



## 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

On May 18, 2015 appellant, then a 49-year-old transportation security officer, filed a traumatic injury claim (Form CA-1) alleging that on May 15, 2015 she suffered injuries to her left shoulder/arm when a coworker, E.G., pushed her from behind while in the performance of duty.<sup>3</sup> On the reverse side of the claim form, the employing establishment noted that appellant stopped work on May 15, 2018 and returned to work on May 18, 2018.

In a May 18, 2015 statement, E.G. indicated that as she walked around appellant, she leaned gently and touched or pressed against appellant with both hands on appellant's back. Appellant reportedly made faces and told E.G. that she had touched the part of her back that had severe nerve damage. E.G. also noted that appellant stated that her back felt like it was on fire. Appellant later returned stating that she had been instructed to go to the emergency department for treatment of her pain.

In a May 20, 2015 statement, another coworker, A.P., noted that he had reviewed a video recording of the alleged May 15, 2015 incident as a member of the safety assessment team. He noted that E.G. touched appellant twice on the shoulder as she moved around her. A.P. also noted that there did not appear to be significant movement of appellant's body to indicate that she had been pushed. Appellant was reportedly smiling and did not appear to be in immediate distress or discomfort until she put her head down several seconds later. A.P. indicated that he did not see sufficient evidence to indicate that an injury had occurred.

In a May 30, 2015 letter, the employing establishment controverted appellant's claim noting that the video recording of the May 15, 2015 incident merely showed another officer "touching [appellant] on the shoulder area."

In a June 11, 2015 development letter, OWCP requested that appellant submit additional evidence in support of her claim. It advised her of the type of factual and medical evidence needed and provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit the necessary evidence.

By decision dated July 20, 2015, OWCP denied appellant's claim, finding that she had not established a diagnosed medication condition in connection with the accepted May 15, 2015 employment incident.

OWCP subsequently received a May 20, 2015 report from Dr. Chad Mathis, a Board-certified orthopedic surgeon, who noted that appellant was seen as a follow-up for complaints of left shoulder pain. Dr. Mathis noted that appellant's symptoms had worsened since her last visit.

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<sup>3</sup> Under OWCP File No. xxxxxx287, appellant has an accepted claim for July 26, 2014 neck and left shoulder sprains.

He also noted that she had been receiving physical therapy. On examination of the left shoulder, Dr. Mathis observed tenderness over the subacromial and glenohumeral aspects, forward flexion to 110 degrees, and external rotation with the arm by the side to 10 degrees. He diagnosed adhesive capsulitis of the shoulder and supplied a shoulder immobilizer. Dr. Mathis recommended arthroscopy.

On July 19, 2016 appellant, through counsel, requested reconsideration of OWCP's July 20, 2015 decision. Counsel argued that the May 15, 2015 employment incident aggravated appellant's prior left shoulder injury. He also noted that she had undergone surgery on June 25, 2015, and later received a diagnosis of complex regional pain syndrome. Lastly, counsel argued that appellant established the elements of her May 15, 2015 claim.

Additional evidence included a May 15, 2015 left shoulder x-ray, which revealed no abnormality.

In a report dated May 15, 2015, Dr. Nicholas J. Manzari, Jr., Board-certified in emergency and internal medicine, examined appellant for complaints of upper back and left shoulder pain associated with a chronic injury. He related just prior to arrival that she sustained a "direct blow" to her left thoracic area at work. On examination, Dr. Manzari observed moderate left lateral tenderness of the back, as well as tenderness and range of motion restricted by pain of the left upper extremity. He diagnosed shoulder pain and discharged appellant in stable condition.

By decision dated August 22, 2016, OWCP reviewed the merits of the claim, but denied modification of the July 20, 2015 decision.

On August 22, 2017 appellant, through counsel, requested reconsideration of OWCP's August 22, 2016 decision.

In a February 5, 2016 report, Dr. Alethia B. Sellers, Board-certified in pain medicine and anesthesiology, noted that she had examined appellant for complaints of back, neck, and arm pain. She noted that appellant stated that in July 2014, she injured her left shoulder and brachial plexus after lifting a bag off of a conveyer belt at an airport. Appellant underwent shoulder surgery in the summer of 2015. She described an incident where a coworker lost her balance and bumped into her back. Diagnostic studies, including a magnetic resonance imaging (MRI) scan, a nerve conduction velocity study, and a left shoulder x-ray were normal. On examination, Dr. Sellers observed tenderness at C5 and C6 and edema of the left hand/wrist. She diagnosed complex regional pain syndrome (CRPS) and noted that appellant's pain was out of proportion to findings on imaging and clinical studies.

In clinical notes dated April 29, 2016, Dr. Sellers noted her review of a recent MRI scan which demonstrated a mild central disc bulge at C5-6 causing mild central canal stenosis. She diagnosed CRPS and pain disorder with psychological factors and recommended a stellate ganglion block.

