

FACTUAL HISTORY

This case has previously been before the Board.² The facts and circumstances of the case as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On April 30, 2018 appellant, then a 44-year-old motor vehicle operator, filed a traumatic injury claim (Form CA-1) alleging that on April 24, 2018 he injured his neck, back, and shoulder when involved in a motor vehicle accident while in the performance of duty. On the reverse side of the claim form, his supervisor indicated that he stopped work on the date of injury.

In a development letter dated June 1, 2018, OWCP advised appellant that additional factual and medical evidence was necessary to establish his claim. Specifically, it noted that it did not receive any documentation with appellant's claim form. OWCP requested that appellant submit a comprehensive narrative medical report and provided a questionnaire for his completion. It afforded appellant 30 days to submit the necessary evidence.

In response, appellant submitted a police report dated April 24, 2018 regarding the motor vehicle accident.

By decision dated July 13, 2018, OWCP denied appellant's claim, finding that the medical evidence of record did not contain a medical diagnosis in connection with the alleged incident. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On October 19, 2018 OWCP received an employing establishment incident report, which related that appellant's vehicle was hit from the left side by an oncoming vehicle which flipped his vehicle over and all airbags deployed. Appellant reported a sprain/strain to his left shoulder and lower back.

On November 5, 2018 appellant requested reconsideration of OWCP's July 13, 2018 decision.

By decision dated November 14, 2018, OWCP denied appellant's request for reconsideration.

OWCP thereafter received an emergency room discharge report dated April 24, 2018 from Dr. Jimson Smith, a Board-certified emergency medicine specialist. Dr. Smith related that appellant was in a motor vehicle accident and complained of left shoulder pain and a minor headache. He stated that appellant did not meet the criteria for a computerized tomography scan or x-rays.

² Docket No. 19-0507 (issued August 7, 2019).

OWCP received a report dated April 26, 2018 from Dr. Tawian M. Livingston, a Board-certified internist. Dr. Livingston related that appellant was in a motor vehicle accident and had back, shoulder, and neck pain.

On January 8, 2019 appellant filed a timely appeal with the Board. By decision dated August 7, 2019, the Board affirmed the July 13 and November 14, 2018 OWCP decisions.³

On September 9, 2019 appellant requested reconsideration and submitted additional evidence.

In a letter dated April 26, 2018, Dr. Livingston held appellant off work until May 7, 2018 due to the accident. He released appellant to return on May 8, 2018 on light duty with no lifting.

Appellant also submitted an x-ray report dated May 18, 2018 from Dr. Livingston, which found that appellant's cervical lordosis was mildly reversed.

OWCP received a letter dated June 6, 2018 from Dr. Livingston, which related that appellant could return to work for full duty on June 13, 2018.

Appellant submitted progress reports dated June 22, July 11, and August 15, 2018, and May 21, 2019 from Dr. Pickens Andrew Patterson, III, a Board-certified pain medicine specialist. Dr. Patterson diagnosed spinal enthesopathy and low back pain.

OWCP received medical records from nurse practitioners, dated from August 8, 2018 through June 6, 2019.

On October 8 and 25, 2019 appellant requested reconsideration.

By decision dated November 20, 2019, OWCP denied modification.

On August 3, 2020 appellant requested reconsideration and submitted a magnetic resonance imaging (MRI) scan report dated July 17, 2018 from Dr. Johnny Alexander, a diagnostic radiologist. Dr. Alexander noted that there were no compression deformities or fracture lines of bone marrow edema present. He also noted that there was minor levoscoliosis.

By decision dated August 19, 2020, 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.⁴

³ *Id.*

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

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.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.⁷ 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.⁸

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).

In his timely request for reconsideration, appellant did not show that OWCP erroneously applied or interpreted a specific point of law and did not advance a new and relevant legal argument not previously considered. Thus, he is not entitled to a review of the merits based on the first and second above-noted requirements under 20 C.F.R. § 10.606(b)(3).⁹

The Board further finds that appellant has not provided any relevant and pertinent new evidence not previously considered. Appellant submitted an MRI scan report dated July 17, 2018 from Dr. Alexander. The MRI scan report did not include any discussion of whether appellant's diagnosed conditions were causally related to the accepted April 24, 2018 employment incident. The Board notes that the submission of evidence that does not address the particular issue involved does not constitute a basis for reopening a case.¹⁰ As appellant did not provide relevant and

⁵ 20 C.F.R. § 10.606(b)(3); *see L.D., id.*; *see also 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). The one-year period begins on the next day after the date of the original contested decision. 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). Chapter 2.1602.4b.

⁷ *Id.* at § 10.608(a); *see also A.F.*, Docket No. 19-1832 (issued July 21, 2020); *M.S.*, 59 ECAB 231 (2007).

⁸ *Id.* at § 10.608(b); *J.B.*, Docket No. 20-0145 (issued September 8, 2020); *Y.K.*, Docket No. 18-1167 (issued April 2, 2020); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

⁹ 20 C.F.R. § 10.606(b)(3); *see K.F.*, Docket No. 19-1846 (issued November 3, 2020); *L.D.*, *supra* note 4; *see also L.G.*, *supra* note 5; *C.N.*, *supra* note 5.

¹⁰ *D.C.*, Docket No. 19-0873 (issued January 27, 2020); *E.G.*, Docket No. 18-0270 (issued August 24 2018); *Alan G. Williams*, 52 ECAB 180 (2000); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

pertinent new evidence, he is not entitled to a merit review based on the third requirement under 20 C.F.R. § 10.606(b)(3).¹¹

The Board, accordingly, finds that appellant did not meet 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.¹²

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 August 19, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 21, 2021
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

¹¹ See *T.W.*, Docket No. 18-0821 (issued January 13, 2020).

¹² *J.B.*, *supra* note 8; *D.G.*, Docket No. 19-1348 (issued December 2, 2019).