

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

D.M., Appellant)	
)	
and)	Docket No. 19-1674
)	Issued: March 6, 2020
DEPARTMENT OF THE INTERIOR,)	
NATIONAL PARK SERVICE, Washington, DC,)	
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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 5, 2019 appellant filed a timely appeal from a June 27, 2019 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has 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 to review 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 August 6, 2018 appellant, then a 51-year-old line lieutenant, filed a traumatic injury claim (Form CA-1) alleging that on August 3, 2018 she sustained an injury to the middle of her back while in the performance of duty. She explained that, while she was on duty as the commander of a horse-mounted police unit, her horse began to buck and threw her to the ground. Appellant further explained that she landed on her back and as she stood up she felt pain in the middle of her back. She did not stop work.

In a development letter dated August 9, 2018, OWCP advised appellant that it had received no evidence in support of her traumatic injury claim. It advised her of the factual and medical evidence necessary to establish her claim. OWCP also noted that no firm diagnosis of a work-related condition had been provided by a physician. It asked appellant to complete a questionnaire to provide further details regarding the circumstances of the claimed August 3, 2018 employment incident. OWCP afforded her 30 days to respond.

OWCP received an August 3, 2018 medical report from Dr. Patrick McCarville, Board-certified in family medicine, and Dr. Hamid Shokoohi, Board-certified in emergency medicine, which provided that appellant presented to the emergency department with thoracic back pain after the horse she was riding began to buck and she fell off and landed on her back. Appellant underwent a computerized tomography (CT) scan performed by Dr. Ramin Javan, a Board-certified diagnostic radiologist, which found no evidence of an acute displacement fracture involving the thoracic spine and no evidence of severe spinal canal narrowing. Based on the CT scan, Dr. McCarville diagnosed back pain and provided her with follow-up instructions.

By decision dated September 12, 2018, OWCP denied appellant's traumatic injury claim finding that the diagnosis of back pain was insufficient as pain is a symptom and not a diagnosis of a medical condition. It concluded, therefore, that she had failed to submit probative medical evidence establishing a medical diagnosis causally related to the accepted August 3, 2018 employment incident.

On June 10, 2019 appellant requested reconsideration of OWCP's September 12, 2018 decision. She did not submit additional evidence along with her request.

By decision dated June 27, 2019, OWCP denied appellant's request for reconsideration of the merits of her claim.³

³ OWCP found that appellant submitted only duplicate copies of hospital records already received. The Board notes, however, that the case record provided does not show that appellant submitted evidence between the time of her request for reconsideration and OWCP's June 27, 2019 decision.

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.⁴

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.⁵

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.⁶ If it chooses to grant reconsideration, it reopens and reviews the case on its merits.⁷ 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.⁸

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 filed a timely request for reconsideration on June 10, 2019,⁹ but she did not establish that OWCP erroneously applied or interpreted a specific point of law, or advance a relevant legal argument not previously considered by OWCP. Accordingly, the Board finds that she is not entitled to a review of the merits based on either the first or second requirement under 20 C.F.R. § 10.606(b)(3).¹⁰

⁴ 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).

⁵ 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).

⁶ *Id.* at § 10.607(a). The one-year period begins on the next day after the date of the original contested decision. For merit decisions issued on or after August 29, 2011, a request for reconsideration must be received by OWCP within one year of the merit 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.

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

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

⁹ *Supra* note 6; *J.F.*, Docket No. 16-1233 (issued November 23, 2016).

¹⁰ *Supra* note 5.

Appellant also failed to submit relevant and pertinent new evidence in support of her June 10, 2019 request for reconsideration. The underlying issue is whether she has met her burden of proof to establish a traumatic injury in the performance of duty, as alleged. This is a medical question that requires rationalized medical opinion evidence to resolve the issue.¹¹ However, appellant did not submit additional evidence with her request for reconsideration. Therefore, she is not entitled to a review of the merits based on the third requirement under 20 C.F.R. § 10.606(b)(3).¹²

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 June 27, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 6, 2020
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

¹¹ *E.T.*, Docket No. 14-1087 (issued September 5, 2014).

¹² 20 C.F.R. § 10.606(b)(3)(iii).