

ISSUE

The issue is whether OWCP properly denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On February 27, 2018 appellant, then a 48-year-old motor vehicle operator, filed a traumatic injury claim (Form CA-1) alleging that on that date he sustained a left shoulder injury when he opened the back door of a truck while in the performance of duty. He asserted in so doing, he felt a pulling sensation and sudden pain in his left shoulder. Appellant stopped work on February 27, 2018.

Appellant submitted a March 15, 2018 note from Dr. Samirlal Amin, a Board-certified family medicine physician, who indicated that appellant was not able to work from March 12 through 20, 2018 due to his "medical problems." In a March 19, 2018 note, Dr. Amin indicated that he advised appellant to be homebound until March 26, 2018 due to "left shoulder inflammatory disease."

In a development letter April 4, 2018, OWCP informed appellant that additional evidence was required to establish his claim. It advised him of the type of factual and medical evidence needed and attached a questionnaire for his completion. OWCP afforded appellant 30 days to respond.

Appellant submitted a February 28, 2018 note from Dr. Amin who indicated that appellant had been advised to be homebound until at least March 12, 2018 due to an inflammatory left shoulder. The findings of a March 26, 2018 magnetic resonance imaging (MRI) scan of appellant's left shoulder contained an impression of partial tear of the supraspinatus tendon, possible mild biceps tenosynovitis, and mild acromioclavicular joint disease.

In an April 2, 2018 note, Dr. Amin indicated that he advised appellant to be homebound until at least May 14, 2018 due to a left shoulder injury. In another April 2, 2019 note, he prescribed physical therapy for a partial tear of the left supraspinatus tendon, and partial left biceps tenosynovitis with mild acromioclavicular arthritis and abutment of the supraspinatus tendon.

In an April 12, 2018 attending physician's report (Form CA-20), Dr. Amin listed a history of employment injury as "sudden severe pain right shoulder with radiculopathy on [February 27, 2018]." He diagnosed partial tear of the right supraspinatus tendon, and acromioclavicular arthrosis with abutment of the supraspinatus tendon, and opined that appellant was totally disabled from February 28 through May 15, 2018.

By decision dated May 17, 2018, OWCP accepted that the February 27, 2018 employment incident occurred as alleged, but denied his claim as he failed to provide sufficient medical evidence to establish causal relationship between the accepted incident and a specific diagnosed condition. This decision failed to include appellant's appeal rights. On May 23, 2018 OWCP issued subsequent decision, which superseded its May 17, 2018 decision, denying appellant's claim on the same bases, and which contained the proper appeal rights.

On May 11, 2019 appellant, through counsel, requested reconsideration of the May 23, 2018 decision. He submitted a January 25, 2019 report of Dr. Damien I. Davis, a Board-certified orthopedic surgeon, who noted that appellant presented to his office on May 23, 2018 complaining of left shoulder pain from a February 2018 incident when he lifted the back door of his postal truck. Dr. Davis discussed the physical examination findings from the May 23, 2018 visit, including slight tenderness to palpation over the long head of the left biceps. He noted, "It is within reasonable degree of medical certainty that [appellant's] injury and subsequent shoulder pain is [sic] a direct result of him lifting the back door of his truck in February of 2018."

In a May 11, 2019 brief, counsel argued that Dr. Davis' January 25, 2019 report established causal relationship between the accepted February 27, 2018 employment incident and a specific diagnosed left shoulder condition.

By decision dated June 24, 2019, OWCP denied modification of the May 23, 2018 decision.

On June 18, 2020 appellant, through counsel, requested reconsideration of the June 24, 2019 decision. In a statement of the same date, counsel argued that the previously submitted January 25, 2019 report of Dr. Davis explained in detail how appellant's left shoulder condition was caused by the February 27, 2018 incident at work. He argued that this report was sufficiently well rationalized to require OWCP to refer appellant to an appropriate specialist for an evaluation and an opinion on the issue of causation.³

By decision dated June 25, 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.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 OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.⁵

³ Counsel cited *L.G.*, Docket No. 16-1065 (issued October 13, 2016) in support of this proposition.

⁴ 5 U.S.C. § 8128(a); see *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).

⁵ 20 C.F.R. § 10.606(b)(3); see *M.S.*, Docket No. 18-1041 (issued October 25, 2018); *L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

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

The Board has held that the submission of evidence or argument which repeats or duplicates evidence or argument already in the case record⁹ and the submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.¹⁰

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).

On June 18, 2020 appellant filed a timely request for reconsideration of a June 24, 2019 decision.¹¹ The Board finds, however, that he neither established that OWCP erroneously applied or interpreted a specific point of law, nor did he advance a relevant legal argument not previously considered by OWCP. Appellant argued that he had submitted sufficient medical evidence in support of his claim for a February 27, 2018 traumatic injury, including a January 25, 2019 report of Dr. Davis, to require OWCP to remand the case for further development of the medical evidence. However, the Board notes that OWCP had already considered and rejected this argument when it previously denied appellant's claim. OWCP had previously reviewed Dr. Davis' January 25, 2019 report and found that it was not of sufficient probative value to require either acceptance or further development of appellant's claim. The Board has held that the submission of evidence/argument which repeats or duplicates evidence or argument already in the case record does not constitute a basis for reopening a case.¹² Accordingly, the Board finds that appellant is not entitled to a review of the merits based on either the first or second requirement under 20 C.F.R. § 10.606(b)(3).

⁶ 20 C.F.R. § 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.

⁷ *Id.* at § 10.608(a); *see D.C.*, Docket No. 19-0873 (issued January 27, 2020); *M.S.*, 59 ECAB 231 (2007).

⁸ *Id.* at § 10.608(b); *see T.V.*, Docket No. 19-1504 (issued January 23, 2020); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

⁹ *N.L.*, Docket No. 18-1575 (issued April 3, 2019); *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

¹⁰ *M.K.*, Docket No. 18-1623 (issued April 10, 2019); *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

¹¹ *See J.F.*, Docket No. 16-1233 (issued November 23, 2016).

¹² *See supra* note 9.

On reconsideration, appellant did not submit any new medical evidence. The underlying issue of the present case is medical in nature and appellant has not submitted pertinent new and relevant evidence in connection with his reconsideration request. Therefore, appellant is not entitled to further review of the merits of his claim based on the third above-noted requirement under 20 C.F.R. § 10.606(b)(3).

The Board accordingly finds that appellant has not met 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.

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 June 25, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 23, 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