

**United States Department of Labor
Employees' Compensation Appeals Board**

R.M., Appellant

and

DEPARTMENT OF THE INTERIOR,
NATIONAL PARK SERVICE, Carlsbad, NM,
Employer

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**Docket No. 21-0963
Issued: April 19, 2023**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On June 9, 2021 appellant filed a timely appeal from a December 10, 2020 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from OWCP's last merit decision, dated June 8, 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 over the merits of this case.²

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).

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the December 10, 2020 decision, OWCP received additional evidence on appeal. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

FACTUAL HISTORY

On April 28, 2020 appellant, then a 52-year-old park technician, filed a traumatic injury claim (Form CA-1) alleging that on March 21, 2020 he sustained injuries to his face, head, neck, left shoulder, knees and elbows as a result of an assault while in the performance of duty. He did not stop work.

In a development letter dated May 1, 2020, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence needed and provided a factual questionnaire for his completion. In a separate development letter of even date, OWCP also requested additional information from the employing establishment. It afforded both parties 30 days to respond.

In medical reports dated March 21, 2020, Dr. Ryan Mangel, Board-certified in family medicine, recounted that appellant was struck in the left side of his face during a scuffle at work. He noted that he was experiencing pain on the left side of his neck and shoulder and, on evaluation, diagnosed atypical facial pain. Dr. Mangel provided appellant with information sheets discussing aftercare treatment for a jaw contusion, a contusion, and hypertension. In a diagnostic report of even date, Dr. John Dennis, a Board-certified diagnostic radiologist, performed a computerized tomography (CT) scan of the left facial bones, observing no acute osseous fracture or dislocation.

By decision dated June 8, 2020, OWCP denied appellant's traumatic injury claim, finding that the evidence of record had not established a diagnosed medical condition in connection with the accepted March 21, 2020 employment incident. It concluded, therefore, that the requirements had not been met to establish an injury as defined under FECA.

OWCP continued to receive evidence. Appellant submitted a March 21, 2020 ambulance record in which he informed an emergency medical services (EMS) worker, that he was involved in a shooting, and subsequently complained of high blood pressure. He related that he was struck in the head and neck during the altercation.

On December 8, 2020 appellant requested reconsideration of OWCP's June 8, 2020 decision. In an attached August 25, 2020 statement, he recounted the events of the March 21, 2020 employment incident and his subsequent medical care. Appellant explained that the medical records OWCP requested were being held by a detective in a court case in relation to the March 21, 2020 employment incident.

By decision dated December 10, 2020, OWCP denied appellant's request for reconsideration of the merits of his claim, finding that his request neither raised substantial legal questions, nor had he included new or relevant evidence in support of his request.

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.³

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.⁴

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.⁵ If it chooses to grant reconsideration, it reopens and reviews the case on its merits.⁶ 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.⁷

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 did not establish that OWCP erroneously applied or interpreted a specific point of law, or advance a relevant legal argument not previously considered by OWCP. Accordingly, the Board finds that he is not entitled to a review of the merits based on either the first or second requirement under 20 C.F.R. § 10.606(b)(3).⁸

Appellant also did not submit relevant and pertinent new evidence in support of his December 8, 2020 request for reconsideration. The underlying issue in this case is whether appellant submitted sufficient medical evidence to establish a diagnosed medical condition causally related to the accepted March 21, 2020 employment incident. This is a medical question

³ 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).

⁴ 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).

⁵ *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 the merit 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.

⁶ *Id.* at § 10.608(a); *see also M.S.*, 59 ECAB 231 (2007).

⁷ *Id.* at § 10.608(b); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

⁸ *Supra* note 4.

that requires rationalized medical opinion evidence to resolve the issue.⁹ OWCP received a March 31, 2020 ambulance record signed by an EMS worker. However, this report is of no probative value on the underlying issue of this case because it is not signed by a qualified physician under FECA.¹⁰ Because he did not provide any relevant and pertinent new evidence, appellant is not entitled to a review of the merits based on the third requirement under 20 C.F.R. § 10.606(b)(3).¹¹

The Board accordingly 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).

ORDER

IT IS HEREBY ORDERED THAT the December 10, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 19, 2023
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

⁹ *E.T.*, Docket No. 14-1087 (issued September 5, 2014).

¹⁰ *See T.J.*, Docket No. 18-1500 (issued May 1, 2019); *see D.S.*, Docket No. 18-0061 (issued May 29, 2018).

¹¹ 20 C.F.R. § 10.606(b)(3)(iii).