



## 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 June 2, 2000 appellant, then a 51-year-old clerk, filed a traumatic injury claim (Form CA-1) alleging that on June 1, 2000 she sustained a buttock injury when she fell while in the performance of duty. OWCP assigned the claim OWCP File No. xxxxxx097 and accepted it for a contusion of the left buttock and low back sprain.

On February 8, 2018 appellant, then a 69-year-old mail processing clerk, filed a notice of recurrence (Form CA-2a) alleging disability due to her employment-related conditions. She alleged an increase of shingles episodes, left hip pain, and left shoulder pain due to factors of her federal employment, including repetitive motions. Appellant noted that the recurrence of disability was a gradual and slow process starting around February 1, 2018.

In a February 7, 2018 work status report, Dr. Victor N. Egwu, an orthopedic specialist, held appellant off work until February 19, 2018.

In a development letter dated February 22, 2018, OWCP converted appellant's recurrence claim to one for a new occupational disease claim, and assigned OWCP File No. xxxxxx687 and informed her that the evidence of record was insufficient to establish her claim. It advised her of the type of factual and medical evidence needed and attached a factual questionnaire for her completion, requesting that she provide a detailed description of the employment-related factors she believed contributed to her conditions, including a description of her required duties, relevant dates, and how often she performed those duties. OWCP afforded appellant 30 days to respond.

In a February 23, 2018 medical note, Dr. Egwu noted that appellant was scheduled for surgical procedure on her left shoulder on March 6, 2018. In a work status report of even date, he recommended that she remain off work until April 4, 2018. In a March 21, 2018 work status report, Dr. Egwu indicated that on March 6, 2018 appellant underwent left shoulder arthroscopy and could not perform her job duties.

By decision dated April 3, 2018, OWCP denied appellant's occupational disease claim, noting that she had not responded to its February 22, 2018 development letter requesting specific factual information regarding the employment-related factors that she believed contributed to her conditions. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

OWCP subsequently received an April 9, 2018 work status report, wherein Dr. Egwu held appellant off work until May 2, 2018. In a May 2, 2018 work status report, Dr. Egwu recommended postponing her return to work for at least four weeks. He also indicated that appellant was undergoing physical therapy.

In an undated medical report, Dr. Marcus Hinkle, a physical therapist, noted that appellant underwent a left shoulder surgery and recommended limited-duty work.

On April 3, 2019 appellant, through counsel, requested reconsideration.

By decision dated July 2, 2019, OWCP denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

### **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.<sup>4</sup>

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.<sup>5</sup>

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

### **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 has not shown that OWCP erroneously applied or interpreted a specific point of law. Moreover, she has not advanced a relevant legal argument not previously considered. As such, 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).<sup>9</sup>

In support of her request for reconsideration, appellant submitted April 9 and May 2, 2018 work status reports from Dr. Egwu and an undated medical report from Dr. Hinkle. While these

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<sup>4</sup> 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).

<sup>5</sup> 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).

<sup>6</sup> *Id.* at § 10.607(a). The one-year period begins on the next day after the date of the original 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.

<sup>7</sup> *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).

<sup>8</sup> *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).

<sup>9</sup> *E.W.*, *supra* note 5; *T.V.*, Docket No. 19-1504 (issued January 23, 2020).

reports were new to the record, they were not relevant to the issue for which OWCP denied her claim, the failure to establish the factual component of her claim because the evidence did not support that the injury or events occurred as alleged.<sup>10</sup> The Board has held that the submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a claim.<sup>11</sup> Thus, appellant is not entitled to a review of the merits of her claim based on the third above-noted requirement under 20 C.F.R. § 10.606(b)(3).<sup>12</sup>

The Board accordingly finds that, as appellant has not satisfied any of the three requirements under 20 C.F.R. § 10.606(b)(3) to warrant further merit review of her claim, OWCP properly denied her request for reconsideration.<sup>13</sup>

On appeal counsel argues that OWCP improperly denied review when appellant presented evidence of causal relationship. As previously noted, however, the Board does not have jurisdiction over the April 3, 2018 merit decision.

### **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 July 2, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 1, 2020  
Washington, DC

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

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

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

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<sup>10</sup> See *R.W.*, *supra* note 7; *Daniel Deparini*, 44 ECAB 657 (1993); *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

<sup>11</sup> *E.J.*, Docket No. 19-1509 (issued January 9, 2020); *S.W.*, Docket No. 19-1498 (issued January 9, 2020).

<sup>12</sup> *A.G.*, Docket No. 20-0290 (issued June 24, 2020).

<sup>13</sup> *C.A.*, Docket No. 19-0160 (issued January 16, 2020); *L.E.*, Docket No. 19-0470 (issued August 12, 2019).