

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

_____)
A.M., Appellant)

and)

DEPARTMENT OF THE INTERIOR,)
NATIONAL PARK SERVICE, GEORGE)
WASHINGTON MEMORIAL PARKWAY,)
McLean, VA, Employer)

Docket No. 21-0158
Issued: May 24, 2021

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 November 9, 2020 appellant filed a timely appeal from an October 28, 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 February 7, 2020, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of this case.

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).

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On May 6, 2019 appellant, then a 50-year-old police officer, filed a traumatic injury claim (Form CA-1) alleging that on May 4, 2019, after participating in physical training while in the performance of duty, he arrived at his car in the parking lot and experienced a medical episode that caused him to become disoriented. He noted that he had to be transferred to the hospital by ambulance.

In a May 16, 2019 development letter, OWCP informed appellant that it had received no evidence in support of his claim. It advised him of the type of factual and medical evidence necessary to establish his claim and provided a questionnaire for his completion. OWCP afforded appellant 30 days to respond. No additional evidence was received.

By decision dated June 20, 2019, OWCP denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish a medical diagnosis from a qualified physician in connection with the accepted May 4, 2019 employment incident. It concluded, therefore, that the requirements had not been met to establish an injury as defined under FECA.

On June 27, 2019 appellant requested a review of the written record before a representative of OWCP's Branch of Hearings and Review.

In a May 4, 2019 surgical report, Dr. Ramesh Singh, a Board-certified cardiac surgeon, performed an emergency-type A dissection repair to treat appellant's acute type A aortic dissection.

Appellant submitted incident reports dated May 4 and 5, 2019 in which M.Y. and C.H., coworkers, explained the events of the May 4, 2019 employment incident where appellant was found in a rear parking lot requiring medical assistance.

In a May 6, 2019 authorization for examination and/or treatment, (Form CA-16), the employing establishment authorized examination and medical treatment of appellant for the May 4, 2019 employment incident. In Part B of the Form CA-16, attending physician's report dated May 8, 2019, Dr. Singh indicated that appellant underwent open heart surgery on May 4, 2019 to treat an ascending aortic aneurysm. He checked a box marked "No" to indicate his opinion that appellant's condition was not caused or aggravated by his employment activity.

In a May 8, 2019 medical report, Dr. Pamela Henry, a general surgery resident, diagnosed an acute thoracic aortic dissection and recommended a treatment plan. In a duty status report (Form CA-17) of even date, Dr. Singh diagnosed an acute type A aortic dissection, an ascending aortic aneurysm and checked a box marked "No" to indicate that he was not able to perform his regular work duties.

On May 18, 2019 Dr. Sairah Bashir, a Board-certified neurologist, evaluated appellant for a type A dissection repair with a left suboccipital headache with an otherwise normal neurological examination and negative brain scan on May 16, 2019. She reviewed the history of the May 4, 2019 employment incident and his initial visit to the hospital in which he presented with a history of a coffee ground emesis and was found to have an aortic dissection on review of a computerized tomography (CT) scan of his chest. Appellant underwent a repair of an aortic ascending aneurysm.

By decision dated September 12, 2019, an OWCP hearing representative affirmed, as modified, the June 20, 2019 decision, finding that the medical evidence submitted was sufficient to establish a diagnosed medical condition. The claim remained denied, however, because the medical evidence of record was insufficient to establish causal relationship between appellant's diagnosed condition and the accepted May 4, 2019 employment incident.

By decision dated September 25, 2019, OWCP denied authorization for the May 4, 2019 emergency type A dissection repair surgical procedure. It found that the May 6, 2019 Form CA-16 was not in effect at the time of the emergency treatment on May 4, 2019. As a result, OWCP found that the emergency treatment and hospitalization that resulted from the May 4, 2019 employment incident was not authorized.

On October 10, 2019 appellant requested a review of the record before a representative of OWCP's Branch of Hearings and Review of the September 25, 2019 decision.

In a letter of even date, M.W., appellant's supervisor, outlined the sequence of events relating to the May 4, 2019 employment incident that led to appellant's emergency hospitalization.

In a November 18, 2019 medical note, Dr. Singh indicated that appellant underwent open heart surgery on May 4, 2019. He explained that a bicuspid aortic valve could be associated with an aortic aneurysm, which could lead to an aortic dissection, especially with strenuous activity.

By decision dated February 7, 2020, OWCP's hearing representative affirmed the September 25, 2019 decision.

On March 2, 2020 appellant requested reconsideration of OWCP's February 7, 2020 decision. He resubmitted copies of the October 10, 2019 letter from the employing establishment and Dr. Singh's November 18, 2019 medical note.

By decision dated October 28, 2020, OWCP denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a), finding that his March 2 2020 letter neither raised substantial legal questions, nor included new or relevant evidence.

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.²

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

² 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).

OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.³

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.⁴ If it chooses to grant reconsideration, it reopens and reviews the case on its merits.⁵ 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.⁶

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 March 2, 2020 timely reconsideration request, appellant did not show that OWCP erroneously applied or interpreted a specific point of law, nor did he advance a new and relevant legal argument not previously considered. Consequently, appellant was 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).⁷

Along with his reconsideration request, appellant submitted a copy of an October 10, 2019 letter from his supervisor, recounting the events of the May 4, 2019 employment incident as well as a copy of Dr. Singh's November 18, 2019 medical note, previously considered by OWCP. The Board has held that providing additional evidence that either duplicates or is substantially similar to evidence of record does not constitute a basis for reopening a case.⁸ This evidence, therefore, is insufficient to warrant further merit review.

The Board, therefore, finds that appellant has not met 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.

³ 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).

⁴ *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 the merit 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.

⁵ *Id.* at § 10.608(a); *see also M.S.*, 59 ECAB 231 (2007).

⁶ *Id.* at § 10.608(b); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

⁷ *Supra* note 5; *T.B.*, Docket No. 18-1214 (issued January 29, 2019); *C.B.*, Docket No. 08-1583 (issued December 9, 2008).

⁸ *L.K.*, Docket No. 18-1183 (issued May 12, 2020); *M.O.*, Docket No. 19-1677 (issued February 25, 2020).

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).⁹

ORDER

IT IS HEREBY ORDERED THAT the October 28, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 24, 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

⁹ The Board notes that the employing establishment issued a Form CA-16. A properly executed Form CA-16 authorization may constitute a contract for payment of medical expenses to a medical facility or physician, when properly executed. The form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. The period for which treatment is authorized by a Form CA-16 is limited to 60 days from the date of issuance, unless terminated earlier by OWCP. 20 C.F.R. § 10.300(c). *P.R.*, Docket No. 18-0737 (issued November 2, 2018); *N.M.*, Docket No. 17-1655 (issued January 24, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).