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M.N., Appellant)	
)	
and)	Docket No. 22-0243
)	Issued: June 28, 2022
DEPARTMENT OF DEFENSE, GLOBAL)	
STRIKE COMMAND, MINOT AIR FORCE)	
BASE, ND, Employer)	
)	

Case Submitted on the Record

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
JAMES D. MCGINLEY, Alternate Judge

On December 7, 2021 appellant filed a timely appeal from a June 10, 2021 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from the last merit decision on this issue, dated December 15, 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 to review the merits of this case.

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 February 4, 2020 appellant, then a 54-year-old engineer, filed a traumatic injury claim (Form CA-1) alleging that on December 16, 2019 he sustained hip and neck soreness when he slipped and fell on a patch of ice while in the performance of duty.

In a February 11, 2020 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence needed and provided a questionnaire for his completion. OWCP afforded appellant 30 days to respond.

In a February 19, 2020 response to OWCP's development questionnaire, appellant explained how his slip and fall occurred.

By decision dated March 13, 2020, OWCP denied appellant's claim. It found that he had not submitted sufficient medical evidence to establish a firm diagnosis in connection with the accepted incident of December 16, 2019.

Appellant subsequently submitted an emergency department report dated December 17, 2019 signed by a certified nurse practitioner. His differential diagnoses were listed as fall, contusion, sprain, strain, and closed fracture. The emergency room record also indicated that appellant was provided educational materials for a hip contusion. The emergency department report also included the results of diagnostic testing obtained on that date and conducted by Dr. James Miller, a Board-certified diagnostic radiologist, who stated impressions of no acute bone findings, sclerotic focus/lesion within the proximal tibia, chronic and of unclear etiology, inability to exclude a tiny knee joint effusion, and moderate degenerative changes in the right hip.

On December 1, 2020 appellant requested reconsideration.

By decision dated December 15, 2020, OWCP reviewed the merits of appellant's claim, but denied modification.

On May 27, 2021 appellant requested reconsideration. He submitted a copy of the December 17, 2019 emergency department report, which had been updated to include an addendum signature by Dr. Jeffrey Sather, a Board-certified emergency medicine physician, dated March 22, 2021.

By decision dated June 10, 2021, 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 or her own motion or on application.²

² 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).

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.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 improperly denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

In support of his request for reconsideration, appellant submitted a copy of the December 17, 2019 emergency department report, which had been updated to include an addendum signature by Dr. Sather dated March 22, 2021. As this report addresses the underlying issue of whether a medical condition had been diagnosed in connection with the accepted employment incident, the report constitutes relevant and pertinent new evidence that was not previously considered by OWCP. Therefore, the Board finds that the submission of this evidence requires reopening of appellant's claim for merit review pursuant to the third requirement of 20 C.F.R. § 10.606(b)(3).⁷

Consequently, the Board will set aside OWCP's June 10, 2021 decision and remand the case for an appropriate merit decision on appellant's claim.⁸

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 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.

⁵ *Id.* at § 10.608(a); *F.V.*, Docket No. 18-0230 (issued May 8, 2020); *see also M.S.*, 59 ECAB 231 (2007).

⁶ *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).

⁷ 20 C.F.R. § 10.606(b)(3); *see also S.C.*, 20-1661 (issued May 6, 2022); *J.T.*, Docket No. 20-1301 (issued July 28, 2021); *M.J.*, Docket No. 20-1067 (issued December 23, 2020).

⁸ *F.K.*, Docket No. 21-0998 (issued December 29, 2021).

CONCLUSION

The Board finds that OWCP improperly denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the June 10, 2021 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 28, 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