



## 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 September 3, 2018 appellant, then a 61-year-old electronic technician, filed a traumatic injury claim (Form CA-1) alleging that he injured his right shoulder on August 25, 2018 when he felt a twinge and a burning sensation in his right elbow while attempting to adjust the belt/rollers on a delivery bar code sorter machine while in the performance of duty. On the reverse side of the claim form, the employing establishment acknowledged that appellant was injured in the performance of duty. It also indicated that he had stopped work on August 26, 2018.

In a properly executed authorization for examination and/or treatment (Form CA-16) dated September 4, 2018, Dr. Guido Guidotti, who specializes in occupational medicine, diagnosed a right elbow sprain. He checked a box marked "Yes" indicating that the condition was caused or aggravated by the described employment activity of appellant pulling on the belt of a heavy machine. In an attending physician's report (Form CA-20) of even date, Dr. Guidotti diagnosed right elbow sprain, checked a box marked "Yes" that the condition was caused or aggravated by employment, and found that he was unable to work. In a duty status report (Form CA-7) of even date, he found that appellant was totally disabled.

An August 26, 2018 x-ray of appellant's right elbow interpreted by Dr. David Pace, a Board-certified radiologist, included findings of an elbow joint effusion, which he noted may be secondary to postoperative and degenerative changes, a possible loose body, and degenerative changes associated with a history of a previous fracture and surgery along the radial head/neck.<sup>3</sup>

In a report dated August 29, 2018, Dr. Kai Mithoefer, a Board-certified orthopedic surgeon, noted that appellant complained of a right elbow injury that he sustained at work on August 25, 2018. He discussed his history of a previous injury to his elbow as a youth and subsequent surgery. Dr. Mithoefer noted that appellant had slightly reduced motion, but no pain after his previous elbow injury and could work without restrictions until his August 25, 2018 injury. He diagnosed a right elbow injury with effusion and noted that, while appellant had degenerative changes, he had clearly sustained a new injury.

A September 12, 2018 magnetic resonance imaging (MRI) scan report of appellant's right elbow, interpreted by Dr. Ketan Patel, a radiology specialist, revealed a small joint effusion, diffuse synovitis, severe osteoarthritis, severe tendinopathy of the right common extensor tendon, a chronic radial collateral ligament tear, and a partial-thickness right medial ulnar collateral ligament tear.

In an updated September 4, 2018 report, Dr. Guidotti provided a history of the August 25, 2018 employment incident. He diagnosed a partial thickness tear of the extensor carpi radialis

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<sup>3</sup> On August 26, 2018 a physician assistant evaluated appellant for right elbow pain and swelling that had occurred after he stretched a heavy belt on a machine at work.

brevi tendon, tendinopathy of the common extensor tendon from the lateral epicondyle, a radial collateral ligament tear, a partial thickness distal medial ulnar collateral ligament tear, and secondary osteoarthritis of the right elbow. Dr. Guidotti attributed the diagnoses to appellant's pulling on the belt over rollers on a machine, noting that this "placed an excessive load on his tendon, causing a tear and aggravating his tendinopathy, ligament tears, and osteoarthritis."

In a September 18, 2018 Form CA-20 report, Dr. Guidotti diagnosed a right elbow sprain and checked a box marked "Yes" noting that the condition resulted from the described employment activity of pulling a belt onto a heavy machine.

By decision dated October 19, 2018, OWCP denied appellant's traumatic injury claim. It found that he had established that the August 25, 2018 employment incident occurred as alleged, that he was in the performance of duty, and that a medical condition had been diagnosed. OWCP determined, however, that the medical evidence of record was insufficient to establish a diagnosed condition causally related to the accepted August 25, 2018 employment incident.

On October 29, 2018 appellant requested reconsideration. He resubmitted a September 18, 2018 statement describing the occurrence of the August 25, 2018 employment incident.

By decision dated November 6, 2018, OWCP denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

OWCP subsequently received Form CA-17 reports dated October 30 and November 13, 2018 from Dr. Guidotti, who diagnosed right elbow sprain and found that appellant was unable to work. In Form CA-20 reports dated October 30 and November 27, 2018, Dr. Guidotti diagnosed right elbow strain and checked a box marked "Yes" indicating that the condition was caused or aggravated by an employment activity as it had "occurred at work."

On January 8, 2019 appellant again requested reconsideration. In an accompanying letter dated January 2, 2019, he advised that he had attached pictures and treatment notes from his episode of gout in his right foot prior to the August 25, 2018 employment incident, which he claimed the employing establishment was attempting to represent as his elbow injury. Appellant asserted that his absence prior to his injury date was due to his gout in his foot, not an elbow injury as claimed by the employing establishment. He noted that he had missed work three days before the August 25, 2018 employment incident due to gout in his right foot. Appellant also advised that he had received a letter of warning that was unrelated to this injury which had since been rescinded.

