

<sup>2</sup> 20 C.F.R. § 501.6(d). See *S.M.*, Docket No. 21-0392 (issued August 12, 2021); *G.G.*, Docket No. 18-1074 (issued January 7, 2019).

Act<sup>3</sup> (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).

### **FACTUAL HISTORY**

This case has been previously before the Board. The facts and circumstances of the case as set forth in the Board's prior decision are incorporated herein by reference.<sup>4</sup> The relevant facts are as follows.

On September 22, 2017 appellant, then a 69-year-old teacher, filed a traumatic injury claim (Form CA-1) alleging that on August 22, 2017 he sustained an optic nerve rupture of his right eye causing blindness triggered by a mandated, demanding two-day online social studies teacher training while in the performance of duty. On the reverse side of the claim form, the employing establishment noted that he was injured while in the performance of duty. Appellant did not stop work.

In a development letter dated December 7, 2017, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of medical and factual evidence needed and provided a questionnaire for his completion. OWCP afforded appellant 30 days to submit the necessary evidence.

Thereafter, OWCP received an October 31, 2017 letter by Dr. Tina D. Aldana, an optometrist, indicating that appellant was under her care, and that she had recommended various adjustments to his daily lifestyle as a result of his vision loss.

In a letter dated January 8, 2018, Dr. Aldana related that she examined appellant on August 23, 2017 for acute onset vision loss in his right eye. She noted that he reported stress and strain related to visual and cognitive demands from excessive computer work during an online training course. Dr. Aldana noted a history of hypertension and glaucoma and performed a threshold visual field test, which revealed attitudinal defect in the right eye and glaucomatous defects in both eyes. She also administered fundus photographs, which revealed a swollen optic nerve and hemorrhages in the right eye. Dr. Aldana diagnosed Anterior Ischemic Optic Neuropathy (AION). She noted that there were many causes for this type of disease, but common factors included diabetes mellitus, rheumatoid arthritis, systemic low or high blood pressure, gastrointestinal ulcers, atherosclerosis, internal carotid artery disease, vasculitis, defective cardiovascular autoregulation, migraine, Type A personality, and sleep apnea. Dr. Aldana opined that several compounding risk factors contributed to appellant's condition, including his systemic

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<sup>3</sup> 5 U.S.C. § 8101 *et seq.*

<sup>4</sup> Docket No. 19-0577 (issued on August 16, 2019).

medical history as well as history of stress. In a letter dated January 26, 2018, she clarified that his preexisting glaucoma diagnosis was not the direct cause of his AION diagnosis.

In a letter dated January 11, 2018, Dr. Edgar Bindeis, an ophthalmologist, indicated that, in August 2017, appellant sustained a vascular process on appellant's right optic nerve which led to an almost complete blindness of his right eye. He instructed appellant to avoid activities that placed excess strain on his vision. Dr. Bindeis noted that, based upon his reported history, the vascular process had occurred in immediate temporal relation to a stress response and blood pressure increase.

By decision dated February 1, 2018, OWCP denied appellant's occupational disease claim, finding that the evidence of record was insufficient to establish that his right eye condition was causally related to the accepted employment factors. It explained that the medical evidence of record failed to provide a rationalized medical opinion as to how his two-day online training course resulted in the AION condition of the right eye.<sup>5</sup>

On February 9, 2018 appellant, through counsel, requested a telephonic hearing before an OWCP hearing representative, which took place on July 10, 2018.

OWCP continued to receive medical evidence, including a letter dated March 12, 2018 by Dr. Ryan Ascherl, a Board-certified family practitioner, who indicated that appellant suffered from elevated blood pressure in August 2017 and that he reported suffering overwhelming stress due to mandatory online training. Dr. Ascherl opined that appellant was clearly under stress and the blood pressure increase was the result of his optic nerve hemorrhage. He noted that the vascular process occurred as a situational stress-related response with blood pressure increase.

