

FACTUAL HISTORY

On July 27, 2018 appellant, then a 59-year-old city carrier, filed an occupational disease claim (Form CA-2) alleging that on July 21, 2018 he first realized that his right shoulder pain was caused by factors of his federal employment including lifting and carrying mail and parcels. He stopped work on July 21, 2018.

In support of his claim, appellant submitted a work restriction form dated July 27, 2018 with an illegible signature. The form diagnosed right shoulder strain and provided work restrictions.

In a development letter dated August 9, 2018, OWCP informed appellant that the factual and medical evidence of record was insufficient to establish his claim. It provided a factual questionnaire for his completion and requested additional medical evidence in support of his claim. OWCP afforded appellant 30 days to submit the necessary evidence.

In response to OWCP's request, appellant submitted a July 27, 2018 duty status report (Form CA-17) and another work restriction form dated August 1, 2018 diagnosing right shoulder strain and providing work restrictions. The signatures on both forms were illegible.

By decision dated October 4, 2018, OWCP denied appellant's claim finding that the evidence of record was insufficient to establish his occupational disease claim. It explained that he had not responded to its August 9, 2018 questionnaire requesting him to identify employment factors he believed caused or aggravated his right shoulder condition. OWCP concluded, therefore, that appellant had not established that an injury occurred as alleged.

On March 15, 2019 appellant requested reconsideration and submitted evidence in support of his claim.

An undated letter by Catrecha Anderson, a physician assistant, summarized appellant's right shoulder diagnostic test results.

A March 8, 2019 medical note from Dr. William F. Beauchamp, an osteopath specializing in orthopedic surgery, noted that over the past year appellant had shoulder pain which developed in a gradual, persistent pattern with no specific causative incident. Physical examination findings were detailed with diagnoses of right shoulder impingement syndrome, complete rotator cuff tear, and slap lesion, Type II. Dr. Beauchamp further indicated appellant's shoulder pain was aggravated by lifting and overhead activity.

By decision dated April 9, 2019, OWCP denied appellant's request for reconsideration of the merits of his claim.

LEGAL PRECEDENT

Section 8128(a) of FECA does not entitle a claimant to review of an OWCP decision as a matter of right.³ OWCP has discretionary authority in this regard and has imposed certain limitations in exercising its authority.⁴ One such limitation is that the request for reconsideration must be received by OWCP within one year of the date of the decision for which review is sought.⁵

A timely request for reconsideration, including all supporting documents, must set forth arguments and contain evidence that either: (i) shows that OWCP erroneously applied or interpreted a specific point of law; (ii) advances a relevant legal argument not previously considered by OWCP; or (iii) constitutes relevant and pertinent new evidence not previously considered by OWCP.⁶ When a timely request for reconsideration does not meet at least one of the above-noted requirements, OWCP will deny the request for reconsideration without reopening the case for a review on the merits.⁷

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).

On reconsideration, appellant did not show that OWCP erroneously applied or interpreted a specific point of law, nor did he advance a relevant legal argument not previously considered by OWCP. Consequently, he is not entitled to a review of the merits of his claim based on the first and second above-noted requirements under 20 C.F.R. § 10.606(b)(3).⁸

In support of his reconsideration request, appellant resubmitted an undated letter signed by Ms. Anderson, a physician assistant, and a March 8, 2019 medical note from Dr. Beauchamp. This evidence, while new, is not relevant to the underlying factual issues in this case of whether appellant established factors of employment which allegedly caused his condition. Evidence which does not address the particular issue under consideration does not constitute a basis for

³ This section provides in pertinent part: “[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application.” 5 U.S.C. § 8128(a).

⁴ 20 C.F.R. § 10.607.

⁵ *Id.* at § 10.607(a). 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). *Id.* at Chapter 2.1602.4b.

⁶ *Id.* at § 10.606(b)(3).

⁷ *Id.* at § 10.608(a), (b).

⁸ *S.C.*, Docket No. 19-0479 (issued August 8, 2019); *T.B.*, Docket No. 18-1214 (issued January 29, 2019); *C.B.*, Docket No. 08-1583 (issued December 9, 2008).

reopening a case.⁹ Thus, appellant is also not entitled to a review of the merits of his claim based on the third above-noted requirement under section 10.606(b)(3).

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.

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).

ORDER

IT IS HEREBY ORDERED THAT the April 9, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 7, 2020
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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

⁹ *H.H.*, Docket No. 18-1660 (issued March 14, 2019); *F.B.*, Docket No. 18-1039 (issued December 6, 2018); *Eugene F. Butler*, 36 ECAB 393, 398 (1984).