



## ISSUE

The issue is whether OWCP properly denied appellant's request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a).

## FACTUAL HISTORY

On April 3, 2020 appellant, then a 56-year-old tool and parts clerk, filed a traumatic injury claim (Form CA-1) alleging that on April 2, 2020 she injured her left shoulder when lifting parts from a skid pallet to a cart while in the performance of duty. She did not immediately stop work. On the reverse side of the claim form, appellant's supervisor acknowledged that appellant was in the performance of duty at the time of the claimed injury.

Appellant had previously filed a Form CA-1 for an injury sustained on June 21, 2016, when she injured her left shoulder while in the performance of duty. OWCP assigned OWCP File No. xxxxxx414.<sup>4</sup> It accepted that claim for incomplete rotator cuff tear or rupture of the left shoulder.<sup>5</sup>

In an April 3, 2020 authorization for examination and/or treatment (Form CA-16), the employing establishing authorized appellant to seek medical care. In Part B of the Form CA-16, attending physician's report, of even date, Angela D. Delawder, a physician assistant, reported that appellant was lifting auto parts and injured her left shoulder. She diagnosed left shoulder strain. Ms. Delawder checked a box marked "Yes" indicating that the diagnosed conditions were caused or aggravated by the described employment activity. She opined that appellant was partially disabled and could return to light-duty work on April 2, 2020.

In a development letter dated April 7, 2020, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of evidence needed and provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit the necessary evidence.

Appellant was treated by Dr. James A. Hill, a Board-certified orthopedist, from January 4, 18 through March 20, 2019, who diagnosed torn left rotator cuff. He indicated that appellant had not improved with conservative care and recommended arthroscopic surgery. On May 7, 2018 Dr. Hill performed left shoulder diagnostic arthroscopy and diagnosed left shoulder arthritis and supraspinatus rotator cuff tear. In reports dated May 17, 2018 through March 19, 2019, he diagnosed status-post right shoulder arthroscopy and labrum debridement. Dr. Hill recommended physical therapy and advised that appellant was disabled from work. He returned appellant to full unrestricted duty on January 14, 2019 and discharged her from his care on March 18, 2019.

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<sup>4</sup> On August 13, 2018 appellant appealed this claim to the Board. By decision dated February 22, 2019, the Board affirmed the decision dated June 27, 2018 finding that she had not established that her left shoulder condition was causally related to the accepted June 21, 2016 employment incident. Docket No. 18-1579 (issued February 22, 2019).

<sup>5</sup> OWCP granted appellant a schedule award for seven percent permanent impairment of the left upper extremity. The period of the award ran for 21.84 weeks from January 30 through June 30, 2020. This claim was administratively combined by OWCP with the current file, OWCP File No. xxxxxx130. OWCP File No. xxxxxx414 is designated as the master file.

On April 3, 2020 Ms. Delawder returned appellant to modified-duty work with restrictions of no use of the left upper extremity. On April 29, 2020 she diagnosed left shoulder strain, subsequent encounter and continued modified duty.

Appellant attended physical therapy treatments from April 6 through 22, 2020.

Dr. Jose Ayala, Board-certified in family medicine, treated appellant on April 8 and 15, 2020, in follow up for a left shoulder injury. He diagnosed left shoulder strain, subsequent encounter, and referred appellant for physical therapy.

By decision dated May 12, 2020, OWCP denied appellant's traumatic injury claim finding that she had not established that the injury or events occurred as she described. It concluded, therefore, that the requirements had not been met to establish as injury as defined by FECA.

OWCP received additional evidence. Dr. Hill treated appellant on March 15 through November 20, 2018 and diagnosed status-post left shoulder arthroscopy and labral debridement on May 7, 2018 with a massive rotator cuff tear. He continued physical therapy and advised that appellant remained off work. On May 13, 2020 Dr. Hill treated appellant for an aggravation of left shoulder pain occurring in April after she lifted heavy tires at work. He noted findings on examination of weakness on abduction and external rotation and pain of her supraspinatus. Dr. Hill diagnosed chronic left shoulder tear status-post left shoulder arthroscopy and debridement. He opined that the size of appellant's ongoing rotator cuff tear increased and recommended a magnetic resonance imaging (MRI) scan.

On May 20, 2020 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. The hearing was held on August 4, 2020.

An MRI scan of the left shoulder dated May 29, 2020 revealed chronic full-thickness tear of the supraspinatus with proximal retraction and tendon gap of 3.2 centimeters and muscle atrophy of the supraspinatus and infraspinatus musculature.

By decision dated October 9, 2020, an OWCP hearing representative affirmed the decision dated May 12, 2020.

