

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

D.C., Appellant)	
)	
and)	Docket No. 22-0098
)	Issued: August 26, 2022
DEPARTMENT OF THE TREASURY,)	
INTERNAL REVENUE SERVICE,)	
El Monte, CA, 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
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On October 29, 2021 appellant filed a timely appeal from a June 22, 2021 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days elapsed from the last merit decision dated July 8, 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 her claim, pursuant to 5 U.S.C. § 8128(a).

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On May 30, 2019 appellant, then a 57-year-old internal revenue agent, filed a traumatic injury claim (Form CA-1) alleging that on May 29, 2019 she injured her left shoulder and left upper extremity while in the performance of duty. She explained that, while typing on a laptop computer and printing documents, she heard a grinding noise, awkwardly turned to the left, and pulled paper from a jammed mobile printer. Appellant stopped work on the date of the alleged injury and returned to work on May 30, 2019.

In support of her claim, appellant submitted a May 29, 2019 medical office intake note, indicating that OWCP had not authorized treatment for appellant's left upper extremity; a May 29, 2019 visit summary with a diagnosis of hypertension; and a May 29, 2019 receipt of payment.

In a June 3, 2019 statement, appellant explained that she had been treated at her primary care physician's office on May 29, 2019 for hypertension aggravated by the left shoulder injury, and at a hospital emergency department on June 1, 2019. She submitted a scan of a hospital emergency department wristband issued to her on June 1, 2019, and a patient tracking form, noting that she had presented for evaluation of a minor left shoulder injury with neck pain.

In a June 1, 2019 report, Dr. Hanne Rechtschaffen, an osteopath Board-certified in family practice, noted that appellant experienced the onset of left shoulder pain when she "pulled" her left shoulder while attempting to clear a jammed printer on May 29, 2019. On examination she noted tenderness of the left shoulder and slight tenderness in the left humeral area. Left shoulder x-rays were within normal limits. Dr. Rechtschaffen diagnosed left shoulder pain. She held appellant off work.

In a report dated June 18, 2019, Dr. Tarek Ezzeddine, an internist, noted that appellant presented with neck pain, headache, nausea, sensitivity to sound, and loss of appetite. Appellant noted that she had a preexisting condition affecting the left shoulder and upper extremity. On examination Dr. Ezzeddine found tenderness of the neck and upper back muscles. He diagnosed muscle strain, tension headache, and nausea. Dr. Ezzeddine held appellant off work through June 21, 2019.

In a June 19, 2019 statement, appellant asserted that she remained disabled for work and requested continuation of pay (COP) from June 24 through July 12, 2019.

Dr. Nayan Shah, a Board-certified family practitioner, diagnosed intractable migraine on June 25, 2019. He held appellant off work through June 28, 2019.

In reports dated from June 29 through July 17, 2019, Nancy Oakley, a nurse practitioner, diagnosed neck pain, left shoulder pain, and migraine headache. She held appellant off work.

Appellant, in a statement dated July 8, 2019, asserted that she remained disabled for work and was unable to attend scheduled training that day due to a physical therapy appointment.

Dr. Jeffrey Ijadi, Board-certified in family practice and sports medicine, in a July 9, 2019 report noted treating appellant for a musculoskeletal injury. X-rays of the cervical spine demonstrated mild neural foraminal narrowing on the left at C5-6 secondary to uncovertebral

osteophyte formation. Dr. Ijadi held appellant off work through July 18, 2019. A July 15, 2019 magnetic resonance imaging (MRI) scan of the cervical spine demonstrated multilevel cervical degenerative disc disease without central canal stenosis or neuroforaminal narrowing.

In July 19, 2019 reports, Dr. Albert Tsai, a Board-certified orthopedic surgeon, noted a two-month history of left shoulder pain after trying to pull a sheet of paper from a jammed printer on May 29, 2019. He diagnosed left shoulder pain and impingement syndrome of the left shoulder. Dr. Tsai opined that appellant's left upper extremity pain and numbness into the left hand were "more likely from the neck" and recommended evaluation by a spine specialist. He prescribed physical therapy to address the left rotator cuff.

In an August 27, 2019 report, Dr. Ijadi diagnosed acute left shoulder pain, left glenohumeral joint arthritis, acute neck pain, numbness and tingling of the left upper and lower extremities, cervical disc disease, cervical disc bulge without myelopathy, acute left knee pain, and chondromalacia of the left patella.

On August 27, 2019 appellant submitted a claim for compensation (Form CA-7) for intermittent disability for the period August 19 through 27, 2019.

