

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

E.R., Appellant)	
)	
and)	Docket No. 19-0017
)	Issued: March 2, 2020
DEPARTMENT OF AGRICULTURE, U.S.)	
FOREST SERVICE, Camptonville, CA,)	
Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Deputy Chief Judge
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On September 17, 2018 appellant filed a timely appeal from a March 20, 2018 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from OWCP's last merit decision, dated June 19, 2017, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of this case.

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 April 18, 2017 appellant, then a 42-year-old forestry technician, filed an occupational disease claim (Form CA-2) alleging that he had struggled with Lyme disease for many years with chronic symptoms of unrelenting fatigue, pain, and loss of brain function. He indicated that he first became aware of the disease on June 25, 2002 and first realized it was related to his federal employment on March 1, 2016.

In a development letter dated April 27, 2017, OWCP advised appellant that additional factual and medical evidence was necessary to establish his claim. It provided a questionnaire for his completion regarding the factual elements of his claim. OWCP also requested that appellant provide a narrative medical report from his physician, which contained a detailed description of findings and diagnoses, explaining how the claimed exposure resulted in a specific condition. It afforded him 30 days to submit the necessary evidence. Appellant did not timely respond.

By decision dated June 19, 2017, OWCP denied the claim. It found that the evidence of record was insufficient to establish that the events occurred as described, as appellant had not responded to the development letter and had not identified a specific work factor or exposure, which he believed caused or contributed to his alleged condition.

On February 27, 2018 appellant requested reconsideration of OWCP's June 19, 2017 decision.

Along with his request for reconsideration, appellant submitted a traumatic injury claim (Form CA-1) dated June 29, 2002. On that form he indicated that he had been bitten by a tick on June 25, 2002 and developed a fever and lethargy the following day. An undated supplemental information worksheet, signed by two employing establishment managers, noted that appellant received first aid on June 25, 2002. An undated and unsigned injury case summary noted that on June 25, 2002 appellant had a tick bite.

Appellant also submitted a notice of recurrence (Form CA-2a) dated April 18, 2017 in which he noted that he suffered from chronic fatigue, general body pain, and periods of cognitive limitations. An employing establishment manager wrote on the claim form that appellant had been bitten by a tick on June 25, 2002, which he reported, that he had submitted a Form CA-1, was taken to the doctor for flu-like symptoms, and then had returned to work. She noted that, in 2009, appellant began to experience intermittent symptoms that became severe in 2016 when he was diagnosed with Lyme disease.

A June 28, 2002 physician's progress report bearing an illegible signature related a diagnosis of tick bite and an injury date of June 23, 2002.

A laboratory test report dated November 8, 2016 was positive for babesiosis and bartonellosis. A laboratory test report dated November 28, 2017 was positive for Lyme disease (borreliosis) and babesiosis.

In a narrative report dated January 12, 2018, Dr. Raphael B. Stricker, Board-certified in internal medicine, noted treating appellant for Lyme disease and tick-borne co-infections including Babesia and Bartonella. He described appellant's history of tick exposure at work, and described appellant's worsening symptoms, noting that he had to stop work in 2012. Dr. Stricker described appellant's medical treatment and continuing symptoms. He concluded that appellant was quite debilitated due to the severity of his symptoms.

By decision dated March 20, 2018, OWCP denied appellant's request for reconsideration, finding that the evidence submitted was insufficient to warrant a merit review.

LEGAL PRECEDENT

Section 8128(a) of FECA does not entitle a claimant the review of an OWCP decision as a matter of right.¹ OWCP has discretionary authority in this regard and has imposed certain limitations in exercising its authority.² 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.³

A timely application for reconsideration, including all supporting documents, must set forth arguments and contain evidence that either: (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 When a timely application 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.⁵

ANALYSIS

The Board finds that OWCP improperly denied appellant's request for reconsideration of the merits of his claim.

The Board finds that appellant has not shown that OWCP erroneously applied or interpreted a specific point of law, nor advanced a relevant legal argument not previously considered. Thus, appellant 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).

The Board finds, however, that appellant did submit relevant and pertinent new evidence with his request for reconsideration. OWCP denied appellant's claim, finding that he had not established that the alleged employment exposure occurred in the performance of duty.

In support of a request for reconsideration, a claimant is not required to submit all evidence necessary to discharge his or her burden of proof.⁶ With his February 27, 2018 reconsideration request, appellant submitted documents including a Form CA-1, dated June 29, 2002, an undated supplemental worksheet, an undated case summary, and an April 18, 2017 Form CA-2a, which addressed a tick bite he allegedly sustained on June 25, 2002. OWCP also received a June 28,

¹ 5 U.S.C. § 8128(a).

² 20 C.F.R. § 10.607.

³ *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 (IFECES). Chapter 2.1602.4b

⁴ *Id.* at § 10.606(b)(3); *see G.L.*, Docket No. 19-0620 (issued September 3, 2019).

⁵ *Id.* at § 10.608.

⁶ *R.M.*, Docket No. 19-0543 (issued December 23, 2019).

2002 physician's progress report, which addressed a tick bite appellant allegedly sustained on June 23, 2002. Appellant also submitted laboratory test results dated November 8, 2016 and November 28, 2017 and a report from his attending internist, Dr. Stricker, which confirmed that he was diagnosed with Lyme disease. The Board finds that, the new evidence submitted on reconsideration is relevant and pertinent new evidence.⁷ Appellant's February 27, 2018 reconsideration request, therefore, met the third above-noted requirement of 20 C.F.R. § 10.606(b)(3).

Consequently, the Board finds that OWCP improperly denied merit review pursuant to 20 C.F.R. § 10.608. The case shall therefore be remanded to OWCP for consideration of the merits of appellant's claim to be followed by an appropriate merit decision.

CONCLUSION

The Board finds that OWCP improperly denied appellant's request for reconsideration of the merits of his claim.

ORDER

IT IS HEREBY ORDERED THAT the March 20, 2018 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: March 2, 2020
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

⁷ See *N.D.*, Docket No. 18-0753 (issued January 17, 2020).