

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

N.L., Appellant	)	
	)	
and	)	<b>Docket No. 23-0976</b>
	)	<b>Issued: December 28, 2023</b>
<b>DEPARTMENT OF THE INTERIOR, BUREAU</b>	)	
<b>OF LAND MANAGEMENT, CENTRAL COAST</b>	)	
<b>FIELD OFFICE, Marina, CA, Employer</b>	)	
	)	

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Chief Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On July 12, 2023 appellant filed a timely appeal from a July 5, 2023 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from OWCP's last merit decision, dated July 27, 2022, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act<sup>1</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).

---

<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

On September 13, 2021 appellant, then a 46-year-old inspection, investigation, and compliance officer, filed a traumatic injury claim (Form CA-1) alleging that on September 12, 2021 he injured his neck and back when he was involved in a motor vehicle accident (MVA) while in the performance of duty. He did not stop work.

In a state compensation form report dated September 12, 2021, Kevin Palm, a physician assistant, noted that appellant related complaints of neck pain, which he attributed to an MVA which occurred on September 12, 2021. On physical examination he observed no tenderness to palpation of the midline and indicated that the bilateral upper extremities were neurovascularly intact. Mr. Palm diagnosed neck pain and muscle sprain and checked a box marked “Yes” to indicate that appellant’s condition was consistent with his account of the injury.

On September 14, 2021 the employing establishment executed an authorization for examination and/or treatment (Form CA-16) authorizing appellant to seek medical care related to the September 12, 2021 vehicle collision.

In a development letter dated September 16, 2021, 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.

OWCP thereafter received an emergency department report dated September 12, 2021 signed by Dr. James Goldberg, a Board-certified emergency medicine physician, who noted that appellant related complaints of neck pain, which he attributed to a near head-on, sideswipe MVA on that date. Dr. Goldberg’s physical examination was normal, and he diagnosed neck pain.

By decision dated October 20, 2021, OWCP denied appellant’s claim, finding that the medical evidence of record was insufficient to establish a medical diagnosis from a qualified physician in connection with the accepted September 12, 2021 employment incident. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On May 5, 2022 appellant requested reconsideration of OWCP’s October 20, 2021 decision.

OWCP thereafter received a September 12, 2021 traffic crash report which noted the details of the collision and indicated that appellant was self-transported to the hospital “for precautionary reasons at the direction of [appellant’s] supervisor, not for injuries sustained in the collision.”

In a July 18, 2022 medical report, Dr. Julie R. Powers, a Board-certified family medicine physician, noted that appellant related a history of neck pain following an MVA on September 12, 2021, which had resolved. She diagnosed a cervical sprain due to the September 12, 2021 MVA and opined that there was no need for further treatment.

By decision dated July 27, 2022, OWCP modified its October 20, 2021 decision to find that appellant had established a diagnosed neck condition in connection with the accepted September 12, 2021 employment incident. However, the claim remained denied as the medical

evidence of record was insufficient to establish causal relationship between the diagnosed neck condition and the accepted September 12, 2021 employment incident.

On June 30, 2023 appellant requested reconsideration of OWCP's July 27, 2022 decision. In support of his request, he submitted a statement of even date detailing the events of the date of injury and contending that the injury should be accepted.

By decision dated July 5, 2023, OWCP denied appellant's request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

### **LEGAL PRECEDENT**

Section 8128(a) of FECA does not entitle a claimant the review of an OWCP decision as a matter of right.<sup>2</sup> OWCP has discretionary authority in this regard and has imposed certain limitations in exercising its authority.<sup>3</sup> 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.<sup>4</sup>

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.<sup>5</sup> 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.<sup>6</sup>

### **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

---

<sup>2</sup> *Id.* at § 8128(a).

<sup>3</sup> 20 C.F.R. § 10.607.

<sup>4</sup> *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 (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>5</sup> *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).

<sup>6</sup> *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).<sup>7</sup>

Furthermore, appellant has not provided relevant and pertinent new evidence in support of his request for reconsideration. On reconsideration he submitted a statement dated June 30, 2023 contending that the claim should be accepted. The underlying issue of the present case is a medical issue, *i.e.*, whether appellant has established causal relationship between his diagnosed condition and the accepted September 12, 2021 employment incident, which requires rationalized medical opinion evidence.<sup>8</sup> While the statement submitted was new, it is not relevant because it does not constitute medical evidence. The Board has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.<sup>9</sup> Therefore, the above evidence does not constitute relevant and pertinent new evidence not previously considered by OWCP and appellant was not entitled to a merit review of his claim based on the third above-noted requirement under 20 C.F.R. § 10.606(b)(3).<sup>10</sup>

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).<sup>11</sup>

---

<sup>7</sup> See *R.L.*, Docket No. 20-1403 (issued July 21, 2021); *M.O.*, Docket No. 19-1677 (issued February 25, 2020); *C.B.*, Docket No. 18-1108 (issued January 22, 2019).

<sup>8</sup> *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *T.H.*, 59 ECAB 388, 393 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

<sup>9</sup> *A.E.*, Docket No. 23-0245 (issued June 16, 2023); *R.L.*, Docket No. 20-1403 (issued July 21, 2021); *R.P.*, Docket No. 20-0661 (issued April 14, 2021); *D.P.*, Docket No. 13-1849 (issued December 19, 2013); *Edward Matthew Diekemper*, 31 ECAB 224-25 (1979).

<sup>10</sup> *Id.*

<sup>11</sup> The Board notes that the employing establishment executed a Form CA-16. A completed Form CA-16 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. See 20 C.F.R. § 10.300(c); *J.G.*, Docket No. 17-1062 (issued February 13, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 5, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 28, 2023  
Washington, DC

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

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

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