Appellant submitted reports from Dr. Hill dated May 7, 2018 through May 13, 2020, previously of record. On September 26, 2019 Dr. Hill noted that appellant was working full unrestricted duty, but occasionally suffered discomfort in the anterior aspect of her left shoulder. He diagnosed status-post left shoulder arthroscopy and bicipital tendinitis and continued full-duty work. On May 13, 2020 Dr. Hill treated appellant in follow up for complete tear of the left rotator cuff.<sup>6</sup>

Mia Werner, a physician assistant, treated appellant on March 28, 2019 for temporal pain. She diagnosed temporal pain and impaired fasting glucose.

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<sup>6</sup> Appellant submitted preoperative testing from April 24, 2018 and a preoperative evaluation dated May 7, 2018.

On November 20, 2020 appellant requested reconsideration.

By decision dated February 18, 2021, OWCP denied appellant's request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a).

Appellant submitted an April 15, 2021 statement and noted that at the time of the injury she was breaking down skids for one and a half to two hours a day. She indicated that the weight varied from one ounce to 40 pounds and included small parts, alternators, tires, steering gears, and ball bearings. Appellant attended physical therapy for her left shoulder from July 6 through November 19, 2018.

On May 6, 2021 appellant requested reconsideration.

By decision dated August 3, 2021, OWCP modified its prior decision, finding that appellant had established that the April 2, 2020 employment incident occurred, as alleged. However, it further denied her claim, finding that she had not provided the necessary medical opinion evidence to establish causal relationship between her accepted April 2, 2020 employment incident and the diagnosed left shoulder condition.

OWCP received physical therapy notes dated April 15, 2020, reports from Ms. Delawder dated April 3 and 29, 2020, and a May 13, 2020 report from Dr. Hill, all previously of record.

On September 16, 2021 appellant requested reconsideration.

By decision dated December 7, 2021, OWCP denied appellant's request for reconsideration of the merits of her 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 or her own motion or on application.<sup>7</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>8</sup>

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<sup>7</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>8</sup> 20 C.F.R. § 10.606(b)(3); *see L.D., id.*; *see also K.L.*, Docket No. 17-1479 (issued December 20, 2017); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

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>9</sup> If it chooses to grant reconsideration, it reopens and reviews the case on its merits.<sup>10</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>11</sup>

### 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).

Appellant has not shown that OWCP erroneously applied or interpreted a specific point or law, nor did she advance a new and relevant legal argument not previously considered in her September 16, 2021 reconsideration request. Consequently, she was not entitled to a review of the merits of her claim based on the first or second above-noted requirements under section 10.606(b)(3).<sup>12</sup>

The underlying issue in the case is whether appellant has provided sufficient medical evidence to establish that she sustained a medical condition causally related to the accepted April 2, 2020 employment incident.

Appellant resubmitted physical therapy notes dated April 15, 2020, reports from Ms. Delawder, a physician assistant, dated April 3 and 29, 2020, and a report from Dr. Hill dated May 13, 2020. As these reports repeat evidence already in the case record, it is cumulative and does not constitute relevant and pertinent new evidence. The Board has held that providing additional evidence that either repeats or duplicates information already in the record does not constitute a basis for reopening a claim.<sup>13</sup> Thus, appellant is not entitled to a review of the merits based on the third above-noted requirement under 20 C.F.R. § 10.606(b)(3).<sup>14</sup>

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<sup>9</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 (September 2020). 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>10</sup> *Id.* at § 10.608(a); *see also M.S.*, 59 ECAB 231 (2007).

<sup>11</sup> *Id.* at § 10.608(b); *M.S.*, Docket No. 19-0291 (issued June 21, 2019); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

<sup>12</sup> *Id.* at § 10.606(b)(3); *see J.W.*, Docket No. 19-1795 (issued March 13, 2020).

<sup>13</sup> *S.F.*, Docket No. 18-0516 (issued February 21, 2020); *James W. Scott*, 55 ECAB 606, 608 n.4 (2004); *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

<sup>14</sup> *See* 20 C.F.R. § 10.606(b)(3)(iii).

The Board accordingly finds that appellant has not met any of the requirements under 20 C.F.R. § 10.606(b)(3). Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.<sup>15</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).

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 7, 2021 decision of the Office of Workers' Compensation Programs is affirmed.<sup>16</sup>

Issued: September 2, 2022  
Washington, DC

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board

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

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<sup>15</sup> See *S.M.*, Docket No. 18-0673 (issued January 25, 2019); *A.R.*, Docket No. 16-1416 (issued April 10, 2017); *M.E.*, 58 ECAB 694 (2007); *Susan A. Filkins*, 57 ECAB 630 (2006) (when a request for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b), OWCP will deny the request for reconsideration without reopening the case for a review on the merits).

<sup>16</sup> The Board notes that the case record contains a Form CA-16, dated April 3, 2020. A properly completed Form CA-16 form 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. The period for which treatment is authorized by a Form CA-16 is limited to 60 days from the date of issuance, unless terminated earlier by OWCP. 20 C.F.R. § 10.300(c); *P.R.*, Docket No. 18-0737 (issued November 2, 2018); *N.M.*, Docket No. 17-1655 (issued January 24, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).