

ISSUE

The issue is whether OWCP properly denied appellant's April 26, 2019 request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On March 12, 2018 appellant, then a 46-year-old rural letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on March 10, 2018 she twisted her right knee on an uneven driveway when exiting her long-life vehicle while in the performance of duty. She stopped work on March 13, 2018 and returned to a limited-duty position on June 25, 2018.

The record contains an authorization for examination and/or treatment (Form CA-16) dated March 12, 2018 from the employing establishment authorizing appellant to receive treatment for a right knee strain. In the corresponding attending physician's report (Part B of the Form CA-16), dated March 12, 2018, Dr. R. Armstead, a Board-certified family practitioner, checked a box marked "Yes" indicating that appellant's diagnosis was caused or aggravated by the employment activity described. He found her totally disabled from work from March 12 to 19, 2018.

Appellant was treated by Dr. Michael Chrissos, a Board-certified orthopedist, on April 12, 2018 who diagnosed pain in the right knee and tear of medial meniscus of the right knee. Dr. Chrissos noted that she was totally disabled from work.

In a May 1, 2018 development letter, OWCP requested that appellant submit factual and medical information, including a comprehensive report from her physician regarding how a specific work incident contributed to her claimed injury. It afforded her 30 days to submit the necessary evidence.

On April 25, 2018 Dr. Chrissos performed a right knee arthroscopy, medial meniscal root repair and diagnosed a medial meniscus root tear avulsion and chondromalacia of the medial femoral condyle, superior medial patella, and central femoral trochlea. In reports dated May 10 to June 19, 2018, he diagnosed a right knee medial meniscectomy and advised that appellant was totally disabled from work until June 7, 2018 when she could return to work with restrictions.

By decision dated July 5, 2018, OWCP accepted that the March 10, 2018 employment incident occurred as alleged. However, it denied appellant's traumatic injury claim finding that the medical evidence of record was insufficient to establish that her diagnosed conditions were causally related to the accepted employment incident.

On August 7, 2018 appellant requested reconsideration of OWCP's July 5, 2018 decision and submitted additional medical evidence.

In a report dated April 12, 2018, Dr. Chrissos noted a history of injury and diagnosed a tear of the medial meniscus of the right knee by magnetic resonance imaging scan. He recommended arthroscopic surgery. On July 26, 2018 Dr. Chrissos diagnosed a right peripheral tear of the medial meniscus and returned appellant to work with restrictions.

By decision dated October 4, 2018, OWCP denied modification of its July 5, 2018 decision.

OWCP subsequently received an additional report dated October 19, 2018, wherein Dr. Chrissos responded to the denial of appellant's claim. Dr. Chrissos advised that a "degenerative" diagnosis does not exclude the tear from being consistent with the mechanism of injury and opined that the work injury could have likely caused a degenerative tear of the knee.

On October 30, 2018 appellant requested reconsideration.

By decision dated January 25, 2019, OWCP denied modification of its October 4, 2018 decision.

On April 26, 2019 appellant requested reconsideration.

By decision dated May 1, 2019, OWCP denied appellant's request for reconsideration.

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, it reopens and reviews the case on its merits.⁶ If the request is timely, but fails to meet at least one of the

³ 5 U.S.C. § 8128(a); *see M.S.*, Docket No. 19-1001 (issued December 9, 2019); *L.D.*, Docket No. 18-1468 (issued February 11, 2019); *see also V.P.*, Docket No. 17-1287 (issued October 10, 2017); *W.C.*, 59 ECAB 372 (2008).

⁴ 20 C.F.R. § 10.606(b)(3); *see also E.W.*, Docket No. 19-1393 (issued January 29, 2020); *L.D., id.; B.W.*, Docket No. 18-1259 (issued January 25, 2019).

⁵ *Id.* at § 10.607(a). The one-year period begins on the next day after the date of the originally 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 Y.H.*, Docket No. 18-1618 (issued January 21, 2020); *R.W.*, Docket No. 18-1324 (issued January 21, 2020); *M.S.*, 59 ECAB 231 (2007).

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 April 26, 2019 request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

Appellant has not alleged or demonstrated that OWCP erroneously applied or interpreted a specific point of law. Moreover, she has not advanced a relevant legal argument not previously considered. Consequently, appellant is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under 20 C.F.R. § 10.606(b)(3).⁸

Further, appellant did not submit relevant and pertinent new evidence in support of her request for reconsideration under 20 C.F.R. § 10.606(b)(3). As she did not submit relevant and pertinent new medical evidence not previously considered by OWCP, she is not entitled to further merit review under the third requirement of 20 C.F.R. § 10.606(b)(3).

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.⁹

CONCLUSION

The Board finds that OWCP properly denied appellant's April 26, 2019 request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

⁷ *Id.* at § 10.608(b); *D.C.*, Docket No. 19-0873 (issued January 27, 2020); *M.S.*, Docket No. 19-0291 (issued June 21, 2019).

⁸ *M.O.*, Docket No. 19-1677 (issued February 25, 2020); *C.B.*, Docket No. 18-1108 (issued January 22, 2019).

⁹ The Board notes that the employing establishment issued a Form CA-16. A completed Form CA-16 authorization may constitute a contract for payment of medical expenses to a medical facility or physician, when properly executed. The form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. *See* 20 C.F.R. § 10.300(c); *J.G.*, Docket No. 17-1062 (issued February 13, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).

ORDER

IT IS HEREBY ORDERED THAT the May 1, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 2, 2020
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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