



(FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction to review the merits of this case.<sup>4</sup>

### **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**

This case has previously been before the Board.<sup>5</sup> The facts and circumstances as set forth in the prior Board decisions are incorporated herein by reference. The relevant facts are set forth below.

On September 27, 1999 appellant, then a 56-year-old information officer, filed a traumatic injury claim (Form CA-1) alleging that on September 24, 1999 she injured her right knee and leg when her foot caught and she tripped on boxes while in the performance of duty. OWCP accepted the claim for right knee and leg sprain. Appellant intermittently received wage-loss compensation on the supplemental and periodic rolls. She received wage-loss compensation on the periodic rolls from August 1, 2010 until January 15, 2011.

By decision dated October 31, 2014, an OWCP hearing representative finalized a preliminary determination that appellant was at fault in the creation of a \$17,806.25 overpayment for the period July 31, 2010 through January 15, 2011 because she concurrently received retirement benefits from the Office of Personnel Management (OPM) while receiving FECA benefits without an appropriate offset.

On November 24, 2014 appellant appealed to the Board. By decision dated August 19, 2016, the Board affirmed the October 31, 2014 decision.<sup>6</sup>

On August 21, 2017 appellant timely requested reconsideration. In the August 21, 2017 reconsideration request, in addition to generally challenging the overpayment finding, he provided a recitation of the factual history of his case.

By decision dated June 15, 2018, OWCP denied appellant's request finding that the evidence presented was insufficient to warrant merit review.

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<sup>4</sup> The Board notes that, following the June 15, 2018 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.*

<sup>5</sup> Docket No. 08-2057 (issued July 1, 2009); Docket No. 15-0312 (issued August 19, 2016).

<sup>6</sup> *Id.*

## LEGAL PRECEDENT

Section 8128(a) of FECA does not entitle a claimant the review of an OWCP decision as a matter of right.<sup>7</sup> OWCP has discretionary authority in this regard and has imposed certain limitations in exercising its authority.<sup>8</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>9</sup>

A timely request 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.<sup>10</sup> When a timely request 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.<sup>11</sup>

Section 10.440(b) of OWCP's regulations specifically provides that the only review of a final overpayment determination of OWCP is to the Board and that section 8128(a) of FECA does not apply to such a final overpayment determination.<sup>12</sup>

## ANALYSIS

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

On August 21, 2017 appellant requested reconsideration of the overpayment determination. By decision dated June 15, 2018, OWCP denied her request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a). It found that appellant had not submitted evidence or argument warranting such merit review of her claim under the standards of 5 U.S.C. § 8128(a) and associated OWCP regulations, including those set forth at 20 C.F.R § 10.606.

Section 10.440(b) of OWCP's regulations, however, specifically provides that the only review of a final overpayment determination of OWCP is to the Board and that 5 U.S.C. § 8128(a)

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<sup>7</sup> 5 U.S.C. § 8128(a).

<sup>8</sup> 20 C.F.R. § 10.607.

<sup>9</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 (iFECS). *Id.* at Chapter 2.1602.4b.

<sup>10</sup> *Id.* at § 10.606(b)(3); *see B.R.*, Docket No. 19-0372 (issued February 20, 2020).

<sup>11</sup> *Id.* at § 10.608.

<sup>12</sup> *Id.* at § 10.440(b).

does not apply to such a final overpayment determination.<sup>13</sup> The Board finds that OWCP erred in applying 5 U.S.C. § 8128(a) and its associated regulations in its June 15, 2018 decision. Therefore, the Board shall modify OWCP's June 15, 2018 decision denying appellant's request for reconsideration of the merits of her claim to reflect that the basis of the denial was not her failure to meet the standards of 5 U.S.C. § 8128(a), but rather because 5 U.S.C. § 8128(a) does not apply to a final overpayment determination of OWCP.<sup>14</sup>

### **CONCLUSION**

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

### **ORDER**

**IT IS HEREBY ORDERED THAT** the June 15, 2018 decision of the Office of Workers' Compensation Programs is affirmed, as modified.

Issued: October 20, 2020  
Washington, DC

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

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

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

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<sup>13</sup> *See id.*

<sup>14</sup> *See P.J.*, Docket No. 19-1479 (issued May 8, 2020).