



## **FACTUAL HISTORY**

On May 5, 2021 appellant, then a 42-year-old maintenance mechanic, filed a traumatic injury claim (Form CA-1) alleging that on May 4, 2021 he sustained ringing in the ears and pain in the legs and feet as a result of sustaining an indirect lightning strike on a hiking trail while in the performance of duty.

The employing establishment completed and signed an authorization for examination and/or treatment (Form CA-16) on May 4, 2021. In the attending physician's report portion of the form, Part B of the Form CA-16, a physician with an illegible signature diagnosed "electrical injury." The physician indicated that appellant was able to return to work on May 5, 2021 if his symptoms had resolved.

In an emergency department report dated May 4, 2021, Dr. Benjamin Murphy, an emergency medicine specialist, diagnosed electrical injury.

OWCP received a letter dated May 7, 2021 from the employing establishment which advised that seven employees, including appellant, were in close vicinity of a lightning strike on May 4, 2021 and had sustained injuries.

In a development letter dated May 13, 2021, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of additional medical evidence necessary, noting that electrical shock injury was not a firm diagnosis. Appellant was afforded 30 days to submit the necessary evidence.

By decision dated June 15, 2021, OWCP denied appellant's traumatic injury claim. It accepted that the alleged incident occurred as alleged, but found that he had not submitted sufficient medical evidence containing a medical diagnosis in connection with the claimed injury.

On August 17, 2021 appellant requested reconsideration of OWCP's June 15, 2021 decision.

With his request, appellant submitted an undated narrative statement, which described the May 4, 2021 incident. He stated that on the morning of May 4, 2021, while working alongside six co-workers, a cloud to ground lightning strike occurred. The strike hit approximately 15 feet from the nearest crew member and approximately 100 feet from the furthest crew member. The crew was evacuated to a parking area and was later assessed at a medical center. Appellant noted that it was necessary that he be seen at the hospital emergency room to ensure that he had no further complications from the lightning strike. He related that the only diagnosis on his discharge instructions was "electrical injury in adult."

Appellant resubmitted a copy of the May 4, 2021 Form CA-16, with the attending physicians report portion of the form included.

By decision dated November 17, 2021, 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 own motion or on application.<sup>2</sup>

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or 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>3</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>4</sup> If it chooses to grant reconsideration, it reopens and reviews the case on its merits.<sup>5</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>6</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).

Appellant's August 17, 2021 request for reconsideration neither alleged nor demonstrated that OWCP erroneously applied or interpreted a specific point of law. Moreover, it did not advance a relevant legal argument not previously considered by OWCP. In support of his reconsideration request, appellant submitted an undated narrative statement that was received on August 17, 2021 explaining the events of May 4, 2021 and his subsequent medical care. While appellant's undated statement received on August 17, 2021 is new, the underlying issue in this case is medical in nature, as OWCP found that appellant had not submitted sufficient medical evidence containing a medical diagnosis in connection with the claimed injury. As such, medical evidence from a

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<sup>2</sup> 5 U.S.C. § 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>3</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>4</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>5</sup> *Id.* at § 10.608(a); *F.V.*, Docket No. 18-0230 (issued May 8, 2020); *see also M.S.*, 59 ECAB 231 (2007).

<sup>6</sup> *Id.* at § 10.608(b); *B.S.*, Docket No. 20-0927 (issued January 29, 2021); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

qualified physician is required.<sup>7</sup> Thus, appellant's reconsideration request did not raise a new and relevant legal argument not previously considered. Consequently, appellant is not entitled to further review of the merits of his claim based on either the first or second above-noted requirements under 20 C.F.R. § 10.606(b)(3).

On reconsideration appellant submitted a copy of the May 4, 2021 Form CA-16 and accompanying attending physician's report, previously of record. However, medical evidence that either duplicates or is substantially similar to evidence previously of record does not constitute a basis for reopening a case.<sup>8</sup> Therefore, appellant is also 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 requirements of 20 C.F.R. § 10.606(b)(3). Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.<sup>9</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>7</sup> See *J.B.*, Docket No. 18-1531 (issued April 11, 2019); *D.K.*, 59 ECAB 141 (2007).

<sup>8</sup> See *B.S.*, Docket No. 20-0927 (issued January 29, 2021); *M.O.*, Docket No. 19-1677 (issued February 25, 2020); *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

<sup>9</sup> The Board notes that the employing establishment issued a Form CA-16, dated May 4, 2021. A completed 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. See 20 C.F.R. § 10.300(c); *V.S.*, Docket No. 20-1034 (issued November 25, 2020); *J.G.*, Docket No. 17-1062 (issued February 13, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 17, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 19, 2022  
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

James D. McGinley, Alternate Judge  
Employees' Compensation Appeals Board