

**United States Department of Labor
Employees' Compensation Appeals Board**

_____)	
B.B., Appellant)	
)	
and)	Docket No. 20-1129
)	Issued: December 31, 2020
U.S. POSTAL SERVICE, POST OFFICE,)	
Kenner, LA, Employer)	
_____)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
CHRISTOPHER J. GODFREY, Deputy Chief Judge
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On May 7, 2020 appellant filed a timely appeal from an April 22, 2020 nonmerit decision of the Office of Workers' Compensation Programs (OWCP).¹ As more than 180 days elapsed from OWCP's last merit decision, dated June 24, 2019, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of this case.³

¹ The Board notes that, during the pendency of this appeal, OWCP issued an August 5, 2020 decision which denied modification of the April 22, 2020 denial of the claim. The Board and OWCP may not simultaneously exercise jurisdiction over the same issue(s). 20 C.F.R. §§ 501.2(c)(3), 10.626; *see J.W.*, Docket No. 19-1688, n.1 (issued March 18, 2020); *J.A.*, Docket No. 19-0981, n.2 (issued December 30, 2019); *Arlonia B. Taylor*, 44 ECAB 591 (1993); *Douglas E. Billings*, 41 ECAB 880 (1990). Consequently, OWCP's August 5, 2020 decision is set aside as null and void.

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that, following the April 22, 2020 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

ISSUE

The issue is whether OWCP properly denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On May 17, 2019 appellant, then a 50-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on that date he was injured when a car rear ended his mail truck while in the performance of duty. The employing establishment acknowledged that he had been injured in the performance of duty and did not dispute the facts surrounding the injury. Appellant stopped work that day.

In a development letter dated May 23, 2019, OWCP informed appellant that it had not received any evidence in support of his claim. It advised him of the type of factual and medical evidence needed and provided a questionnaire for his completion. OWCP afforded appellant 30 days to respond.

In a May 17, 2019 duty status report (Form CA-17), Amanda Menard, a physician assistant, diagnosed an abrasion to appellant's eyebrow due to a May 17, 2019 vehicle accident and opined that he was able to perform his regular work.

By decision dated June 24, 2019, OWCP denied appellant's traumatic injury claim finding that he had not submitted medical evidence containing a diagnosis in connection with his injury. It concluded, therefore, that the requirements had not been met to establish an injury as defined under FECA.

OWCP continued to receive evidence. In a May 17, 2019 emergency department report, appellant informed Ms. Menard that he wanted to be examined after he was involved in a motor vehicle crash in which his mail truck was rear ended. In a medical note of even date, Paul Moton, a registered nurse, also evaluated appellant after his motor vehicle accident and noted a small nickel-sized abrasion on the left side of his forehead. He diagnosed minor facial trauma, an abrasion, head trauma, and muscle strain.

On April 16, 2020 appellant requested reconsideration of OWCP's June 24, 2019 decision.

By decision dated April 22, 2020, OWCP denied appellant's April 16, 2020 request for reconsideration of the June 24, 2019 merit decision pursuant to 5 U.S.C. § 8128(a).

LEGAL PRECEDENT

Section 8128(a) of FECA vests OWCP with discretionary authority to determine whether to review an award for or against compensation. The Secretary of Labor may review an award for or against compensation at any time on his own motion or on application.⁴

⁴ 5 U.S.C. § 8128(a); *see L.D.*, Docket No. 18-1468 (issued February 11, 2019); *see also V.P.*, Docket No. 17-1287 (issued October 10, 2017); *D.L.*, Docket No. 09-1549 (issued February 23, 2010); *W.C.*, 59 ECAB 372 (2008).

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or an argument which: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.⁵

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.⁶ If it chooses to grant reconsideration, it reopens and reviews the case on its merits.⁷ If the request is timely, but fails to meet at least one of the requirements for reconsideration, OWCP will deny the request for reconsideration without reopening the case for review on the merits.⁸

ANALYSIS

The Board finds that OWCP improperly denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

Appellant filed a timely request for reconsideration on April 16, 2020,⁹ but he did not establish that OWCP erroneously applied or interpreted a specific point of law or advance a relevant legal argument not previously considered by OWCP. Consequently, the Board finds that appellant is not entitled to a review of the merits based on either the first or second requirement under 20 C.F.R. § 10.606(b)(3).¹⁰

In support of his April 16, 2020 request for reconsideration, appellant submitted an emergency department report and medical note dated May 17, 2019 in which a physician assistant and registered nurse both noted that he was involved in a motor vehicle accident earlier that day and observed a small nickel-sized abrasion on the left side of his forehead. Additionally, the employing establishment did not dispute the facts of this case and agreed that appellant was injured in a motor vehicle accident, while in the performance of duty, on May 17, 2019. Pursuant to OWCP's procedures, no development of a claim is necessary when the condition reported is a minor one, which can be identified on visual inspection by a lay person (*e.g.*, burn, laceration, insect sting, or animal bite), where the injury was witnessed or reported promptly and no dispute

⁵ 20 C.F.R. § 10.606(b)(3); *see L.D., id.*; *see also L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

⁶ *Id.* at § 10.607(a). The one-year period begins on the next day after the date of the original contested decision. For merit decisions issued on or after August 29, 2011, a request for reconsideration must be received by OWCP within one year of the merit decision for which review is sought. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (February 2016). Timeliness is determined by the document receipt date of the request for reconsideration as indicated by the received date in the Integrated Federal Employees' Compensation System (iFECS). *Id.* at Chapter 2.1602.4b.

⁷ *Id.* at § 10.608(a); *see also M.S.*, 59 ECAB 231 (2007).

⁸ *Id.* at § 10.608(b); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

⁹ *Supra* note 7; *J.F.*, Docket No. 16-1233 (issued November 23, 2016).

¹⁰ *Supra* note 6.

exists, and when no time was lost from work due to disability.¹¹ Thus, the Board finds that the newly submitted May 17, 2019 medical evidence, which demonstrated that appellant sustained a minor injury that could be identified on visual inspection by a lay person, constitutes relevant and pertinent new evidence in support of appellant's traumatic injury claim. Therefore, the submission of this evidence requires reopening of appellant's claim for merit review pursuant to the third prong of section 10.606(b).¹²

The Board will therefore set aside OWCP's April 22, 2020 decision and remand the case to properly consider appellant's claim and issue an appropriate merit decision.

CONCLUSION

The Board finds that OWCP improperly denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the April 22, 2020 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: December 31, 2020
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Christopher J. Godfrey, Deputy Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

¹¹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.800.6(a) (June 2011); *see S.H.*, Docket No. 20-0113 (issued June 24, 2020) and *K.R.*, Docket No. 19-1452 (issued June 29, 2020) (the Board accepted contusions as causally related to the accepted employment incident).

¹² *Id.*; *see also C.H.*, Docket No. 17-1065 (issued December 14, 2017); *J.W.*, Docket No. 18-0822 (issued July 1, 2020); *D.M.*, Docket No. 10-1844 (issued May 10, 2011); *Kenneth R. Mroczkowski*, 40 ECAB 855 (1989).