

FACTUAL HISTORY

On May 31, 2017 appellant, then a 48-year-old transportation security officer/screener, filed an occupational disease claim (Form CA-2) alleging that she developed life threatening facial cellulitis due to staph bacteria from an unhygienic breakroom. She noted that she first realized its relation to her federal employment on April 1, 2015. On the reverse side of the claim form, the employing establishment controverted the claim, noting that appellant previously filed for the same condition under OWCP File No. xxxxxx918, which was denied.²

In a June 15, 2016 report, Dr. Ronald L. Ragotzy, an allergy specialist, opined that appellant's recurrent cellulitis was directly caused by her employment. He related that cellulitis could be contracted from other infected individuals, or from a contaminated surface that was not disinfected on a daily basis. Dr. Ragotzy explained that the employing establishment breakroom was not cleaned with a disinfectant. He further noted that appellant's cellulitis completely resolved after she left the employing establishment because she was removed from the environment.

In a May 16, 2017 report, Dr. Aletha Poste, Board certified in family practice, related that the temporary aggravation of appellant's cellulitis had resolved since appellant had left her work environment.

On March 16, 2018 OWCP accepted the claim for temporary aggravation of cellulitis of the face.

On June 12, 2018 appellant filed a claim for compensation (Form CA-7) requesting a schedule award.

In an October 23, 2018 report, Dr. Poste opined that, due to appellant's recurrent cellulitis, appellant had permanent hypersensitivity and hyperalgesia of the left side of her face, permanent scar tissue where appellant's peripherally inserted central catheter line was placed, and permanent anxiety related to her repeated hospital admissions and treatments.

On April 12, 2021 OWCP referred appellant, along with a statement of accepted facts and the medical record, to Dr. Robert Marshall, Board-certified in dermatology, for a second opinion examination to determine whether the accepted aggravation was temporary or permanent, and whether she had a permanent impairment.

In an April 26, 2021 report, Dr. Marshall noted appellant's medical course. He noted that her facial cellulitis had completely resolved, and she had reached maximum medical improvement (MMI) on March 16, 2015. Dr. Marshall concluded that appellant had no aggravation of any preexisting condition, and no permanent impairment as a result of the work-related condition.

By decision dated January 3, 2022, OWCP denied appellant's schedule award claim, finding that the medical evidence of record was insufficient to establish permanent impairment of a scheduled member or function of the body warranting a schedule award.

² OWCP noted that the claim was denied and doubled into the present claim.

On January 3, 2023 appellant requested reconsideration. She argued that the report from the second opinion physician, Dr. Marshall, had overlooked several points. Appellant noted that the report did not mention the conversation she had with him, that he erroneously concluded that she had no permanent impairment, and that she had several impairments. She alleged that she had gastrointestinal issues due to high use of antibiotics and some minor facial scarring which she covered with make-up. Appellant further alleged that the veins in her arms were no longer usable due to the high-powered antibiotic use and peripherally inserted catheters. She also alleged that she sustained methicillin-resistant staphylococcus aureus. Appellant argued that Dr. Marshall failed to look at her medical notes because he did not mention her use of her medications. She further noted that he failed to discuss the improper cleaning procedures that resulted in her cellulitis and did not have all of the facts to make a proper conclusion when he examined her.

By decision dated January 4, 2023, 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.³

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.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.⁷

³ 5 U.S.C. § 8128(a); *see L.J.*, Docket No. 22-0348 (issued April 28, 2023); *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).

⁴ 20 C.F.R. § 10.606(b)(3); *see P.M.*, Docket No. 20-0780 (issued November 24, 2020); *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 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.

⁶ *Id.* at § 10.608(a); *F.V.*, Docket No. 18-0230 (issued May 8, 2020); *see also M.S.*, 59 ECAB 231 (2007).

⁷ *Id.* at § 10.608(b); *S.K.*, Docket No. 22-0248 (issued June 27, 2022); *B.S.*, Docket No. 20-0927 (issued January 29, 2021); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

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).

In her January 2, 2023 reconsideration request, appellant indicated that she disagreed with various aspects of Dr. Marshall's report. However, she did not show that OWCP erroneously applied or interpreted a specific point of law, nor did she advance a new and relevant legal argument not previously considered by OWCP. Accordingly, the Board finds that appellant is not entitled to a review of the merits based on the first and second above-noted requirements under 20 C.F.R. § 10.606(b)(3).⁸

The Board further finds that appellant did not submit relevant and pertinent new evidence not previously considered by OWCP. The underlying issue in this case is whether she has established permanent impairment of a scheduled member or function of the body. In support of her reconsideration request, appellant did not submit any medical evidence. She argued that the second opinion physician, Dr. Marshall, incorrectly opined that, she had no permanent impairment however, she did not submit any medical evidence to support her claim of permanent impairment. Absent new relevant and pertinent medical evidence of permanent impairment, appellant failed to establish a basis for reconsideration. The Board has held that the submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.⁹ Thus, appellant is not entitled to a review of the merits of her claim based on the third above-noted requirement under 20 C.F.R. § 10.606(b)(3).¹⁰

The Board accordingly finds that OWCP properly determined that appellant has not met any of the three requirements under 20 C.F.R. § 10.606(b)(3). Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.¹¹

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).

⁸ *Supra* note 5.

⁹ *See O.A.*, Docket No. 22-1350 (issued May 24, 2023); *A.M.*, Docket No. 20-1417 (issued July 30, 2021); *E.J.*, Docket No. 19-1509 (issued January 9, 2020); *M.K.*, Docket No. 18-1623 (issued April 10, 2019); *Edward Matthew Diekemper*, 31 ECAB 224-25 (1979).

¹⁰ *Supra* note 5.

¹¹ *See D.M.*, Docket No. 18-1003 (issued July 16, 2020); *D.S.*, Docket No. 18-0353 (issued February 18, 2020); *Susan A. Filkins*, 57 ECAB 630 (2006) (when a request for reconsideration does not meet at least one of the three requirements enumerated under 20 C.F.R. § 10.606(b)(3), OWCP will deny the request for reconsideration without reopening the case for a review on the merits).

ORDER

IT IS HEREBY ORDERED THAT the January 4, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 20, 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