



## 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 January 1, 2013 appellant, a 54-year-old mail handler equipment operator, filed a traumatic injury claim (Form CA-1) alleging that on December 31, 2012 he injured his lower back when he off-loaded wire cages from a tow motor while in the performance of duty. On May 28, 2013 OWCP accepted the claim for displacement of lumbar intervertebral disc without myelopathy. By decision dated December 17, 2014, it denied appellant's claim for wage-loss compensation for the period commencing May 17, 2014 and continuing. In a February 25, 2015 decision, OWCP terminated his wage-loss compensation and medical benefits, effective that date, finding that the medical evidence of record established that he had no ongoing medical residuals or disability due to his accepted condition. An OWCP hearing representative, in an October 13, 2015 decision, affirmed the December 17, 2014 decision denying wage-loss compensation. By a subsequent decision dated January 6, 2016, a second OWCP's hearing representative affirmed the February 25, 2015 termination decision. In a decision issued on January 6, 2017, OWCP affirmed in part and modified in the part the October 13, 2015 decision affirming the denial of wage-loss compensation. It determined that appellant was entitled to wage-loss compensation for attending medical appointments during the period May 8 through September 18, 2014. However, OWCP affirmed the decision regarding his claim for disability compensation from May 17, 2014 and continuing, finding that the medical evidence of record failed to sufficiently support a causal relationship between his inability to work during the above period and his accepted December 31, 2012 employment injury. In decisions dated March 29, 2017 and April 3, 2018, it denied modification of the January 6, 2016 termination decision. OWCP, in a decision issued on September 6, 2018, denied appellant's March 26, 2018 request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a) pertaining to the termination of his wage-loss compensation and medical benefits. In a decision dated May 15, 2019, it denied modification of the April 3, 2018 decision which affirmed the termination of his compensation benefits.

On May 11, 2020 appellant requested reconsideration of the May 15, 2019 decision which affirmed the termination of his wage-loss compensation and medical benefits. In an accompanying letter dated May 2, 2020, he asserted that he was totally disabled. Appellant further asserted that OWCP failed to follow its procedures as it failed to provide written notice of the proposed termination of his compensation benefits that included specific evidence used as the basis for the determination, and 30 days to respond to the proposed action.

In support of his reconsideration request, appellant sent several provisions from Title 20 of the Code of Federal Regulations (C.F.R.) which defined the term disability and described the circumstances under which OWCP may reduce or terminate FECA compensation benefits. He also submitted a December 4, 2017 award letter from the Social Security Administration (SSA) which indicated that he was totally disabled and received disability benefits under SSA beginning in April 2016.

Additionally, appellant submitted an August 29, 2014 benefit statement from the U.S. Department of Labor (DOL) that was previously of record. He further submitted copies of a Board decision to support his contention that OWCP has the burden of proof to terminate his compensation benefits, and OWCP's May 15, 2019 decision denying modification of its decision to terminate his compensation benefits.

OWCP, by decision dated June 3, 2020, 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 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).

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<sup>3</sup> *Id.* at § 8128(a); *see T.K.*, Docket No. 19-1700 (issued April 30, 2020); *L.D.*, Docket No. 18-1468 (issued February 11, 2019); *W.C.*, 59 ECAB 372 (2008).

<sup>4</sup> 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).

<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. 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). *Id.* at Chapter 2.1602.4b.

<sup>6</sup> *Id.* at § 10.608(a); *see F.V.*, Docket No. 18-0230 (issued May 8, 2020); *M.S.*, 59 ECAB 231 (2007).

<sup>7</sup> *Id.* at § 10.608(b); *see B.S.*, Docket No. 20-0761 (issued January 29, 2021); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

Appellant's timely May 11, 2020 request for reconsideration does not demonstrate that OWCP erroneously applied or interpreted a specific point of law. Additionally, the Board finds that he did not advance a relevant legal argument not previously considered by OWCP. On reconsideration appellant contended that he continued to be totally disabled due to his accepted employment injury and that OWCP failed to follow its procedures as it did not provide written notice of the proposed termination of his compensation benefits that included specific evidence used as the basis for the determination, and 30 days to respond to the proposed action. The Board notes, however, that OWCP issued a January 7, 2015 notice of proposed termination of his wage-loss compensation and medical benefits, finding that the weight of the medical evidence of record rested with a December 1, 2014 medical opinion of Dr. Peter J. Millheiser, a Board-certified orthopedic surgeon and OWCP referral physician, that appellant no longer suffered from any residuals or continuing disability from work due to appellant's December 31, 2012 employment injury. Dr. Millheiser also advised that appellant could return to his regular work duties with no restrictions. OWCP afforded appellant 30 days to submit additional evidence to refute the proposed termination of benefits. Following the submission of additional medical evidence, OWCP, in a February 25, 2015 decision, finalized the termination of his wage-loss compensation and medical benefits effective that date. Consequently, appellant is not entitled to a review of the merits of his claim based on the first and second above-noted requirements under section 10.606(b)(3).

The Board further finds that appellant did not submit relevant and pertinent new evidence not previously considered by OWCP in support of his reconsideration request under 20 C.F.R. § 10.606(b)(3). As noted, OWCP previously terminated appellant's wage-loss compensation and medical benefits, effective February 25, 2015, based on Dr. Millheiser's second opinion that appellant no longer had continuing employment-related residuals or disability. In support of his reconsideration request, appellant submitted new evidence which included several provisions from Title 20 of the Code of Federal Regulations which defined the term disability and described the circumstances under which OWCP may reduce or termination FECA compensation benefits. He also submitted a December 4, 2017 award letter from the SSA which indicated that he was totally disabled and received disability payments beginning in April 2016. This evidence is not relevant to the underlying medical issue in this case of whether appellant had continuing residuals or disability causally related to the December 31, 2102 employment injury. The Board has held that the submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.<sup>8</sup> As such, this evidence does not require reopening of appellant's claim for review on the merits.

Appellant also resubmitted an August 29, 2014 DOL benefit statement. Additionally, he submitted copies of a Board decision and OWCP's May 15, 2019 decision, which are part of the claim record. The Board has held that evidence that repeats or duplicates evidence already in the case record, has no evidentiary value, and does not constitute a basis for reopening a case.<sup>9</sup> As

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<sup>8</sup> *Y.L.*, Docket No. 20-1025 (issued November 25, 2020); *E.W.*, Docket No. 19-1393 (issued January 29, 2020); *R.R.*, Docket No. 18-1562 (issued February 22, 2019); *K.B.*, Docket No. 18-1392 (issued January 15, 2019).

<sup>9</sup> *J.V.*, Docket No. 19-0990 (issued August 26, 2020); *D.M.*, Docket No. 18-1003 (issued July 16, 2020); *L.C.*, Docket No. 19-0503 (issued February 7, 2020); *A.A.*, Docket No. 18-0031 (issued April 5, 2018).

appellant did not provide relevant and pertinent evidence, he 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 his claim pursuant to 5 U.S.C. § 8128(a).

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<sup>10</sup> See *S.V.*, Docket No. 20-1309 (issued December 22, 2020); *C.C.*, Docket No. 20-0950 (issued October 29, 2020).

<sup>11</sup> *D.G.*, Docket No. 19-1348 (issued December 2, 2019).

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 3, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 19, 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