

² A claimant has 180 days from the date of OWCP's decision to timely file an appeal. 20 C.F.R. § 501.3(e). The 180th day following OWCP's September 10, 2024 decision was Sunday, March 9, 2025. However, when the last day to file an appeal falls on a Saturday, Sunday, or federal holiday, the 180-day period runs until the close of the next business day. 20 C.F.R. § 501.3(f)(3). Appellant therefore had until Monday, March 10, 2025, to file this appeal. As this appeal was received by the Office of the Clerk of the Appellate Boards on Monday, March 10, 2025, it was a timely filed.

filing of this appeal, pursuant to the Federal Employees' Compensation Act³ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction to review the merits of this case.

ISSUE

The issue is whether OWCP properly denied appellant's September 7, 2024 request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On January 4, 2022 appellant, then a 56-year-old health care administrator, filed a traumatic injury claim (Form CA-1) alleging that on November 29, 2021, she experienced a migraine headache fainted, and fell while in the performance of duty. She asserted that she sustained illness, a chipped left front tooth, left lower extremity bruising, a swelling on the back of her head, neck stiffness, back pain, and left side pain. Appellant stopped work on November 29, 2021.

OWCP also received December 1 and 15, 2021 work excuse notes wherein Blain P. Carmichael, a physician assistant, held appellant off work through December 30, 2021, a schedule of physical therapy appointments for the period December 21, 2021 through January 20, 2022, and a January 4, 2022 appointment slip.

In a development letter dated January 7, 2022, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence necessary to establish her claim and provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit the necessary evidence.

In response, appellant submitted an undated witness statement, wherein a coworker asserted that on November 29, 2021, while seated at her desk, she heard a "loud bump" against her desk and saw appellant "hit her mouth on [the witness'] desk and chipped her front tooth. She fainted ... [and] hit her head on the floor when she fell." Appellant was then taken to the employing establishment's emergency room.

OWCP also received a January 5, 2022 lumbar magnetic resonance imaging (MRI) scan, which demonstrated mild lumbar degenerative disc disease and facet arthropathy, moderate left and minimal right L3-4 foraminal narrowing, and mild L3-4 and L4-5 lateral recess effacement without significant central canal stenosis.

In a January 20, 2022 work slip, Mr. Carmichael held appellant off work through January 24, 2022 with a subsequent return to modified-duty work with restrictions.

By decision dated February 14, 2022, OWCP accepted that the November 29, 2021 employment incident occurred as alleged. However, it denied appellant's traumatic injury claim as the medical evidence of record did not establish causal relationship between her diagnosed conditions and the accepted November 29, 2021 employment incident.

³ 5 U.S.C. § 8101 *et seq.*

On March 16, 2022 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

A hearing was held on June 13, 2022.

By decision dated August 26, 2022, OWCP's hearing representative affirmed OWCP's February 14, 2022 decision.

On August 26, 2023 appellant, through counsel, requested reconsideration. Counsel asserted that appellant's claim should be accepted under Chapter 2.0804.9 of OWCP's procedures⁴ as her fall was due to work conditions including excessive heat and a broken air conditioner. Counsel also contended that under Chapter 2.0805.3 of OWCP's procedures regarding evidence necessary to establish causal relationship,⁵ that appellant had a "clear, witnessed accident" that should be accepted without submission of medical evidence.

OWCP subsequently received a November 29, 2021 emergency department report, wherein Dr. Marc V. Goldhagen, Board-certified in preventive medicine and occupational medicine, related a history of the employment incident that day. X-rays of the right knee and bilateral hips were negative for acute findings. A computerized tomography (CT) scan of the head and cervical spine revealed no acute intracranial abnormality or cervical spine fracture or subluxation. Dr. Goldhagen diagnosed headache pain, resolved.

OWCP also received reports dated February 10 through April 20, 2022 wherein Dr. Jonathan W. Bourgeois, a Board-certified anesthesiologist, diagnosed lumbar radiculopathy and chronic pain syndrome. Dr. Bourgeois administered a series of intra-articular epidural injections.

OWCP also received a February 18, 2022 a form report wherein Mr. Carmichael provided work restrictions.

By decision dated September 7, 2023, OWCP denied modification of the August 26, 2022 decision.

On September 7, 2024 appellant, through counsel, requested reconsideration. He reiterated the arguments presented in his August 26, 2023 reconsideration request. No additional evidence was received.

By decision dated September 10, 2024, OWCP denied appellant's request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a).

⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Performance of Duty*, Chapter 2.0804.9 (September 1995).

⁵ *Id.* at Chapter 2.0805.3 (May 2023).

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.⁶

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.⁷

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.⁸ If it chooses to grant reconsideration, it reopens and reviews the case on its merits.⁹ 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.¹⁰

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 a request for reconsideration dated September 7, 2024 appellant, through counsel, reiterated a legal argument previously considered by OWCP. Thus, she was not entitled to a review of the merits of her claim based on the first or second above-noted requirements under 20 C.F.R. § 10.606(b)(3).¹¹

⁶ 5 U.S.C. § 8128(a); *see S.B.*, Docket No. 24-0703 (issued December 13, 2024); *L.D.*, Docket No. 18-1468 (issued February 11, 2019); *W.C.*, 59 ECAB 372 (2008).

⁷ 20 C.F.R. § 10.606(b)(3); *see S.B.*, *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).

⁸ *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. *Supra* note 4 at 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.

⁹ *Id.* at § 10.608(a); *see also M.S.*, 59 ECAB 231 (2007).

¹⁰ *Id.* at § 10.608(b); *S.W.*, Docket No. 25-0261 (issued February 24, 2025); *B.S.*, Docket No. 20-0927 (issued January 29, 2021); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

¹¹ *S.W.*, *id.*; *see J.P.*, Docket No. 25-0028 (issued December 6, 2024); *C.S.*, Docket No. 19-0851 (issued November 18, 2019); *J.B.*, Docket No. 17-0628 (issued June 28, 2017).

Appellant also did not submit any medical evidence on reconsideration. Because she did not provide relevant and pertinent new medical evidence, she was not entitled to a review of the merits based on the third above-noted requirement under 20 C.F.R. § 10.606(b)(3).¹²

The Board, therefore, 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 her claim, pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the September 10, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 15, 2025
Washington, DC

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

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

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

¹² See 20 C.F.R. § 10.606(b)(3)(iii); see also *S.W.*, *supra* note 10; see also *J.P.*, *id.*