In a September 12, 2019 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of evidence necessary and provided a questionnaire for her completion. OWCP afforded appellant 30 days to respond.

In response, appellant submitted statements dated September 20 and October 8, 2019 describing a history of bilateral carpal tunnel syndrome, a neck condition, left lateral epicondylitis, and bilateral shoulder tendinitis from May 1, 1996 through 2002. She provided chart notes dated from May 28, 1996 through December 4, 2001 diagnosing bilateral carpal tunnel syndrome and left lateral epicondylitis.² Appellant also provided April 27, 2017 cervical and lumbar x-ray reports, which demonstrated mild degenerative disc disease at C5-6, L4-5, and L5-S1, December 9, 2017 thoracic and lumbar MRI scan reports, and September 17, 2019 letters summarizing medical bills.³

In a September 3, 2019 attending physician's report (Form OWCP-20), Dr. John M. Cocco, an internist, noted a history of a May 29, 2019 left shoulder injury when clearing a paper jam from a printer while at work. He indicated that appellant had sustained a back injury in an occupationally-related motor vehicle accident (MVA) in 1987. Dr. Cocco diagnosed adhesive capsulitis of the left shoulder.

² In reports dated from May 1 through 28, 1996, Dr. Warren R. Gabillo, a family practitioner, diagnosed bilateral carpal tunnel syndrome, right greater than left. In reports from August 4, 2000 through December 4, 2001, Dr. Hing M. Be, a Board-certified family practitioner, diagnosed right carpal tunnel syndrome and left lateral epicondylitis.

³ Appellant also submitted documents pursuant to an October 2019 request for social security disability benefits for an April 2016 injury.

In an October 1, 2019 e-mail, appellant requested the status of pending requests for Family and Medical Leave Act leave. She continued to file Form CA-7 claims for intermittent disability.

In an October 9, 2019 duty status report (Form CA-17), a practitioner, whose signature is illegible, noted work restrictions.

By decision dated October 25, 2019, OWCP denied appellant's traumatic injury claim, finding that she had not submitted medical evidence establishing a causal relationship between her diagnosed conditions and the accepted May 29, 2019 employment incident. Consequently, it found that she had not met the requirements to establish an injury or medical condition causally related to the accepted employment incident.⁴

On October 25, 2019 OWCP received Dr. Ijadi's October 3, 2019 report, noting that a subacromial cortisone injection and physical therapy had not relieved appellant's left shoulder symptoms. Dr. Ijadi diagnosed chronic left shoulder pain, osteoarthritis of the left glenohumeral joint, acute neck pain, cervical disc disease, foraminal stenosis of the cervical region, left cervical radiculopathy, numbness and tingling of the left arm and leg, and acute left knee pain. He ordered additional imaging studies⁵ and physical therapy. Dr. Ijadi held appellant off work.

In an October 17, 2019 report, Dr. Marc E. Lynch, an anesthesiologist, provided a history of injury and treatment. He noted that appellant had a history of neck pain for more than 10 years, exacerbated by lifting injuries and an MVA. On examination, Dr. Lynch observed left upper extremity strength at 3/5 and limited range of left shoulder abduction secondary to upper extremity pain. He diagnosed chronic pain syndrome, cervical radiculitis, cervical spondylosis with myelopathy, cervicgia, disc disorder of cervical region, muscle spasms of neck, and hypertension.

In October 22 and November 4, 2019 Form CA-17 reports and a November 4, 2019 attending physician's report (Form CA-20), Dr. Joseph Pierson, a family medicine physician, diagnosed adhesive capsulitis and impingement syndrome of the left shoulder.

In a February 24, 2020 report, Dr. Afshin Arianjam, a Board-certified orthopedic surgeon, noted a May 29, 2019 left shoulder injury sustained when appellant pulled paper out of a jammed printer. He diagnosed a partial tear of the left rotator cuff, biceps tendinitis of the left shoulder, left acromioclavicular joint arthritis, and adhesive capsulitis of the left shoulder. Dr. Arianjam recommended left shoulder arthroscopy as conservative measures had failed to relieve appellant's symptoms.

⁴ OWCP initially denied the claim by decision dated September 30, 2019. It vacated the September 30, 2019 decision on October 8, 2019 as appellant had not been afforded a full 30 days to respond to its September 12, 2019 development letter.

⁵ An October 23, 2019 MRI scan of the left shoulder demonstrated severe tendinosis of the supraspinatus, infraspinatus, and subscapularis tendons with low-grade partial tearing, evidence of adhesive capsulitis, and mild subacromial subdeltoid bursitis.