In a letter dated May 7, 2018, Dr. Astrid Pinsky,<sup>6</sup> specializing in family medicine, noted a history of high blood pressure, but that it has been adequately treated, which historically was aggravated by situational stress. She related that appellant did not suffer from atherosclerosis, internal carotid artery disease, vasculitis, defective cardiovascular autoregulation, sleep apnea, diabetes mellitus, rheumatoid arthritis, gastrointestinal ulcers, or migraines. Dr. Pinsky indicated that the only risk factor associated with the AION diagnosis was his arterial hypertension. She reiterated that appellant's preexisting glaucoma condition had no causal relationship to the diagnosed AION. Dr. Pinsky explained that AION was referred to as a stroke of the optic nerve with resulting vision loss, and the association between acute and chronic stress and the risk of stroke was well known. She indicated that an acute or prolonged high stress situation can cause the elevation of one's blood pressure to the point of hemorrhage and, in this case, hemorrhage of the optic nerve. Dr. Pinsky opined that appellant's preexisting arterial hypertension was greatly aggravated by immense situational stress with a severe blood pressure increase which could cause hemorrhaging. She noted that he advised her that he experienced stress due to severe time constraints associated with the mandatory online training. Dr. Pinsky further noted that it was

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<sup>5</sup> OWCP converted appellant's traumatic injury claim to a claim for an occupational disease (Form CA-2). Its regulations define an occupational disease as a condition produced by the work environment over a period longer than a single workday or shift. 20 C.F.R. § 10.5(q).

<sup>6</sup> The record contains documentation establishing Dr. Pinsky's credentials as a German physician.

during this time period that appellant experienced sudden vision loss. She opined that the acute vision loss in his right eye due to hemorrhaging of the optic nerve was caused by the situational stress he experienced during the mandatory online training.

In a report dated August 3, 2018, Dr. Pinsky reiterated appellant's medical history and recount of factual events of August 22, 2017. She indicated that AION was also referred to as a stroke of the optic nerve resulting in vision loss and was an acute impairment to the circulation of the arteries supplying the optic nerve due to high blood pressure. Dr. Pinsky further noted that, a sustained high stress situation "could cause" the elevation of blood pressure to the point of hemorrhaging and, in appellant's case, this was what occurred. She opined that his acute permanent total vision loss in his right eye due to hemorrhaging affecting the optic nerve was caused by his blood pressure surges due to sustained situational stress during online mandatory training in August 2017.

By decision dated August 21, 2018, the hearing representative affirmed OWCP's February 1, 2018 decision. He noted that Dr. Pinsky was not considered a qualified physician as defined under FECA.

On October 1, 2018 appellant, through counsel, requested reconsideration of OWCP's August 21, 2018 decision. He submitted additional evidence with his request including a copy of Dr. Pinsky's credentials.

By decision dated December 28, 2018, OWCP denied modification of the August 21, 2018 decision. It found that Dr. Pinsky was a physician as defined by FECA; however, her opinion regarding causal relationship was speculative and not supported by medical rationale.

On January 22, 2019 appellant, through counsel, appealed OWCP's December 28, 2018 decision to the Board.

By decision dated August 16, 2019,<sup>7</sup> the Board affirmed OWCP's December 28, 2018 decision.

On July 30, 2020 appellant requested reconsideration, contending that the employing establishment conducted the online training session in a negligent manner, and that he was prejudiced by OWCP's conversion of the claim from a traumatic injury to an occupational disease. In support of his request, he enclosed an August 23, 2017 referral slip by Dr. Abraham Wonduk Suhr, an ophthalmologist, noting a diagnosis of AION and a January 2, 2018 medical note of Dr. Bindeis who opined that arterial embolism was "mostly the cause" of appellant's AION. Appellant also enclosed duplicate copies of Dr. Aldana's January 8 and 26, 2018 notes, an abstract of an article by the Polish Neurological Society, the September 20, 2017 Form CA-1, OWCP's December 7, 2017 development letter and February 1, 2018 decision, the July 10, 2018 hearing transcript, a witness statement, and excerpts of the employing establishment's safety and training procedure manual.