In an August 16, 2016 letter, Dr. Sellers explained that appellant had an original work-related injury on July 26, 2014 when she injured her neck and shoulder. She noted that appellant underwent surgery with Dr. Mathis on July 25, 2015, but that her problems persisted. Appellant returned for follow up on April 29, 2016 and Dr. Sellers examined the results of a recent MRI

scan, which demonstrated a mild central disc bulge at C5-6 causing mild central stenosis. Dr. Sellers stated that this finding would not explain her complaints of pain. Appellant underwent stellate ganglion blocks on July 5, 2016, returning on July 14, 2016 to report increased pain of the left upper extremity. Dr. Sellers noted that the failure of the stellate ganglion blocks to reduce pain demonstrated that appellant's CRPS was advanced. She opined that appellant's employment incident was more likely than not the cause of her CRPS, which followed an injury on July 26, 2014, later being hit by a wheelchair and pushed by a coworker, and that she was not yet at maximum medical improvement for her conditions. Dr. Sellers recommended visiting a psychologist and affirmed that her opinions were within a reasonable degree of medical certainty.

In clinical notes dated June 23, 2017, Dr. Sellers followed up with appellant for complaints of chronic left arm pain. On examination of the left shoulder, she observed reduced range of motion with pain, reduced strength of the deltoid, allodynia, hyperalgesia, and asymmetric temperature. Dr. Sellers noted that appellant had poor response and previous adverse reactions to stellate ganglion block. She diagnosed CRPS and left upper extremity pain, explaining that there were no other diagnoses that better explained her signs and symptoms. Dr. Sellers recommended acupuncture and hypnosis for appellant's pain.

By decision dated November 15, 2017, OWCP reviewed the merits of appellant's claim and found that while she had provided sufficient evidence to establish a diagnosed medical condition, the evidence of record was insufficient to establish causal relationship between her medical conditions and the accepted May 15, 2015 employment incident.

On November 15, 2018 appellant requested reconsideration of OWCP's November 15, 2017 decision.

By letter dated November 2, 2018, Dr. Sellers noted that appellant had been under her care since February 5, 2016 and repeated her prior findings. She stated that this was possibly from an injury at work and possibly postoperative, but no definite nerve injury was noted. Dr. Sellers clarified that the current diagnosis of CRPS was a diagnosis of exclusion, which became a "working diagnosis" that had continued along with left shoulder and arm pain. Appellant had not responded well to a stellate ganglion block or other treatments. Dr. Sellers explained that over the years, her examination had changed, but she continued to endorse similar pain varying in intensity. Appellant was also noted to catastrophize her pain and Dr. Sellers had discussions with her about pain psychology. Dr. Sellers indicated that she believed appellant had CRPS of the left upper extremity, especially on initial presentation.

By decision dated November 28, 2018, OWCP denied appellant's request for reconsideration of the merits of her claim.

### **LEGAL PRECEDENT**

Section 8128(a) of FECA does not entitle a claimant to review of an OWCP decision as a matter of right.<sup>4</sup> OWCP has discretionary authority in this regard and has imposed certain

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<sup>4</sup> 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).

limitations in exercising its authority.<sup>5</sup> 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.<sup>6</sup>

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.<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 her claim, pursuant to 5 U.S.C. § 8128(a).

Appellant's request for reconsideration did not show that OWCP erroneously applied or interpreted a specific point of law, or advance a new and relevant legal argument not previously considered. Thus, appellant is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under 20 C.F.R. § 10.606(b)(3).

In support of her request for reconsideration, appellant submitted an additional report from Dr. Sellers dated November 2, 2018. Dr. Sellers reviewed appellant's history of injury, prior treatment, and noted her "working diagnosis" of CRPS which was possibly from an injury at work and possibly postoperative, but no definite nerve injury was noted. She indicated that she believed appellant had CRPS of the left upper extremity, especially on initial presentation. The Board finds that this report is substantially similar to Dr. Sellers' prior medical reports, which were previously reviewed and considered by OWCP. Dr. Sellers did not provide new or relevant evidence explaining how appellant's diagnosed CRPS condition was causally related to the accepted employment incident of May 15, 2015. The Board has held that the submission of evidence which duplicates or is substantially similar to evidence already in the case record does not constitute a

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<sup>5</sup> 20 C.F.R. § 10.607.

<sup>6</sup> *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. *Id.* at Chapter 2.1602.4b.

<sup>7</sup> *Id.* at § 10.606(b)(3).

<sup>8</sup> *Id.* at § 10.608(b); *O.P.*, Docket No. 19-0445 (issued July 24, 2019); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

basis for reopening a case.<sup>9</sup> Thus, appellant was not entitled to a review of the merits of her claim based on the third above-noted requirements under 20 C.F.R. § 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 her claim pursuant to 5 U.S.C. § 8128(a).

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 28, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 3, 2020  
Washington, DC

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

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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<sup>9</sup> *S.W.*, Docket No. 18-1261 (issued February 22, 2019); *E.M.*, Docket No. 09-0039 (issued March 3, 2009); *D.K.*, 59 ECAB 141 (2007).