



## **FACTUAL HISTORY**

On September 23, 2019 appellant, then a 59-year-old occupational safety and health specialist, filed an occupational disease claim (Form CA-2) alleging that he was exposed to cigarette smoke and nicotine due to factors of his federal employment. He noted that he first became aware of his condition on January 4, 2010 and first realized its relationship to his federal employment on July 10, 2018. Appellant stopped work on September 23, 2019.

In a development letter dated October 8, 2019, OWCP informed appellant that the evidence of record was insufficient to establish his claim. It advised him of the type of factual and medical evidence needed and provided a questionnaire for his completion. In a separate development letter of even date, OWCP requested that the employing establishment provide additional information, including comments from a knowledgeable supervisor and an explanation of what potentially harmful substances appellant had been exposed to. It afforded both parties 30 days to submit the necessary evidence.

OWCP subsequently received a September 23, 2019 report from Dr. Bhagya Pallerla, a Board-certified family practitioner, who noted that appellant complained of itchiness, watery eyes, swollen lips, runny nose, tingling, and numbness due to allergic reaction to nicotine from his supervisor's smoking. Dr. Pallerla provided physical examination findings and diagnosed allergy. She recommended that appellant visit an allergy specialist for testing.

In an October 10, 2019 patient care plan, Dr. Stefan Eltgroth, a Board-certified internist, referred appellant to an allergist.

By decision dated November 19, 2019, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish causal relationship between his diagnosed condition and the accepted factors of his federal employment.

In an unsigned, undated request form received by OWCP on January 10, 2020, appellant requested reconsideration. He submitted e-mails, dated September 17 through December 18, 2019, which showed that appellant reported his condition to S.O., his supervisor, and alleged that he experienced an allergic reaction when handling a thumb drive and paperwork that S.O. had previously touched.

In a letter dated March 3, 2020, OWCP informed appellant that his reconsideration request was not signed or dated and; therefore, no further action would be taken on his letter.

On March 13, 2020 appellant requested reconsideration. He asserted that S.O.'s smoking caused his allergic reaction due to exposure to nicotine and secondhand smoke on a regular, daily basis. Appellant noted that he informed S.O. of his allergy to nicotine and secondhand smoke in July 2018. He alleged that S.O. ignored his concerns and frequently gave him documents that were exposed to smoke. Appellant further indicated that S.O. exposed him to nicotine by regularly touching his personal items and coughing without covering his mouth. He noted that he sought treatment, but was informed that the allergy clinic did not have a test for nicotine allergies.

By decision dated June 4, 2020, OWCP denied modification of the November 19, 2019 decision.

On July 13, 2020 appellant requested reconsideration.

By decision dated November 5, 2020, OWCP denied appellant's request for reconsideration of the merits of his 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 or her own motion or on application.<sup>3</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>4</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>5</sup> If it chooses to grant reconsideration, it reopens and reviews the case on its merits.<sup>6</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>7</sup>

### **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).

Appellant's request for reconsideration did not establish that OWCP erroneously applied or interpreted a specific point of law, or advance a relevant legal argument not previously considered by OWCP. Consequently, the Board finds that he is not entitled to a review of the merits of his claim based on either the first or second requirement under 20 C.F.R. § 10.606(b)(3).<sup>8</sup>

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<sup>3</sup> 5 U.S.C. § 8128(a); *see J.T.*, Docket No. 19-1829 (issued August 21, 2020); *W.C.*, 59 ECAB 372 (2008).

<sup>4</sup> 20 C.F.R. § 10.606(b)(3); *see J.V.*, Docket No. 19-0990 (issued August 26, 2020); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

<sup>5</sup> *Id.* at § 10.607(a); *see M.M.*, Docket No. 20-0523 (issued August 25, 2020).

<sup>6</sup> *Id.* at § 10.608(a); *see M.M.*, Docket No. 20-0574 (issued August 19, 2020); *M.S.*, 59 ECAB 231 (2007).

<sup>7</sup> *Id.* at § 10.608(b); *see J.V.*, *supra* note 4; *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

<sup>8</sup> *Supra* note 4.

Furthermore, appellant did not submit any new evidence with his request for reconsideration. Accordingly, he was not entitled to a review of the merits of his claim based on the third above-noted requirement under 20 C.F.R. § 10.606(b)(3).<sup>9</sup>

The Board, therefore, finds that OWCP properly determined that appellant was not entitled to further review of the merits of his claim pursuant to any of the three requirements under 20 C.F.R. § 10.606(b)(3). Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.<sup>10</sup>

**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).

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 5, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 15, 2021  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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

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<sup>9</sup> *Id.*; *P.W.*, Docket No. 20-0380 (issued November 23, 2020); *M.O.*, Docket No. 19-1677 (issued February 25, 2020); *C.B.*, Docket No. 18-1108 (issued January 22, 2019).

<sup>10</sup> *D.M.*, Docket No. 18-1003 (July 16, 2020); *Susan A. Filkins*, 57 ECAB 630 (2006) (when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b), OWCP will deny the application for reconsideration without reopening the case for a review on the merits).