

² 20 C.F.R. § 501.6(d); *see S.M.*, Docket No. 19-1961 (issued January 28, 2021); *P.S.*, Docket No. 18-0718 (issued October 26, 2018); *T.B.*, Docket No. 15-0001 (issued July 1, 2015); *C.M.*, Docket No. 15-0471 (issued April 27, 2015).

Act³ (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).

FACTUAL HISTORY

This case has previously been before the Board.³ The facts and circumstances as set forth in the Board's prior decisions and orders are incorporated herein by reference. The relevant facts are as follows.

On July 28, 2019 appellant, then a 61-year-old Assistant United States Attorney, filed an occupational disease claim (Form CA-2) alleging that he developed Meniere's disease due to factors of his federal employment. He explained that Meniere's disease was an inner ear disorder, which was caused by stress and other factors, and that his work was stressful. Appellant indicated that he first became aware of his condition and its relationship to his federal employment on November 16, 2007. He contended that his claim was timely filed because his supervisor, H.Z., had actual contemporaneous knowledge of his disease/injury and took steps to accommodate him. Appellant also noted that he had retired from his federal employment in November 2013. On the reverse side of the claim form, appellant's supervisor, H.Z., asserted that appellant first reported his condition on November 16, 2007, but that he was unaware that appellant's condition was caused by his federal employment.

By decision dated October 21, 2019, OWCP denied appellant's occupational disease claim, finding that it was untimely filed, pursuant to 5 U.S.C. § 8122.

On October 26, 2019 appellant requested a hearing before a representative of OWCP's Branch of Hearings and Review, which was held on March 11, 2020.

OWCP subsequently received a letter dated April 9, 2020 from the employing establishment controverting appellant's claim. It did not contest that appellant's supervisor had been aware of appellant's medical condition, but stated that his supervisor was unaware of any causal connection with his federal employment.

In a letter dated May 5, 2020, appellant responded that the employing establishment's representative did not know him nor had personal knowledge of the facts. He also asserted that his supervisor acknowledged that his claim was timely filed. Appellant explained that he accepted early retirement because it was an opportunity to reduce his stress level and manage his Meniere's disease.

³ Docket No. 23-0544 (issued September 15, 2023); Docket No. 22-0396 (issued July 19, 2022); Docket No. 21-0107 (issued May 4, 2021).

By decision dated May 12, 2020, OWCP's hearing representative affirmed the October 21, 2019 decision.

On November 2, 2020 appellant timely appealed to the Board. By decision dated May 4, 2021, the Board affirmed the May 12, 2020 decision, finding that appellant's occupational disease claim was untimely filed, pursuant to 5 U.S.C. § 8122.⁴

On May 3, 2021 appellant requested reconsideration. In support of his request, he again alleged that his supervisor, H.Z., and the employing establishment were aware of his work-related illness. Appellant also submitted an April 12, 2021 letter he drafted to Dr. Timothy Queen, an otolaryngologist, asking if he was "on the right track" in attributing his Meniere's disease to stress caused by his federal prosecutor job. Dr. Queen responded to appellant's letter indicating his approval by writing "Yes" on the same document.

By decision dated July 30, 2021, OWCP denied appellant's request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

On January 21, 2022 appellant timely appealed to the Board. By decision dated July 19, 2022, the Board found that the case was not in posture for decision as OWCP did not address all relevant evidence received prior to the issuance of its final decision.⁵ The Board set aside the July 30, 2021 nonmerit decision and remanded the case for OWCP to review and address all evidence of record and following any further development as deemed necessary, to issue an appropriate decision.

By decision dated September 19, 2022, OWCP denied modification of the May 4, 2021 decision. It reviewed Dr. Queen's response with a handwritten "Yes" and his initials, and noted that it did not establish that his supervisor, H.Z., was aware of any causal connection between the diagnosed Meniere's disease and his federal employment. OWCP found that appellant had not established that his claim was timely filed.

On March 13, 2023 appellant timely appealed to the Board. By decision dated September 15, 2023, the Board affirmed the September 19, 2022 OWCP decision finding appellant had not met his burden of proof to establish that he filed a timely claim for compensation, pursuant to 5 U.S.C. § 8122(a).⁶

Following the Board's September 15, 2023 decision, OWCP received an October 19, 2021 clinical report from Dr. Queen noting that appellant was seen for chronic hearing loss. Under history of present illness, he noted that appellant's symptoms began on November 16, 2007 and that stress was his occupational health risk.

On September 2, 2024 appellant requested reconsideration asserting that the October 19, 2021 report from Dr. Queen established that his chronic hearing loss was related to a

⁴ Docket No. 21-0107 (issued May 4, 2021).

⁵ Docket No. 22-0396 (issued July 19, 2022).

⁶ Docket No. 23-0544 (issued September 15, 2023).

November 16, 2007 work injury. He further asserted that he had discussed his Meniere's disease and the relationship to his employment on several occasions with his supervisor.

By decision dated September 9, 2024, OWCP denied appellant's reconsideration request, finding the October 19, 2021 clinical report from Dr. Queen was repetitive of his prior report. It further found his argument that his supervisor was aware of the causal relationship between his illness and job stress had been previously considered and addressed.

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.⁷

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.⁸

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.⁹ If it chooses to grant reconsideration, it reopens and reviews the case on its merits.¹⁰ 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.¹¹

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).

In his reconsideration request, appellant did not show that OWCP erroneously applied or interpreted a specific point of law, nor did he advance a new and relevant legal argument not

⁷ 5 U.S.C. § 8128(a); *see S.B.*, Docket No. 24-0703 (issued December 13, 2024); *M.S.*, Docket No. 19-1001 (issued December 9, 2019); *L.D.*, Docket No. 18-1468 (issued February 11, 2019); *see also V.P.*, Docket No. 17-1287 (issued October 10, 2017); *W.C.*, 59 ECAB 372 (2008).

⁸ 20 C.F.R. § 10.606(b)(3); *see S.B., id.; L.D., id.; see also K.L.*, Docket No. 17-1479 (issued December 20, 2017); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

⁹ *Id.* at § 10.607(a). The one-year period begins on the next day after the date of the original contested decision. 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.

¹⁰ *Id.* at § 10.608(a); *see also M.S.*, 59 ECAB 231 (2007).

¹¹ *Id.* at § 10.608(b); *M.S.*, Docket No. 19-0291 (issued June 21, 2019); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

previously considered. He repeated the contention that he had discussed the relationship of his hearing loss to his federal employment with his supervisor on several occasions. This contention had been previously raised and considered by OWCP. As this argument submitted on reconsideration was cumulative, duplicative, or repetitive in nature, it was insufficient to warrant reopening the claim for merit review.¹² Consequently, appellant was 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).¹³

The Board further finds that appellant has not provided any relevant and pertinent new evidence in support of his request for reconsideration. The evidence submitted on reconsideration included an October 19, 2021 report from Dr. Queen. However, this medical report is irrelevant to the underlying issue of the timely filing of his claim. This report does not establish that appellant's supervisor had timely awareness of appellant's condition and its relationship to his employment. 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.¹⁴ As appellant failed to provide relevant and pertinent new evidence, he is not entitled to a merit review based on the third requirement under 20 C.F.R. § 10.606(b)(3).¹⁵

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.¹⁶

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).

¹² *D.V.*, Docket No. 24-0671 (issued August 24, 2024); *J.R.*, Docket No. 23-0980 (issued January 23, 2024); *J.V.*, Docket No. 19-1554 (issued October 9, 2020); *see T.B.*, Docket No. 16-1130 (issued September 11, 2017); *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

¹³ *Id.*

¹⁴ *P.G.*, Docket No. 24-0404 (issued September 17, 2024); *C.C.*, Docket No. 22-1240 (issued June 27, 2023); *D.P.*, Docket No. 13-1849 (issued December 19, 2013); *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

¹⁵ *P.G.*, *id.*; *C.Y.*, Docket No. 21-1049 (issued February 1, 2022); *P.S.*, Docket No. 20-1090 (issued September 9, 2021); *see also G.J.*, Docket No. 20-0071 (issued July 1, 2020); *V.Q.*, Docket No. 19-1309 (issued January 3, 2020); *Eugene F. Butler*, *supra* note 12.

¹⁶ *P.G.*, *id.*; *C.Y.*, *id.*; *M.O.*, Docket No. 21-0459 (issued December 29, 2021); *D.G.*, Docket No. 19-1348 (issued December 2, 2019).

ORDER

IT IS HEREBY ORDERED THAT the September 9, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 4, 2025
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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