

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## **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**

On June 19, 2022 appellant, then a 48-year-old intelligence officer, filed a traumatic injury claim (Form CA-1) alleging that on February 4, 2017 he suddenly felt intense pressure in his head, became nauseous, and experienced a tingling sensation over his body as well as an intense headache while he was driving while in the performance of duty. He explained that his injury occurred in Guantanamo Bay, Cuba and that he suffered from intense headaches, dizziness, loss of vision in the right eye, nausea, activity intolerance, and inability to maintain a low level of activity for extended periods of time without worsening of headaches or nausea. The employing establishment marked "yes" in response to whether appellant was in the performance of duty and in response to whether its knowledge of the facts about his injury agreed with his statements. It indicated that appellant's supervisor had retired, and the employing establishment would need time to confirm appellant's claim.

By development letter dated June 28, 2022, OWCP indicated that the evidence provided was insufficient to establish that appellant had filed a timely claim for compensation and noted that there was no diagnosis of any condition, nor a physician's opinion as to how the alleged injury resulted in a medical condition. It provided a questionnaire to substantiate the factual elements of his claim and afforded appellant 30 days to respond. In a separate development letter also dated June 28, 2022, OWCP requested that the employing establishment provide additional information, including comments from a knowledgeable supervisor and witness statements from employees with additional information. It afforded the employing establishment 30 days to submit the requested evidence.

In a letter dated July 15, 2022, M.H., a human resources division representative, responded to OWCP's June 28, 2022 development letter and indicated that the employing establishment was unable to verify that appellant sustained an anomalous health incident (AHI) on February 4, 2017. M.H. explained that appellant would need to provide further details, including when he reported this incident to his supervisor and the name of his direct supervisor at the time of the claimed incident. M.H. further noted that the employing establishment was unable to determine who was appellant's supervisor at that time.

OWCP received medical reports and diagnostic test reports dating from March 2, 2020 to May 2, 2022.

By decision dated August 2, 2022, OWCP denied appellant's claim, finding that he did not file a timely claim for compensation within the requisite three-year time limit provided under 5 U.S.C. § 8122. It explained that his claim indicated that his injury occurred on February 4, 2017, however, he did not file his claim until June 19, 2022. OWCP further found that there was no evidence that appellant's immediate supervisor had actual knowledge within 30 days of the alleged date of injury.

OWCP continued to receive medical evidence.

On March 29, 2023 appellant, through counsel, requested reconsideration. Counsel related that appellant was working in Guantanamo Bay, Cuba on February 4, 2017, when he experienced sudden intense head pressure and nausea as a result of a strange sensation that came from the passenger-side open window. He argued that appellant's claim was a case of latent disability and that the time for filing the claim did not begin to run until appellant became aware of the causal relationship between the disability and the employment incident. Counsel related that appellant did not become aware that his condition was caused by the February 4, 2017 incident until he learned in October 2021 that others experienced similar symptoms as a result of an AHI that occurred in Guantanamo Bay, Cuba in 2017. He argued that appellant filed a timely claim for Havana Syndrome because the Havana Act of 2021,<sup>3</sup> which authorized federal agencies to provide payments to agency personnel who incurred brain injuries due to AHI, was not signed into law until October 8, 2021. Counsel noted that on January 12, 2022, a FECA Bulletin 22-03 was released that provided guidance for the filing and handling of claims resulting from the AHI. He also alleged that appellant's immediate supervisor, special agent B.O., had actual knowledge of the alleged incident by way of verbal notification by appellant on February 4, 2017. Counsel argued that the employing establishment did not provide the name of the immediate supervisor and did not respond or contradict appellant's statement, and therefore, it should be accepted that the immediate supervisor had actual knowledge within 30 days of the February 4, 2017 employment incident.

OWCP received a February 14, 2023 memorandum from Gilbert Cisneros, Jr., the Undersecretary of Defense, which indicated that appellant was approved as a secretarial designee for assessment of conditions from a potential AHI and for treatment at the National Intrepid Center of Excellence.

By decision dated June 23, 2023, 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 or her own motion or on application.<sup>4</sup>

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

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<sup>3</sup> 135 Stat. 393, Public Law No. 117-46 (October 8, 2021).

<sup>4</sup> 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).

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.<sup>5</sup>

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.<sup>6</sup> If it chooses to grant reconsideration, OWCP reopens and reviews the case on its merits.<sup>7</sup> If the request is timely, but fails to meet at least one of the requirements for reconsideration, OWCP will deny the request for reconsideration.<sup>8</sup>

Section 8122(a) of FECA<sup>9</sup> provides that an original claim for compensation for disability or death must be filed within three years after the injury or death.<sup>10</sup> Section 8122(b) provides that, in latent disability cases, the time limitation does not begin to run until the claimant is aware, or by the exercise of reasonable diligence should have been aware, of the causal relationship between the employment and the compensable disability.<sup>11</sup> The Board has held that, if an employee continues to be exposed to injurious working conditions after such awareness, the time limitation begins to run on the last date of this exposure.<sup>12</sup> Even if a claim is not timely filed within the three-year period of limitation, it would still be regarded as timely under section 8122(a)(1) if the immediate superior had actual knowledge of her alleged employment-related injury within 30 days or written notice of the injury was provided within 30 days pursuant to section 8119.<sup>13</sup> The knowledge must be such as to put the immediate superior reasonably on notice of an on-the-job injury or death.<sup>14</sup>

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<sup>5</sup> 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).

<sup>6</sup> *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, *Reconsideration*, 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.

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

<sup>8</sup> *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).

<sup>9</sup> 5 U.S.C. § 8101 *et seq.*

<sup>10</sup> *Id.* at § 8122(a).

<sup>11</sup> *Id.* at § 8122(b).

<sup>12</sup> *See P.W.*, Docket No. 16-0418 (issued August 4, 2017); *see Linda J. Reeves*, 48 ECAB 373 (1997).

<sup>13</sup> 5 U.S.C. §§ 8122(a)(1), 8122(a)(2); *see also Larry E. Young*, 52 ECAB 264 (2001).

<sup>14</sup> *Willis E. