

FACTUAL HISTORY

This case has previously been before the Board. The facts and circumstances of the case as set forth in the Board's prior order are incorporated herein by reference. The relevant facts are as follows.²

On April 9, 2007 appellant, then a 33-year-old distribution process worker, filed a traumatic injury claim (Form CA-1) alleging that she sustained a lower back injury on April 4, 2007 when she bent down to pick up an item while in the performance of duty. OWCP accepted appellant's claim, under OWCP File No. xxxxxx080, for low back strain on May 23, 2007.³

On December 26, 2013 appellant filed a notice of recurrence (Form CA-2a) alleging a recurrence of disability commencing August 19, 2013. By decision dated May 28, 2015, OWCP accepted her claim for recurrence of disability effective August 19, 2013 and expanded the acceptance of the claim to include displacement of the lumbar intervertebral disc at L4-L5.

On March 19, 2019 appellant filed a Form CA-2a. She indicated that she had stopped work on January 13, 2015, and had missed work intermittently until January 31, 2019.

By decision dated June 18, 2019, OWCP denied appellant's recurrence claim, finding that the medical evidence did not establish that she sustained a recurrence of disability on January 13, 2015, causally related to the accepted April 4, 2007 employment injury.

On June 18, 2020 appellant requested reconsideration of OWCP's June 18, 2019 decision. By decision dated September 16, 2020, OWCP modified its prior decision and found that the case should be reopened for medical benefits. The claim remained denied, however, as it further found that appellant had not submitted sufficient medical evidence to establish a recurrence of disability on or after January 13, 2015 due to a material change or worsening of her accepted work-related conditions without intervening cause.

In a hospital report dated November 29, 2018, Dr. Mukul Parikh, a Board-certified anesthesiologist, described appellant's left sacroiliac joint fusion surgical procedure, which was performed that day.

In a letter dated May 20, 2021, Dr. Tracy Prince, an osteopath, Board-certified in family practice, described appellant's long-standing history of lower back pain resulting from a work-related injury in 2005. He noted that in January 2015 appellant slipped on ice that exacerbated her lower back pain. Dr. Prince opined that if she did not have underlying back issues from the work-related injury, then the slip would not have caused pain and disability from January 12 to 18, 2015. He further noted that appellant experienced an acute flare-up of her lower back symptoms in

² *Order Remanding Case*, Docket No. 14-1721 (issued February 3, 2015).

³ Appellant had previously filed a claim for traumatic injury under OWCP File No. xxxxxx134 for an injury to her lower back that occurred on November 28, 2005, which OWCP accepted for disc herniation at L5-S1 and resulted in an L5-S1 laminectomy and discectomy performed on June 26, 2006. The claims have been administratively combined by OWCP with OWCP File No. xxxxxx080 serving as the master file.

January 2016, not precipitated by an intervening event. This flare-up lasted from January 20 through February 8, 2016.

On June 10, 2021 appellant requested reconsideration of OWCP's September 16, 2020 decision. By decision dated September 3, 2021, OWCP denied modification of the September 16, 2020 decision.

In a patient note dated December 14, 2021, Dr. Andrew Bayles, a Board-certified osteopath, diagnosed acute pharyngitis, cough, bilateral otalgia, nasal congestion, and suspected exposure to COVID-19.

In an appeal request form received on September 6, 2022, appellant requested reconsideration of OWCP's September 3, 2021 decision. She noted that she had not submitted any new evidence with her request, but that she believed review of previously submitted documentation would demonstrate that she experienced a recurrence without intervening cause. Appellant resubmitted the November 29, 2018 surgical report from Dr. Parikh and the May 20, 2021 letter from Dr. Prince. She also submitted the above-noted December 14, 2021 document from Dr. Bayles.

By decision dated September 19, 2022, 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 own motion or on application.⁴

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.⁵

⁴ 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).

⁵ 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.⁶ If it chooses to grant reconsideration, it reopens and reviews the case on its merits.⁷ 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.⁸

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's September 6, 2022 timely request for reconsideration neither alleged nor demonstrated that OWCP erroneously applied or interpreted a specific point of law. In her statement on reconsideration, she noted that she had not submitted any new evidence with her request, but that she believed review of previously submitted documentation would demonstrate that she experienced a recurrence without intervening cause. Therefore, the Board finds that appellant also did not advance a relevant legal argument not previously considered by OWCP. Consequently, appellant is not entitled to further review of the merits of her claim based on either the first or second above-noted requirements under 20 C.F.R. § 10.606(b)(3).

In support of her reconsideration request, appellant resubmitted a surgical record from November 29, 2018 detailing her undergoing a left sacroiliac joint fusion procedure and a letter from Dr. Prince dated May 20, 2021. These medical documents were previously reviewed by OWCP in its September 3, 2021 decision. Evidence that repeats or duplicates evidence already of record has no evidentiary value, and does not constitute a basis for reopening a case.⁹

Appellant also submitted a December 14, 2021 patient note from Dr. Bayles, in which he diagnosed acute pharyngitis, cough, bilateral otalgia, nasal congestion, and suspected exposure to COVID-19. The underlying issue in this case is whether appellant has established a recurrence of disability on or after January 13, 2015 due to a material change or worsening of her accepted work conditions without intervening cause. The Board has held that the submission of evidence or

⁶ *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. OWCP's procedures further provide that, when determining the one-year period for requesting reconsideration, the last day of the period should be included unless it is a Saturday, Sunday, or legal holiday. *Id.* One year following September 3, 2021 fell on Saturday, September 3, 2022, as Monday September 5, 2022 was a federal holiday, appellant's request for reconsideration filed on September 6, 2022 was timely.

⁷ *Id.* at § 10.608(a); *F.V.*, Docket No. 18-0230 (issued May 8, 2020); *see also M.S.*, 59 ECAB 231 (2007).

⁸ *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).

⁹ *D.M.*, Docket No. 18-1003 (issued July 16, 2020); *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

argument, which does not address the particular issue involved does not constitute a basis for reopening a case.¹⁰ As appellant failed to provide relevant and pertinent new evidence, she is not entitled to a merit review based on the third requirement under 20 C.F.R. § 10.606(b)(3).

The Board, accordingly, finds that appellant did not meet 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 her claim, pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the September 19, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 2, 2024
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

¹⁰ *A.J.*, Docket No. 20-0926 (issued January 26, 2021); *Jimmy O. Gilmore*, 37 ECAB 257 (1985); *Edward Matthew Diekemper*, 31 ECAB 224-25 (1979).