



## ISSUE

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

## FACTUAL HISTORY

This case has previously been before the Board.<sup>4</sup> The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are set forth below.

On March 9, 1991 appellant, then a 31-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on March 9, 1991 she was bitten by a dog on her right thigh while in the performance of duty. OWCP accepted appellant's claim for open wound of the right thigh with complications. Appellant did not stop work following her injury.

On December 28, 2013 appellant stopped work. She filed claims for wage-loss compensation (Form CA-7) for total disability from December 28, 2013 through March 24, 2014. By decision dated May 19, 2014, OWCP denied appellant's claims for wage-loss compensation for the claimed period finding that the medical evidence of record had not supported that appellant was unable to work due to post-traumatic stress disorder (PTSD), which was not an accepted condition. Appellant filed several requests for reconsideration of the denial of her wage-loss compensation claims. By decisions dated September 26, 2014, December 15, 2015, February 15, 2017, and March 14, 2018, OWCP denied modification of its previous denials.

In an undated statement, appellant noted that on March 25, 2015 she tripped while going down a step into her garage, fell down, and broke her ankle.

In a March 30, 2015 report, Dr. James E. Rice, a family practitioner, noted that physical examination of appellant's right ankle revealed swelling and tenderness on palpation. He diagnosed closed fracture of the right ankle and of the right lateral malleolus.

In an April 20, 2015 letter, Dr. Bohdan Kopynec, a Board-certified family practitioner, indicated that appellant suffered a right leg injury in 1991, which resulted in PTSD and reflex sympathetic dystrophy (RSD). He also reported that appellant suffered from neuropathy and weakness, which resulted in falls and that one such fall led to the present ankle fracture.

In a May 27, 2015 letter, appellant, through her representative, indicated that she had been diagnosed with RSD and PTSD. The representative reported that on March 25, 2015 appellant fell down due to weakness in her right leg and suffered an ankle fracture. Appellant requested that the acceptance of her claim be expanded to include the additional conditions of RSD and PTSD.

OWCP also received a December 9, 2013 psychiatric examination report by Dr. Scott T. Schell, a Board-certified psychiatrist and neurologist, who described the March 9, 1991 dog bite injury at work. Dr. Schell noted that appellant complained of recurrent anxiety symptoms, fast heart rate, shortness of breath, and underlying depression. He provided examination findings and

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<sup>4</sup> Docket No. 13-1316 (issued November 18, 2013).

diagnosed chronic PTSD related to a dog attack at work in 1991, generalized anxiety disorder with panic attacks, and depression.

In a June 12, 2013 work status note, Dr. Myra D. Hall, a Board-certified family physician, noted that appellant was seen in the office that day and was unable to work. In an August 1, 2013 letter, she reported that appellant experienced anxiety, stress, and nightmares due to problems with her supervisor, D.S., at work. Dr. Hall noted her agreement with the diagnosis of PTSD.

In a July 8, 2013 letter, Robert Peterson, a licensed professional counselor, noted that appellant exhibited basic symptoms of PTSD. He indicated that appellant had frequent invasive memories of incidents from her marriage. Mr. Peterson also noted that approximately two years prior, appellant was assigned a new supervisor who threatened her with strong rebukes and physically threatening actions.

Appellant submitted office visit summary reports dated from October 29, 2014 to August 5, 2015 by Daniel Matthews, a certified physician assistant, who noted diagnoses of RSD of the lower extremity, long-term drug therapy, neuropathy, and PTSD.

OWCP also received a March 25, 2015 right ankle and tibia x-ray scan report, which showed an oblique fracture in the distal fibula and soft tissue swelling laterally.

In a September 19, 2017 letter, appellant, through her representative, indicated that this letter was her second request to expand the acceptance of appellant's claim to include additional conditions of RSD/neuropathy, PTSD, and broken ankle. She alleged that an April 28, 2016 report from Dr. Utpal Patel, a Board-certified internist, established that appellant sustained consequential injuries due to her March 9, 1991 employment injury. With this letter, appellant's representative submitted an April 28, 2016 report by Dr. Patel which noted the March 9, 1991 date of injury and noted that appellant had experienced ongoing pain and swelling of the right lower leg, and color and temperature changes since she sustained a dog bite on her right upper thigh. He reported that examination of appellant's right thigh revealed sensitivity along the healed scars consistent with a dog bite, slight swelling, and antalgic gait. Dr. Patel diagnosed RSD, also known as complex regional pain syndrome (CRPS), and opined that appellant's RSD/neuropathy was causally related to the trauma of the dog bite.

Appellant also provided a September 1, 2015 letter by Mr. Mathews who noted diagnoses of RSD, PTSD, and neuropathy. Mr. Mathews described the March 1991 dog attack injury and opined that the diagnosed conditions were a direct result of the dog bite injury.

In October 2017 OWCP sought to develop the requested claim expansion for the additional alleged conditions by referring appellant's medical records to district medical advisers (DMA). On October 20, 2017 Dr. Peter Lourgos, a Board-certified general and forensic pathologist serving as a DMA, indicated that, based on his review of the claim, there was insufficient clinical information to support that appellant suffered from PTSD as a result of her accepted March 9, 1991 employment injury.

In an October 30, 2017 letter, Dr. Nizar Souayah, a Board-certified neurologist also serving as a DMA, provided a history of the March 9, 1991 employment injury. He indicated that appellant developed chronic right leg pain, swelling, and color and temperature changes after the dog bite at

work. Dr. Souayah opined that appellant developed RSD of the right lower extremity as a consequence of the accepted March 9, 1991 employment injury.

By decision dated November 21, 2017, OWCP denied appellant's request to expand acceptance of her claim to include the additional condition of PTSD. It noted that the DMA had determined that appellant did not suffer from PTSD due to her March 9, 1991 dog bite injury at work.

