

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

M.M., Appellant	)	
	)	
and	)	Docket No. 21-0227
	)	Issued: June 17, 2021
DEPARTMENT OF JUSTICE, U.S.	)	
ATTORNEY'S OFFICE, Grand Rapids, MI,	)	
Employer	)	
	)	

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Chief Judge  
PATRICIA H. FITZGERALD, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On December 1, 2020 appellant filed a timely appeal from an October 27, 2020 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from OWCP's last merit decision, dated November 12, 2019, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of this case.<sup>2</sup>

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that, following the October 27, 2020 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.*

## 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 September 27, 2019 appellant, then a 56-year-old tribal victim specialist, filed a traumatic injury claim (Form CA-1) alleging that on February 25, 2019 she sustained an injury when her head was jerked forward after her vehicle was rear ended at a stop light while in the performance of duty. She noted that she did not immediately feel the after effects until later. Appellant did not stop work.

In an October 10, 2019 development letter, OWCP informed appellant that additional evidence was needed to establish her claim. It advised her of the type of factual and medical evidence needed and provided a factual questionnaire for her completion. OWCP afforded her 30 days to submit the necessary evidence.

Appellant, in a February 26, 2019 e-mail, notified the employing establishment that she was involved in a motor vehicle accident (MVA) on February 25, 2019 while in the performance of duty and noted that she was unable to provide information to the employing establishment right away as she continued to work. She indicated that she had recently filed a police report.

In an October 18, 2019 response to OWCP's development questionnaire, appellant alleged that she developed a sore neck from her MVA. She noted that she took over-the-counter medication and stretched at home. Appellant explained that she was "a little sore" after her accident, but did not seek a doctor until she scheduled a massage appointment on May 15, 2019, when her therapist suggested that she might have sustained effects of whiplash. She indicated that, prior to her accident, she frequently had a stiff neck from performing computer work, which required regular chiropractic therapy and massage. Appellant noted that she did not realize that her neck issues were possibly related to her accident until they continued to get worse.

OWCP subsequently received a February 25, 2019 State of Michigan Traffic Crash Report completed by the police officer on the scene.

In an October 30, 2019 letter, Dr. Stephanie Wautier, a chiropractor, noted that appellant initially presented to her office on July 22, 2019 with neck and upper back pain and stiffness. She indicated that appellant was involved in an MVA on February 25, 2019. Dr. Wautier indicated that she underwent chiropractic therapy and massage therapy on July 22, August 26, September 8, and October 23, 2019. She indicated that x-rays of appellant's cervical and thoracic spines revealed disc space narrowing at C5-6, mild multilevel facet, and uncovertebral arthropathy, worse at C7-T1. Dr. Wautier diagnosed segmental and somatic dysfunction of cervical and thoracic regions, other cervical disc degeneration at C5-C6, thoracic spine pain, myalgia, stiffness of unspecified joint, and postural kyphosis of cervicothoracic region.

By decision dated November 12, 2019, OWCP denied appellant's traumatic injury claim, finding that she had not submitted medical evidence sufficient to establish a diagnosed medical

condition causally related to the accepted February 25, 2019 employment incident. It noted that Dr. Wautier had not provided a definitive medical diagnosis as a physician under FECA, as she had not definitively diagnosed a subluxation of the spine as demonstrated by x-ray. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

OWCP received an unsigned November 13, 2019 patient billing detail report from Dr. Wautier's office, which indicated the service dates and charges, as well as diagnosis codes.

In a September 11, 2020 statement, appellant asserted that she was in pain daily and had difficulty sleeping due to stiffness and achiness. She alleged that sitting and working at her home workstation caused her to become stiffer in the shoulder and neck areas that were injured in her MVA. Appellant indicated that the COVID-19 pandemic caused a setback in her treatment. She noted that she was seen by physicians, Drs. Mariam Ibdaiwi and Michael Piggott, family medicine specialists, and provided their contact information.

On September 23, 2020 appellant requested reconsideration.

By decision dated October 27, 2020, 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>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

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<sup>3</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>4</sup> 20 C.F.R. § 10.606(b)(3); *see L.D., id.*; *see also K.L.*, Docket No. 17-1479 (issued December 20, 2017); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

<sup>5</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>6</sup> *Id.* at § 10.608(a); *see also 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.<sup>7</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).

In support of her request for reconsideration, appellant submitted a September 11, 2020 statement, noting that she was still experiencing problems due to the accepted February 25, 2019 employment incident and that her treatment was halted by the COVID-19 pandemic. Although appellant timely requested reconsideration, she 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, the Board finds that she 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>8</sup>

The Board further finds that appellant has not provided any relevant and pertinent new evidence not previously considered. The underlying issue in this case is whether appellant submitted sufficient medical evidence to establish a medical diagnosis connected to the accepted February 25, 2019 employment incident. Appellant submitted an unsigned patient billing detail report from Dr. Wautier's office, dated November 13, 2019, which indicated the service dates and charges, as well as diagnosis codes. However, this evidence is merely a billing statement and does not constitute medical evidence from a qualified physician addressing causal relationship. The Board has held that the submission of evidence that does not address the underlying issue involved does not constitute a basis for reopening a case.<sup>9</sup> As appellant did not provide relevant and pertinent new evidence, she is not entitled to a merit review based on the third requirement under 20 C.F.R. § 10.606(b)(3).<sup>10</sup>

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.<sup>11</sup>

### **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).

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<sup>7</sup> *Id.* at § 10.608(b); *M.S.*, Docket No. 19-0291 (issued June 21, 2019); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

<sup>8</sup> *See A.G.*, Docket No. 20-0290 (issued June 24, 2020); *C.B.*, Docket No. 18-1108 (issued January 22, 2019).

<sup>9</sup> *E.J.*, Docket No. 20-0841 (issued February 12, 2021); *T.T.*, Docket No. 19-1624 (issued October 28, 2020).

<sup>10</sup> *See T.W.*, Docket No. 18-0821 (issued January 13, 2020).

<sup>11</sup> *See J.B.*, Docket No. 20-0145 (issued September 8, 2020).

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 27, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 17, 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