With the request for reconsideration, appellant submitted a January 2, 2019 supplemental factual statement and resubmitted his September 18, 2018 statement, a copy of the August 25, 2018 letter of warning issued by the employing establishment, his grievance appeal form, an October 26, 2018 settlement agreement regarding an Equal Employment Opportunity (EEO) complaint, an unsigned urgent care summary report dated August 14, 2018, Dr. Guidotti's September 4, 2018 report, and the September 12, 2018 MRI scan of his right elbow.

By decision dated March 21, 2019, OWCP denied appellant's request for reconsideration of the merits of his 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>4</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>5</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>6</sup> If it chooses to grant reconsideration, it reopens and reviews the case on its merits.<sup>7</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>8</sup>

## ANALYSIS

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

In his January 8, 2019 request for reconsideration, appellant did not show that OWCP erroneously applied or interpreted a specific point of law and did not advance a relevant legal argument not previously considered by OWCP. He noted that he had missed work due to gout in his foot before the August 25, 2018 incident and that a letter of warning that he had received from the employing establishment, which he claimed mischaracterized the situs of his medical condition, was not relevant to the injury and had been withdrawn. OWCP, however, has accepted that the August 25, 2018 employment incident occurred as alleged. Appellant's contentions are not relevant to the underlying issue of whether he has met his burden of proof to establish a medical condition causally related to the accepted employment incident.<sup>9</sup> This is a medical issue which

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<sup>4</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>5</sup> 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).

<sup>6</sup> *Id.* at § 10.607(a). The one-year period begins on the next day after the date of the originally contested decision. 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.

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

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

<sup>9</sup> *J.A.*, Docket No. 19-1817 (issued April 6, 2020).

must be addressed by relevant and pertinent new medical evidence.<sup>10</sup> Consequently, he was not entitled to a review of the merits based on the first and second above-noted requirements under 20 C.F.R. § 10.606(b)(3).<sup>11</sup>

The Board further finds that appellant has not submitted relevant and pertinent new evidence not previously considered by OWCP in support of his request for reconsideration. The underlying issue on reconsideration was whether he has established causal relationship between his right elbow condition and the accepted August 25, 2018 employment incident. As this is a medical issue, it must be addressed by relevant and pertinent new medical evidence.<sup>12</sup> With his request for reconsideration, appellant submitted a January 2, 2019 supplemental factual statement and resubmitted his September 18, 2018 statement and attached photographs, a copy of the August 25, 2018 letter of warning issued by the employing establishment, his grievance appeal form, an October 26, 2018 settlement agreement regarding an Equal Employment Opportunity (EEO) complaint, an unsigned urgent care summary report dated August 14, 2018, Dr. Guidotti's September 4, 2018 report, and the September 12, 2018 MRI scan of his right elbow. The Board finds that this evidence is irrelevant to the issue of causal relationship as it does not contain a rationalized medical opinion on the issue. The Board further finds that the Form CA-17 and Form CA-20 reports dated October and November 2018 from Dr. Guidotti, repeated his prior findings. Evidence that repeats or duplicates evidence already in the case record, or is cumulative in nature, has no evidentiary value and does not constitute a basis for reopening a case.<sup>13</sup> The evidence submitted in support of his request for reconsideration failed to address the underlying issue of causal relationship and thus appellant was not entitled to a review of the merits of his claim pursuant to the third above-noted requirement under 20 C.F.R. § 10.606(b)(3).<sup>14</sup>

The Board, accordingly, finds that appellant has not met any of the requirements of 20 C.F.R. § 10.606(b)(3). Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.<sup>15</sup>

### CONCLUSION

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).<sup>16</sup>

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<sup>10</sup> See *S.P.*, Docket No. 18-1419 (issued February 27, 2019); *Bobbie F. Cowart*, 55 ECAB 746 (2004).

<sup>11</sup> *Y.H.*, Docket No. 18-1618 (issued January 21, 2020).

<sup>12</sup> *K.W.*, Docket No. 18-0970 (issued February 15, 2019).

<sup>13</sup> *L.C.*, Docket No. 19-0503 (issued February 7, 2020); *A.A.*, Docket No. 18-0031 (issued April 5, 2018).

<sup>14</sup> *R.W.*, Docket No. 18-1324 (issued January 21, 2020).

<sup>15</sup> *S.H.*, Docket No. 19-1115 (issued November 12, 2019).

<sup>16</sup> The Board notes that the employing establishment issued a Form CA-16. A completed Form CA-16 authorization may constitute a contract for payment of medical expenses to a medical facility or physician, when properly executed. The form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. See 20 C.F.R. § 10.300(c); *J.G.*, Docket No. 17-1062 (issued February 13, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 21, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 22, 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