



## **FACTUAL HISTORY**

On August 7, 2019 appellant, then a 49-year-old budget analyst employee, filed a traumatic injury claim (Form CA-1) alleging that on August 1, 2019 she became light headed as she was walking to health services and then tripped and fell, causing injury to her head, face, right shoulder, right arm, leg, and knee. She stopped work on August 1, 2019. On the reverse side of the claim form appellant's supervisor acknowledged that she was injured in the performance of duty.

In support of her claim, appellant submitted discharge instructions dated August 1, 2019 from Dr. Michael Kitchen, an emergency medicine specialist. Dr. Kitchen also indicated that she could return to work on August 5, 2019.

In a note dated August 5, 2019, Dr. John Bingham, a Board-certified family medicine specialist, related that appellant fell and hit her head. He diagnosed shoulder strain and excused appellant from work. Appellant also submitted discharge instructions dated August 5, 2019 from Dr. Bingham.

In a development letter dated August 14, 2019, OWCP advised appellant that additional factual and medical evidence was necessary to establish her claim. It also requested that appellant submit a narrative medical report from her attending physician, which includes the physician's opinion supported by a medical explanation as to how the reported employment incident caused or aggravated the claimed injury report. OWCP also provided a questionnaire for her completion. It afforded appellant 30 days to submit the necessary evidence.

Appellant submitted additional evidence. In a medical report dated August 5, 2019, Dr. Bingham related that on April 1, 2019 appellant was walking at her place of employment and fell. Appellant hit her head and complained of back pain, nausea, right shoulder pain, and right leg pain. Dr. Bingham diagnosed right shoulder sprain and lumbar sprain.

OWCP received a radiology report dated August 5, 2019 from Dr. Mary Beth Lewis, a Board-certified diagnostic radiologist. Dr. Lewis related normal findings based on x-rays of appellant's lumbar spine and right shoulder.

In an August 12, 2019 report, Dr. Bingham diagnosed chest wall pain, thoracic back pain, and a sprain of the shoulder. He excused appellant from work from August 12 and 13, 2019. Appellant also submitted discharge instructions dated August 12, 2019 from Dr. Bingham.

In a radiology report dated August 12, 2019, Dr. Lewis noted that appellant fell the previous week. She viewed images of appellant's spine and diagnosed mild degenerative disc disease and a mildly prominent osteophyte. Dr. Lewis also took an x-ray of appellant's chest and found no acute findings.

In a report dated August 13, 2019, Dr. Harry S. Allen, III, a Board-certified internal medicine specialist, related that appellant fell while walking to the medical center on a sidewalk at work on August 1, 2019, hitting her face and head on the grass and her right shoulder on the ground. He stated that appellant felt numbness in her right arm, and she could not lift her arm without pain.

By decision dated September 30, 2019, OWCP denied appellant's claim finding that the evidence of record was insufficient to establish that the claimed incident occurred as alleged. It noted that appellant had not responded to the development questionnaire. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On September 22, 2020 appellant requested reconsideration of OWCP's September 30, 2019 decision. She enclosed duplicate copies of the reports from Dr. Kitchen, Dr. Bingham, Dr. Lewis, and Dr. Allen previously of record.

By decision dated September 23, 2020, OWCP denied appellant's request for reconsideration.

### **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 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>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>

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<sup>2</sup> 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).

<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). Chapter 2.1602.4b.

<sup>5</sup> *Id.* at § 10.608(a); *see also A.F.*, Docket No. 19-1832 (issued July 21, 2020); *M.S.*, 59 ECAB 231 (2007).

<sup>6</sup> *Id.* at § 10.608(b); *J.B.*, Docket No. 20-0145 (issued September 8, 2020); *Y.K.*, Docket No. 18-1167 (issued April 2, 2020); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

### 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).

The Board finds that appellant has neither alleged nor demonstrated that OWCP erroneously applied or interpreted a specific point of law. Moreover, appellant has not advanced a relevant legal argument not previously considered. Consequently, appellant is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under 20 C.F.R. § 10.606(b)(3).<sup>7</sup>

The Board further finds that appellant has not provided relevant and pertinent new evidence not previously considered by OWCP. The underlying issue in this case was whether appellant had established the factual component of fact of injury. OWCP denied her claim, finding that the evidence of record submitted was insufficient to establish that the August 1, 2019 employment incident occurred as alleged. Appellant submitted duplicate copies of medical reports from Drs. Kitchen, Bingham, Lewis, and Allen previously of record. The submission of evidence which repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.<sup>8</sup> Appellant has not submitted relevant and pertinent new evidence regarding the underlying issue of fact of injury.<sup>9</sup> Due to the fact that appellant did not provide relevant and pertinent new evidence, she is not entitled to a merit review based on the third requirement under 20 C.F.R. § 10.606(b)(3).<sup>10</sup>

Accordingly, the Board 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 her claim pursuant to 5 U.S.C. § 8128(a).

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<sup>7</sup> *A.G.*, Docket No. 20-0290 (issued June 24, 2020); *C.B.*, Docket No. 18-1108 (issued January 22, 2019).

<sup>8</sup> *V.L.*, Docket No. 19-0069 (issued February 10, 2020); *A.K.*, Docket No. 19-1210 (issued November 20, 2019); *R.S.*, Docket No. 19-0312 (issued June 18, 2019); *Richard Yadron*, 57 ECAB 207 (2005).

<sup>9</sup> *A.K.*, *id.*, *P.C.*, Docket No. 18-1703 (issued March 22, 2019).

<sup>10</sup> *See T.W.*, Docket No. 18-0821 (issued January 13, 2020).

<sup>11</sup> *J.B.*, *supra* note 6; *D.G.*, Docket No. 19-1348 (issued December 2, 2019).

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 23, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 10, 2022  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

A handwritten signature in cursive script, appearing to read "J. D. McGinley".

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