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<sup>7</sup> *Supra* note 4.

By decision dated August 3, 2020, OWCP denied appellant's request for reconsideration, finding that he had not established that OWCP erroneously applied or interpreted a specific point of law, and that he had not advanced a relevant legal argument or submitted relevant and pertinent new evidence not previously considered by OWCP.

### **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>8</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>9</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>10</sup> If it chooses to grant reconsideration, it reopens and reviews the case on its merits.<sup>11</sup> A right to reconsideration within one year also accompanies any subsequent merit decision on the issues.<sup>12</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>13</sup>

### **ANALYSIS**

The Board finds that this case is not in posture for a decision.

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<sup>8</sup> 5 U.S.C. § 8128(a); *see M.S.*, Docket No. 19-1001 (issued December 9, 2019); *L.D.*, Docket No. 18-1468 (issued February 11, 2019); *see also V.P.*, Docket No. 17-1287 (issued October 10, 2017); *W.C.*, 59 ECAB 372 (2008).

<sup>9</sup> 20 C.F.R. § 10.606(b)(3); *see also E.W.*, Docket No. 19-1393 (issued January 29, 2020); *L.D., id.*; *B.W.*, Docket No. 18-1259 (issued January 25, 2019).

<sup>10</sup> *Id.* at § 10.607(a). The one-year period begins on the next day after the date of the original contested decision. 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>11</sup> *Id.* at § 10.608(a); *see also Y.H.*, Docket No. 18-1618 (issued January 21, 2020); *R.W.*, Docket No. 18-1324 (issued January 21, 2020); *M.S.*, 59 ECAB 231 (2007).

<sup>12</sup> *F.N.*, Docket No. 18-1543 (issued March 6, 2019); *Robert F. Stone*, 57 ECAB 292 (2005).

<sup>13</sup> 20 C.F.R. § 10.608(b); *D.C.*, Docket No. 19-0873 (issued January 27, 2020); *M.S.*, Docket No. 19-0291 (issued June 21, 2019).

In the case of *William A. Couch*,<sup>14</sup> the Board held that, when adjudicating a claim, OWCP is obligated to consider all evidence properly submitted by a claimant and received by OWCP before the final decision is issued.

As noted above, by decision dated August 3, 2020, OWCP denied appellant's request for reconsideration, finding, in part, that he had not submitted relevant and pertinent new evidence not previously considered by OWCP. However, it did not reference the January 2, 2018 medical note of Dr. Bindeis.

While OWCP is not required to list every piece of evidence submitted to the record, the record is clear that the February 1, 2018 report was not referenced or reviewed by OWCP in its August 3, 2020 decision.<sup>15</sup> It is crucial that OWCP consider and address all evidence received prior to the issuance of its final decision, as the Board's decisions are final with regard to the subject matter appealed.<sup>16</sup> The Board finds, therefore, that this case is not in posture for decision as OWCP did not review and address Dr. Bindeis' January 2, 2018 report in its August 3, 2020 decision.<sup>17</sup> On remand OWCP shall review and address all evidence of record and, following any further development as it deems necessary, it shall issue an appropriate decision.

### **CONCLUSION**

The Board finds that this case is not in posture for decision.

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<sup>14</sup> 41 ECAB 548 (1990); *see also* *R.D.*, Docket No. 17-1818 (issued April 3, 2018).

<sup>15</sup> *See Order Remanding Case, J.N.*, Docket No. 21-0086 (issued May 17, 2021); *C.D.*, Docket No. 20-0168 (issued March 5, 2020).

<sup>16</sup> *See C.S.*, Docket No. 18-1760 (issued November 25, 2019); *Yvette N. Davis*, 55 ECAB 475 (2004); *see also William A. Couch*, *supra* note 14.

<sup>17</sup> *See V.C.*, Docket No. 16-0694 (issued August 19, 2016).

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 3, 2020 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: June 22, 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