

FACTUAL HISTORY

On September 30, 2020 appellant, then a 54-year-old border patrol agent, filed an occupational disease claim (Form CA-2) alleging that he developed pigmented squamous cell carcinoma on his right upper buttock due to factors of his federal employment. He indicated that he carried a Buster K910G Density Meter (K910B) on his duty belt for several years and noticed a spot on his right superior buttock area. Appellant noted that he first became aware of his condition on August 26, 2019 and realized its relationship to his federal employment on September 16, 2020. He did not stop work.

In an undated statement, appellant indicated that he was assigned a K910B with a live barium-133 source on September 25, 2017, which he carried for eight hours per day, six days per week. After approximately four months, he discontinued using the device because it was leaking radiation. Appellant first noticed a black spot on his right upper buttock area in the late summer of 2018 and sought medical treatment. He denied any prior history of skin cancer.

In a medical report dated August 26, 2019, Dr. Natasha Carter, a Board-certified dermatologist, noted that appellant presented for evaluation of a black spot on his back, which had been there for a year. She performed an examination, which revealed actinic damage on the left superior central malar cheek. Dr. Carter diagnosed benign seborrheic keratosis on the right buttock and facial actinic damage.

In a medical report dated September 16, 2020, Dr. Dannie Chang, a Board-certified dermatologist, noted that appellant related that the black spot on his lower back was becoming darker. She performed a physical examination and biopsy.

In an October 15, 2020 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence necessary. OWCP afforded appellant 30 days to submit the requested information.

In a form report dated October 16, 2020, Dr. Chang noted that appellant underwent skin cancer surgery on that date and recommended that he remain out of work through October 22, 2020. She also released him to return to work with light-duty restrictions as of October 23, 2020 and then to full duty commencing November 2, 2020.

In a letter dated November 3, 2020, Dr. Chang diagnosed appellant with squamous cell skin cancer on his right buttock/lower back region. She recounted that she had surgically removed the cancer on October 16, 2020. Dr. Chang noted that, based upon a review of medical literature, there “appears to be an association” between radiation and an increased risk of skin cancer. She also opined that there was a “possible association” between appellant’s use of the K910B device and his skin condition. Dr. Chang recommended that he avoid wearing any devices that transmitted radiation.

By decision dated November 16, 2020, OWCP denied appellant’s occupational disease claim, finding that he had not submitted rationalized medical evidence establishing a causal relationship between his diagnosed condition and the accepted employment factors.

On September 21, 2021 appellant requested reconsideration of OWCP's November 16, 2020 decision. In support of his request, he submitted a statement dated September 12, 2021, indicating that he was submitting evidence he had acquired following the November 16, 2020 decision; however, no additional medical evidence was received.

By decision dated September 28, 2021, OWCP denied appellant's request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a), finding that his request for reconsideration neither raised substantial legal questions, nor included new or relevant evidence.

LEGAL PRECEDENT

Section 8128(a) of FECA does not entitle a claimant the review of an OWCP decision as a matter of right.² OWCP has discretionary authority in this regard and has imposed certain limitations in exercising its authority.³ One such limitation is that the request for reconsideration must be received by OWCP within one year of the date of the decision for which review is sought.⁴

A timely request for reconsideration, including all supporting documents, must set forth arguments, and contain evidence that either: (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.⁵ When a timely request for reconsideration does not meet at least one of the above-noted requirements, OWCP will deny the request for reconsideration without reopening the case for a review on the merits.⁶

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 has not alleged or demonstrated that OWCP erroneously applied or interpreted a specific point of law. Moreover, he has not advanced a relevant legal argument not previously

² *Id.* at § 8128(a).

³ 20 C.F.R. § 10.607.

⁴ *Id.* at § 10.607(a). 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 § 10.606(b)(3); *see L.F.*, Docket No. 20-1371 (issued March 12, 2021); *B.R.*, Docket No. 19-0372 (issued February 20, 2020).

⁶ *Id.* at § 10.608.

considered. Consequently, appellant is not entitled to a review of the merits of his claim based on the first and second above-noted requirements under 20 C.F.R. § 10.606(b)(3).⁷

In support of his request for reconsideration, appellant also did not submit any new and relevant medical evidence. The underlying issue on reconsideration is whether appellant has met his burden of proof to establish a skin condition causally related to the accepted factors of his federal employment. This is a medical issue which can only be addressed by submission of rationalized medical evidence not previously considered.⁸ Thus, appellant is not entitled to further review of the merits of his claim based on the third requirement under 20 C.F.R. § 10.606(b)(3).⁹

The Board, therefore, 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.

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).

⁷ *C.B.*, Docket No. 18-1108 (issued January 22, 2019).

⁸ *Y.L.*, Docket No. 20-1025 (issued November 25, 2020); *Eugene F. Butler*, 36 ECAB 393 (1984); *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

⁹ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the September 28, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 14, 2022
Washington, DC

Alec J. Koromilas, 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