

Federal Employees' Compensation Act³ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of this case.⁴

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 March 16, 2018 appellant, then a 58-year-old housekeeping aide, filed a traumatic injury claim (Form CA-1) alleging that on February 19, 2016 he sustained an injury when hazardous material flew in his eyes while in the performance of duty. He indicated that "hazardous material" flew in his eyes and sinus after pushing the button to crush trash he had dumped in the compactor. Appellant last worked since October 28, 2016.⁵ OWCP accepted his claim for left eye acute toxic conjunctivitis.

On June 18, 2018 appellant filed a claim for a schedule award (Form CA-7).

In an April 27, 2018 progress note, Dr. Amy M. Waddell, an ophthalmologist, noted that appellant complained of acute vision loss in 2016. She recommended that appellant follow up with a glaucoma clinic because of his high risk for blindness in the left eye due to severe-stage glaucoma. The report also included an optic nerve head (ONH) and retinal nerve fiber layer (RNFL) analysis test dated April 27, 2018, which showed severe optic nerve damage in the left eye.

By letter dated June 25, 2018, OWCP requested that appellant provide an impairment rating in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment (A.M.A., Guides)*.⁶ It afforded him 30 days to submit the requested information.

By decision dated August 28, 2018, OWCP denied appellant's claim for a schedule award, finding that he had not submitted sufficient evidence to establish permanent impairment of a scheduled member causally related to his accepted employment injury.

On September 17, 2018 appellant requested reconsideration and submitted a September 11, 2018 letter from Dr. Yara Catoira-Boyle, an ophthalmologist. Dr. Catoira-Boyle discussed the

³ 5 U.S.C. § 8101 *et seq.*

⁴ The Board notes that following the May 10, 2019 decision, OWCP received additional evidence. 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.*

⁵ The record reflects that appellant had resigned from federal employment, effective October 28, 2016.

⁶ A.M.A., *Guides* (6th ed. 2009).

history of the February 19, 2016 injury and the medical treatment that appellant had received. Dr. Catoira-Boyle opined that appellant's toxic conjunctivitis was stable and at the point of maximum medical improvement (MMI). She reported that appellant's current diagnosis was severe open angle glaucoma of the left eye and explained that it was possibly secondary to a toxic inflammatory trabeculitis. Dr. Catoira-Boyle indicated that appellant had a total visual impairment of 24 percent permanent impairment.

OWCP also received eye clinic notes dated March 1 to August 9, 2016, which described appellant's complaints of blurred vision and other visual changes in his left eye. The progress notes provided physical examination findings and visual acuity analysis of both eyes. Appellant was diagnosed with toxic conjunctivitis and glaucoma.

On October 31, 2018 OWCP referred appellant's claim, along with a statement of accepted facts (SOAF) and the case record, to Dr. Eric Singham, an OWCP district medical adviser (DMA), for review as to whether appellant sustained permanent impairment as a result of his accepted left eye injury. In a November 5, 2018 report, Dr. Singham reviewed appellant's medical records, including Dr. Catoira-Boyle's September 11, 2018 impairment rating report. He indicated that he was not sure if appellant's "toxic inflammatory trabeculitis" was the cause of appellant's vision loss. Dr. Singham opined that, based on appellant's examination findings, he had long-standing glaucoma, asymmetrically worse in the left eye. He referenced the A.M.A., *Guides* and calculated that appellant had visual system impairment rating of 34.72 percent permanent impairment. Dr. Singham noted that appellant had reached MMI on March 17, 2016.

In a February 2, 2019 addendum report, Dr. Singham clarified that the permanent impairment rating he provided for appellant's left eye was for his overall condition, not strictly due to the accepted condition of acute toxic conjunctivitis. He also indicated that appellant had no permanent impairment due solely to the accepted diagnosis of acute toxic conjunctivitis of the left eye.

By decision dated March 12, 2019, OWCP again denied appellant's schedule award claim based on the November 5, 2018 and February 2, 2019 DMA reports of Dr. Singham.