By decision dated November 30, 2017, OWCP expanded acceptance of appellant's claim to include CRPS of the right lower limb.

On December 7, 2017 appellant requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review regarding the November 21, 2017 decision. By decision dated April 12, 2018, an OWCP hearing representative set aside the November 21, 2017 decision and remanded the case for further development of the medical evidence to determine whether appellant sustained PTSD and/or a right ankle fracture as a result of her accepted March 9, 1991 employment injury.

OWCP subsequently referred appellant, along with a statement of accepted facts (SOAF) and a copy of the record, to Dr. David Michael Susco, a Board-certified psychiatrist, for a second opinion evaluation. In a June 15, 2018 report, Dr. Susco noted his review of appellant's medical and employment history. He noted that appellant complained of panic and anxiety associated with people, crowds, and being harassed, which she related back to experiences that she had with her husband and supervisors at work. Dr. Susco diagnosed major depression, panic attacks, and CRPS. He opined that appellant's symptoms of panic and anxiety were not related to her employment injury. Dr. Susco explained that appellant's symptoms were more closely related to the treatment that she had received from her supervisor at work, subsequent to the employment injury. He completed a work capacity evaluation form (OWCP-5a) for psychiatric/psychological conditions, which indicated that appellant could not return to work.

By decision dated July 11, 2018, OWCP expanded acceptance of appellant's claim to include closed right ankle fracture and closed fracture of the lateral malleolus.

By separate decision of the same date, OWCP denied appellant's request to expand the acceptance of her claim to include the condition of PTSD. It found that the weight of the medical opinion rested with the June 15, 2018 report of Dr. Susco, OWCP's second opinion examiner, who determined that appellant's emotional condition was not causally related to her accepted March 9, 1991 employment injury.

Appellant continued to request reconsideration for the denial of her wage-loss compensation claims. In OWCP's most recent April 15, 2019 merit decision on that issue, it explained that, if appellant was claiming PTSD based on a new incident, based on treatment by her supervisor following her return to work, she should file a new occupational disease claim.

On July 3, 2019 appellant, through her representative, requested reconsideration of the July 11, 2018 decision which denied PTSD as an accepted condition due to the March 9, 1991 employment injury. She argued that appellant had never claimed that her PTSD was causally related to her accepted March 9, 1991 dog bite injury at work, but that it resulted from mistreatment from her supervisor and her inability to perform the full duties of her job following her accepted

employment injury. The representative noted that Dr. Susco had opined in his June 15, 2018 second opinion report that appellant's symptoms of anxiety and panic were more closely related to treatment from her supervisor. She also set forth argument on reconsideration, namely that while the PTSD condition was not due to fear of dogs because of the dog bite it was still due to the accepted employment injury because her accepted conditions made her unable to perform her employment duties leading to harassment. The representative cited Board precedent in cases which had been remanded to OWCP to consider whether an employment injury was a cause of a medical condition even if it was not a direct or sole cause. Based on the cases cited, she asserted that PTSD should be accepted as related to the accepted employment injury and not a new occupational condition.

Appellant also resubmitted a copy of Dr. Susco's June 15, 2018 report.

By decision dated July 18, 2019, OWCP denied appellant's request for reconsideration of the merits of her claim 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.<sup>5</sup>

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.<sup>6</sup>

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.<sup>7</sup> If it chooses to grant reconsideration, it reopens and reviews the case on its merits.<sup>8</sup> 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.<sup>9</sup>

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<sup>5</sup> 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).

<sup>6</sup> 20 C.F.R. § 10.606(b)(3); *see J.W.*, Docket No. 19-1795 (issued March 13, 2010); *see also L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

<sup>7</sup> *Id.* at § 10.607(a). The one-year period begins on the next day after the date of the originally 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 OWCP's 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). Chapter 2.1602.4b.

<sup>8</sup> *Id.* at § 10.608(a); *see also M.S.*, 59 ECAB 231 (2007).

<sup>9</sup> *Id.* at § 10.608(b); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

### ANALYSIS

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

Appellant disagreed with the July 11, 2018 decision and timely requested reconsideration on July 3, 2019. The underlying issue on reconsideration is whether appellant has established a causal relationship between the accepted employment injury and the additional condition of PTSD. Thus, the Board must determine if appellant presented sufficient evidence or argument regarding causal relationship to warrant a merit review pursuant to 5 U.S.C. § 8128(a).<sup>10</sup>

In her July 3, 2019 request for reconsideration, appellant's representative did not show that OWCP erroneously applied or interpreted a specific point of law. However, the Board finds that she has advanced a new and relevant legal argument not previously considered. The reconsideration request submitted on July 3, 2019 cited to Board precedent which the representative asserts is supportive of finding that PTSD should be accepted as an additional condition causally related to the accepted March 9, 1991 employment injury because that injury was the underlying cause of the harassment she alleged. Upon review of the case record, the Board finds that OWCP has not directly addressed the representative's reconsideration argument or explained the deficiencies of the cases cited in support of that argument. Thus, appellant is entitled to a review of the merits based on the second above-noted requirements under section 10.606(b)(3).<sup>11</sup>

Accordingly, the Board finds that appellant has established that OWCP improperly denied her request for reconsideration without reopening the case for review on the merits based upon a new and relevant legal argument.

### CONCLUSION

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

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<sup>10</sup> *S.W.*, Docket No. 18-1261 (issued February 22, 2019); *S.V.*, Docket No. 17-2012 (issued October 18, 2018).

<sup>11</sup> *Supra* note 7; *T.B.*, Docket No. 18-1214 (issued January 29, 2019).

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 18, 2019 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: July 13, 2020  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board