

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

G.J., Appellant

and

**DEPARTMENT OF HEALTH & HUMAN
SERVICES, INDIAN HEALTH SERVICES,
Chinle, AZ, Employer**

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**Docket No. 19-1652
Issued: January 29, 2021**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
CHRISTOPHER J. GODFREY, Deputy Chief Judge
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On July 30, 2019 appellant, filed a timely appeal¹ from a March 25, 2019 nonmerit decision of the Office of Workers' Compensation Programs (OWCP).² As more than 180 days has elapsed from the last merit decision, dated January 11, 2019, to the filing of this appeal, pursuant to the 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.

¹ Appellant timely requested oral argument before the Board. 20 C.F.R. § 501.5(b). By order dated October 28, 2020, the Board exercised its discretion and denied the request, finding that the arguments on appeal could adequately be addressed based on the case record. *Order Denying Request for Oral Argument*, Docket No. 19-1652 (issued October 28, 2020).

²The Board notes that following the March 25, 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.*

³ 5 U.S.C. § 8101 *et seq.*

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 April 5, 2018 appellant, then a 62-year-old fabric worker, filed a traumatic injury claim (Form CA-1) alleging that on April 2, 2018 she sustained strains of her left hand, neck, and left shoulder, as well as bruising below her left knee when a laundry cart struck her while in the performance of duty. She stopped work on April 7, 2018 and returned to work on April 23, 2018.

In an April 2, 2018 e-mail, S.C., appellant's coworker, noted that at 7:15 a.m. that day appellant lost control of a cart she was pushing. She indicated that the cart was rolling in her direction and she had to push the cart away using her arm to prevent it from hitting her.

On April 3, 2018 Dr. Filiz A. Smith, a Board-certified family practitioner, examined appellant and noted that on April 2, 2018 a coworker had shoved a laundry cart at her forcefully. She reported pain in the left side of her neck, as well as her left upper extremity from the shoulder to her hand. Appellant also reported paresthesias. Dr. Smith diagnosed musculoskeletal neck and left upper extremity pain and workplace conflict.

OWCP also received April 3, 2018 notes from Deanne K. Schumaker, a registered nurse.

In an April 9, 2018 form report, a physician whose signature is illegible, noted that on April 2, 2018 a coworker shoved a laundry cart at appellant causing her to experience pain on the left side of her body. The physician indicated by checking a box marked "Yes" that her condition was caused or aggravated by the employment activity.

On April 19, 2018 appellant submitted a duty status report (Form CA-17) from a family nurse practitioner whose signature is illegible.

In an April 23, 2018 development letter, OWCP informed appellant of the evidence necessary to establish her claim and requested a narrative medical report from her treating physician, which contained a detailed description of findings and a diagnosis, explaining how her work activities caused, contributed to, or aggravated her medical conditions. It afforded her 30 days to respond.

On April 19, 2018 Jagannath Shobha, a nurse practitioner, noted appellant's history of injury and diagnosed left shoulder injury, sprain of the right rotator cuff capsule.

In May 4, 2018 notes, Dr. Mital Patel, a Board-certified dermatologist, examined appellant and diagnosed strain of the left rotator cuff capsule. On May 25, 2018 he completed a Form CA-17 and diagnosed left rotator cuff sprain. Dr. Patel noted a history of injury of appellant pushing a linen cart towards her coworker who then pushed the cart away to avoid being hit.

By decision dated May 30, 2018, OWCP denied appellant's traumatic injury claim, finding that she had not provided sufficient medical evidence establishing a causal relationship between the accepted April 2, 2018 employment incident and her diagnosed left rotator cuff strain.

On July 2, 2018 appellant requested reconsideration of the May 30, 2018 decision. In support of her request, she submitted a series of Form CA-17 reports signed by Anne K. Whitis, a physical therapist, dated May 18 through November 20, 2018. Appellant also resubmitted Ms. Jagannath's April 19, 2018 note, Dr. Smith's April 3, 2018 note, and Ms. Schumaker's April 3, 2018 note. OWCP also received physical therapy notes from April 3 through 18, 2018 from Katelyn Snyder, a physical therapist.

