

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

N.O., Appellant)	
)	
and)	Docket No. 19-1481
)	Issued: January 16, 2020
DEPARTMENT OF AGRICULTURE, U.S.)	
FOREST SERVICE, Draper, UT, Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On June 27, 2019 appellant filed a timely appeal from a March 20, 2019 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days elapsed from OWCP's last merit decision, dated September 12, 2018, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of this case.²

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that appellant submitted additional evidence on appeal. 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 her claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On July 31, 2018 appellant, then 27-year-old paramedic firefighter, filed a traumatic injury claim (Form CA-1) alleging that on July 27, 2018 she sustained injuries to her mid-back, lower back, and left knee as a result of an employment-related motor vehicle accident (MVA) while in the performance of duty. On the reverse side of the claim form, the employing establishment acknowledged that appellant was in the performance of duty when injured. It also noted that she initially received medical treatment on July 27, 2018 and was released to resume work.

A July 28, 2018 state workers' compensation form report signed by Sharon K. Cowie, a family nurse practitioner, noted a current diagnosis of MVA -- muscle pain. She provided the same diagnosis on a July 28, 2018 attending physician's report. Ms. Cowie released appellant to resume her regular work. OWCP also received July 28, 2018 x-rays of appellant's cervical, thoracic, and lumbar spine. The respective films revealed no evidence of displaced and/or acute fractures or destructive lesions.

In an August 7, 2018 development letter, OWCP notified appellant of the deficiencies of her claim and advised her of the type of medical evidence needed. It afforded her 30 days to submit the necessary evidence.

OWCP subsequently received a July 27, 2018 Oregon Police Traffic Crash Report and a citation issued to the other motorist for unsafe passing on the left.

OWCP also received July 28, 2018 emergency department treatment notes from Ms. Cowie. Ms. Cowie noted that appellant presented with complaints of discomfort following a MVA, which occurred approximately 36 hours prior. She reported that appellant was driving a pickup truck and making a left-hand turn when another pickup truck T-boned her on the driver's side. Following the collision, appellant self-extricated from her vehicle and was able to ambulate. Ms. Cowie noted current complaints of muscle tenderness across her back. X-rays of the cervical, thoracic, and lumbar spine were negative. She provided a clinical assessment/impression of MVA and back muscle spasm, and discharged appellant in stable condition.

By decision dated September 12, 2018, OWCP denied appellant's traumatic injury claim. It found that while she had established that the July 27, 2018 employment incident occurred as alleged, the evidence of record was insufficient to establish a medical diagnosis in connection with the accepted incident. Consequently, OWCP found that the requirements had not been met to establish that appellant sustained an injury as defined by FECA.

On March 13, 2019 appellant, through counsel, requested reconsideration. Counsel represented that the July 27, 2018 employment-related MVA caused serious physical injuries, including cervical strain/whiplash, lower back and sacroiliac joint pain, and dysfunction. He noted

that appellant obtained new x-rays and had received chiropractic treatment for her neck and back complaints.

By decision dated March 20, 2019, OWCP denied appellant's request for reconsideration of the merits of her claim.

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.³

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.⁴

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.⁵ If it chooses to grant reconsideration, OWCP reopens and reviews the case on its merits.⁶ 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.⁷

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).

On March 13, 2019 appellant, through counsel, timely requested reconsideration of OWCP's September 12, 2018 merit decision. However, counsel neither alleged nor demonstrated that OWCP erroneously applied or interpreted a specific point of law nor did he advance a relevant legal argument not previously considered by OWCP. Accordingly, the Board finds that appellant

³ 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).

⁴ 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).

⁵ *Id.* at § 10.607(a). The one-year period begins on the next day after the date of the original 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.

⁶ *Id.* at § 10.608(a); *see also M.S.*, 59 ECAB 231 (2007).

⁷ *Id.* at § 10.608(b); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

is 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).⁸

Appellant also failed to submit relevant and pertinent new evidence with her request for reconsideration. The underlying issue in the claim is whether she had met her burden of proof to establish a medical condition causally related to the accepted July 27, 2018 employment incident and that issue requires medical evidence to resolve it.⁹ Although counsel represented that appellant had been diagnosed with cervical strain/whiplash and was being treated by a chiropractor for neck and back complaints, he did not submit additional medical evidence on reconsideration. Because appellant and/or counsel did not provide relevant and pertinent new evidence not previously considered, appellant is not entitled to a review of the merits based on the third requirement under 20 C.F.R. § 10.606(b)(3).¹⁰

The Board accordingly finds that appellant has not met any of the requirements of 20 C.F.R. § 10.606(b)(3). Therefore, pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.¹¹

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).

⁸ 20 C.F.R. § 10.606(b)(3)(i) and (ii).

⁹ *B.T.*, Docket No. 18-1397 (issued January 15, 2019); *Bobbie F. Cowart*, 55 ECAB 746 (2004).

¹⁰ 20 C.F.R. § 10.606(b)(3)(iii).

¹¹ *See S.M.*, Docket No. 18-0673 (issued January 25, 2019); *A.R.*, Docket No. 16-1416 (issued April 10, 2017); *M.E.*, 58 ECAB 694 (2007); *Susan A. Filkins*, 57 ECAB 630 (2006) (when an application for reconsideration does not meet at least one of the three requirements enumerated under 20 C.F.R. § 10.606(b), OWCP will deny the application for reconsideration without reopening the case for a review on the merits).

ORDER

IT IS HEREBY ORDERED THAT the March 20, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 16, 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