On April 12, 2019 appellant requested reconsideration. In an April 1, 2019 letter, he indicated that he was submitting documentation for OWCP to reconsider his case. Appellant noted that he had previously submitted medical reports from the employing establishment's hospital and the eye clinic. He indicated that he was submitting documents to address OWCP's determination that appellant had a preexisting eye condition. Appellant related that he was providing documents from the state Department of Transportation (DOT), which showed that he had a valid driver's license and medical certificate (with no restrictions) at the time of the injury. He pointed out that since his medical certificate expired on September 25, 2016, his license had been downgraded to a public passenger chauffer license because he had not passed a medical examination.

Appellant submitted a certification of appellant's state driver's record dated March 27, 2019 and his official driver's record.

By decision dated May 10, 2019, OWCP denied further merit review of appellant's claim pursuant to 5 U.S.C. § 8128(a) finding that appellant's reconsideration request neither raised substantive legal questions nor included new and relevant evidence.

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.⁷

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.⁸

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.⁹ If it chooses to grant reconsideration, it reopens and reviews the case on its merits.¹⁰ 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.¹¹

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).

In his April 12, 2019 request for reconsideration, appellant did not show that OWCP erroneously applied or interpreted a specific point of law, nor did he advance a new and relevant legal argument not previously considered. In his statement, he asserted that he had provided medical reports which demonstrated that he had received medical treatment for eye pressure,

⁷ 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).

⁸ 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).

⁹ *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 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). Chapter 2.1602.4b.

¹⁰ *Id.* at § 10.608(a); *see also M.S.*, 59 ECAB 231 (2007).

¹¹ *Id.* at § 10.608(b); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

trauma, and circulation. Appellant also related that he was submitting documents from the state DOT, which addressed the issue of whether he had a preexisting eye condition. His statement, however, does not show a legal error by OWCP, nor does it provide a new and relevant legal argument. Consequently, appellant was 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).¹²

The underlying issue on reconsideration is the medical question of whether appellant sustained a permanent impairment of a scheduled member causally related to his accepted February 19, 2016 employment injury. That is a medical issue which must be addressed by relevant medical evidence not previously considered.¹³ Along with his reconsideration request, appellant submitted his state driver record and a certification of his driver record dated March 27, 2019. While this evidence is new, it does not address the underlying medical issue of whether he sustained a permanent impairment due to his accepted employment injury.¹⁴ As the underlying issue in this case was a medical issue, it must be addressed by relevant new medical evidence.¹⁵ Accordingly, appellant was not entitled to a review of the merits based on the third above-noted requirement under 20 C.F.R. § 10.606(b)(3).

On appeal counsel asserted that OWCP failed to apply the proper standard of causation and failed to give due deference to the findings of the attending physician. As explained above, however, the Board lacks jurisdiction to review the merits of the claim. The only decision properly before the Board on this appeal is the May 10, 2019 nonmerit decision for which appeal was sought.¹⁶

As appellant's request for reconsideration did not meet any of the three requirements enumerated under 20 C.F.R. § 10.606(b)(3), the Board finds that OWCP properly denied his request for reconsideration without reopening the case for review on the merits.¹⁷

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).

¹² 20 C.F.R. § 10.606(b)(3)(i), (ii); *T.B.*, Docket No. 18-1214 (issued January 29, 2019); *C.B.*, Docket No. 08-1583 (issued December 9, 2008).

¹³ *L.W.*, Docket No. 19-1367 (issued December 19, 2019); *A.M.*, Docket No. 18-1033 (issued January 8, 2019); *Bobbie F. Cowart*, 55 ECAB 746 (2004).

¹⁴ *See T.V.*, Docket No. 19-1504 (issued January 23, 2020).

¹⁵ *S.A.*, Docket No. 18-1481 (issued April 2, 2019); *Bobbie F. Cowart*, 55 ECAB 746 (2004).

¹⁶ Appellant may request a schedule award at any time based on evidence of a new exposure or medical evidence showing progression of an employment-related condition resulting in permanent impairment.

¹⁷ *D.C.*, Docket No. 19-0873 (issued January 27, 2020); *R.C.*, Docket No. 17-0595 (issued September 7, 2017); *M.E.*, 58 ECAB 694 (2007).

ORDER

IT IS HEREBY ORDERED THAT the May 10, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 13, 2020
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board