

¹ 5 U.S.C. § 8101 *et seq.*

elbow and knee and a right ankle injury when he stepped on an uneven surface and fell when delivering mail while in the performance of duty. OWCP accepted his claim for left knee, elbow and forearm contusions, lumbosacral sprain, right ankle sprain, and right lower limb reflex sympathetic dystrophy. It paid appellant wage-loss compensation on the supplemental rolls beginning December 21, 2001 and on the periodic rolls beginning May 18, 2003.

By decision dated May 13, 2016, OWCP terminated appellant's wage-loss compensation and medical benefits, effective that date. It found that the December 10, 2015 second opinion report of Dr. Chason Hayes, a Board-certified orthopedic surgeon, carried the weight of medical evidence and established that appellant no longer had any residuals or disability due to of his accepted November 2, 2001 employment injury.

On May 20, 2016 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.

By decision dated November 9, 2016, OWCP's hearing representative affirmed OWCP's May 13, 2016 termination decision.

Appellant requested reconsideration. By decisions dated July 28, 2017, August 28, 2018, December 20, 2019, and May 20, 2020, OWCP denied modification.

On May 18, 2021 appellant requested reconsideration of OWCP's May 20, 2020 decision. With his request, he resubmitted the January 16, 2020 report. Appellant also submitted a May 3, 2021 statement on reconsideration, in which he argued that Dr. Hayes' examination was limited and his evaluation conclusions were untrue.

By decision dated May 20, 2021, 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 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.²

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

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).

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).

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

Appellant's August 18, 2021 timely request for reconsideration neither alleged nor demonstrated that OWCP erroneously applied or interpreted a specific point of law. He submitted a May 3, 2021 statement on reconsideration, in which he argued that Dr. Hayes' examination was limited and his evaluation conclusions were untrue. However, the underlying issue is medical in nature and appellant's statement was his opinion, and not medical evidence from a qualified physician.⁷ Therefore, the Board finds that he did not advance a relevant legal argument not previously considered by OWCP. Consequently, appellant is not entitled to further review of the merits of his claim based on either the first or second above-noted requirements under 20 C.F.R. § 10.606(b)(3).

In support of his reconsideration request, appellant resubmitted a January 16, 2020 report. This report was previously reviewed by OWCP in its May 20, 2020 decision. Evidence that repeats or duplicates evidence already of record has no evidentiary value, and does not constitute a basis for reopening a case.⁸ Therefore, appellant failed to satisfy the third requirement under 20 C.F.R. § 10.606(b)(3), and is not entitled to further review of the merits of his claim.

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.

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 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.

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 5 U.S.C. § 8102(2) of FECA provides that the term physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. *K.C.*, Docket No. 19-0834 (issued October 28, 2019); *E.T.*, Docket No. 17-0265 (issued May 25, 2018) (finding that physician assistants are not considered physicians under FECA). *See also J.B.*, Docket No. 18-1531 (issued April 11, 2019); *D.K.*, 59 ECAB 141 (2007).

⁸ *D.M.*, Docket No. 18-1003 (issued July 16, 2020).

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 May 20, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 17, 2023
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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