OWCP also received April 3, 2018 reports of x-rays of the left hand, wrist, elbow, humerus, and shoulder which demonstrated mild degenerative changes of the left hand, but no fracture. Appellant also underwent cervical spine x-rays on April 3, 2018 which demonstrated mild discogenic degenerative changes at C4-5 and C5-6, but no evidence of fracture or malalignment.

OWCP subsequently received an April 2, 2018 authorization for examination and/or treatment (Form CA-16) completed by the employing establishment.

On September 26, 2018 appellant again requested reconsideration of the May 30, 2018 decision.

By decision dated January 11, 2019, OWCP denied modification of its May 30, 2018 decision, finding that appellant had not submitted medical evidence sufficient to establish causal relationship between her diagnosed conditions and her accepted employment incident.

On March 6, 2019 appellant requested reconsideration of the January 11, 2019 decision. She submitted a compact disc (CD) containing the April 3, 2018 x-ray studies of her neck, left shoulder humerus, left elbow, left wrist, and left hand. Appellant also resubmitted Form CA-17 reports completed by Ms. Whitis dated October 2 through November 5, 2018.

By decision dated March 25, 2019, OWCP denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 81218(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 or her 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

⁴ 5 U.S.C. § 8128(a); *L.D.*, Docket No. 18-1468 (issued February 11, 2019); *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).

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. 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.⁷

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).

In her timely request for reconsideration, appellant did not show that OWCP erroneously applied or interpreted a specific point of law or advance a relevant legal argument not previously considered by OWCP. Thus, she is not entitled to a review of the merits based on the first and second requirements under 20 C.F.R. §10.606(b)(3).⁸

In support of her request for reconsideration, appellant resubmitted a series of Form CA-17 reports dated October 2 through November 5, 2018 from Ms. Whitis. The Board finds that submission of this evidence does not require reopening appellant's case for merit review, as it had already been considered by OWCP. Providing additional evidence that either repeats or duplicates information already in the record does not constitute a basis for reopening a claim.⁹ Therefore, these reports are insufficient to require OWCP to reopen the claim for consideration of the merits.

Appellant also submitted diagnostic studies of her neck, left shoulder humerus, left elbow, left wrist, and left hand dated April 3, 2018. These studies are also insufficient to warrant merit review as diagnostic studies, standing alone, lack probative value and are insufficient to establish the claim.¹⁰ The Board has held that the submission of evidence that does not address the particular

⁵ 20 C.F.R. § 10.606(b)(3); *L.D.*, *id.*; *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). For merit decisions issued on or after August 29, 2011, a request for reconsideration must be received by OWCP within one year of its 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(b); *A.G.*, Docket No 19-0113 (issued July 12, 2019).

⁸ 20 C.F.R. § 10.606(b)(3); *P.W.*, Docket No. 20-0380 (issued November 23, 2020); *B.R.*, Docket No. 19-0372 (issued February 20, 2020); *L.G.*, Docket No. 09-1517 (issued March 3, 2010).

⁹ *P.W.*, *id.*; *C.L.*, Docket No. 20-0410 (issued October 29, 2020); *S.F.*, Docket No. 18-0516 (issued February 21, 2020); *James W. Scott*, 55 ECAB 606, 608 n.4 (2004).

¹⁰ *J.K.*, Docket No. 20-0591 (issued August 12, 2020); *J.P.*, Docket No. 19-0216 (issued December 13, 2019); *A.B.*, Docket No. 17-0301 (issued May 19, 2017).

issue involved does not constitute a basis for reopening a case.¹¹ Because appellant has not provided relevant and pertinent new evidence, she was 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 therefore 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.¹³

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).

¹¹ *J.K., id.; G.Q.*, Docket No. 18-1697 (issued March 21, 2019); *Alan G. Williams*, 52 ECAB 180 (2000).

¹² *J.K., id.*

¹³ 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); *S.P.*, Docket No. 19-1904 (issued September 2, 2020); *J.G.*, Docket No. 17-1062 (issued February 13, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).

ORDER

IT IS HEREBY ORDERED THAT the March 25, 2019 decision of the Office of Workers' Compensation Programs is affirmed.¹⁴

Issued: January 29, 2021
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

¹⁴ Christopher J. Godfrey, Deputy Chief Judge, who participated in the preparation of the decision, was no longer a member of the Board after January 20, 2021.