On March 3, 2020 OWCP received February 6, 2020 discharge instructions for anesthesia during an unspecified procedure.

On March 10, 2020 OWCP received a February 27, 2020 report by Ms. Oakley.

Appellant requested reconsideration of OWCP's October 25, 2019 decision on April 16, 2020.

By decision dated July 8, 2020, OWCP denied modification of its prior decision.

On June 15, 2021 appellant requested reconsideration of OWCP's July 8, 2020 decision. In support of her claim, appellant submitted a May 7, 2021 statement, contending that all diagnoses of record were relevant to her claim, and that Dr. Arianjam's opinion as a shoulder specialist was entitled to the weight of the medical evidence in the claim. She asserted that she was entitled to COP as OWCP had granted COP under similar circumstances in a prior claim for a lumbosacral strain sustained on August 20, 1996, and as OWCP had authorized physical therapy under the present claim.⁶ Appellant provided an August 14, 2002 employing establishment letter regarding COP and leave buy back pursuant to the August 20, 1996 employment injury.

By decision dated June 22, 2021, 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.⁷

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or an argument that: (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.⁸

A request for reconsideration must also be received by OWCP within one year of the date of OWCP's decision for which review is sought.⁹ If OWCP chooses to grant reconsideration, it reopens and reviews the case on its merits.¹⁰ If the request is timely, but fails to meet at least one

⁶ OWCP File No. xxxxxx800.

⁷ 5 U.S.C. § 8128(a).

⁸ 20 C.F.R. § 10.606(b)(3).

⁹ *Id.* at § 10.607(a).

¹⁰ *Id.* at § 10.608(a).

of the requirements for reconsideration, OWCP will deny the request for reconsideration without reopening the case for review on the merits.¹¹

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).

OWCP previously denied appellant's claim because the medical evidence of record was insufficient to establish a causal relationship between the accepted May 29, 2019 employment incident and the diagnosed conditions. Thus, the Board must determine if appellant presented sufficient evidence or argument regarding her traumatic injury claim to warrant a merit review pursuant to 5 U.S.C. § 8128(a).¹²

In her June 15, 2021 reconsideration request, 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 by OWCP. Accordingly, the Board finds that appellant 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).¹³

The Board further finds that appellant did not submit relevant and pertinent new evidence not previously considered by OWCP. The underlying issue in this case is causal relationship, which is medical in nature. In support of her request for reconsideration, appellant submitted her May 7, 2021 statement discussing medical opinions of record and asserting entitlement to COP, and an August 14, 2002 employing establishment document regarding a prior claim. However, neither document constitutes medical evidence.¹⁴ 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 claim.¹⁵ As the evidence submitted on reconsideration is not pertinent new

¹¹ *Id.* at § 10.608(b).

¹² *D.L.*, Docket No. 21-1142 (issued March 23, 2022).

¹³ *Supra* note 12 at § 10.606(b)(3); *D.L., id.* See also *C.C.*, Docket No. 19-1622 (issued May 28, 2020); *M.S.*, Docket No. 18-1041 (issued October 25, 2018); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

¹⁴ Section 8101(2) of FECA provides that medical opinions can only be given by a qualified physician. This section defines a physician as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by state law. 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013). See *N.V.*, Docket No. 20-0781 (issued November 18, 2020); *C.T.*, Docket No. 19-0058 (issued June 14, 2019); *Susan M. Biles*, 40 ECAB 420 (1988) (where the Board held that the statement of a layperson is not competent evidence on the issue of causal relationship).

¹⁵ *T.D.*, Docket No. 21-1381 (issued June 21, 2022); *T.M.*, Docket No. 19-0535 (issued July 25, 2019); *Edward Matthew Diekemper*, 31 ECAB 224-25 (1979).

and relevant medical evidence not previously considered by OWCP, appellant is not entitled to a review of the merits of her claim based on the third requirement under 20 C.F.R. § 10.606(b)(3).¹⁶

The Board, therefore, finds that OWCP properly determined that appellant was not entitled to further review of the merits of her claim pursuant to 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.¹⁷

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).

ORDER

IT IS HEREBY ORDERED THAT the June 22, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 26, 2022
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

¹⁶ 20 C.F.R. § 10.606(b)(3)(iii).

¹⁷ *D.L.*, *supra* note 12; *D.S.*, Docket No. 18-0353 (issued February 18, 2020); *Susan A. Filkins*, 57 ECAB 630 (2006) (when a request for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b), OWCP will deny the request for reconsideration without reopening the case for a review on the merits).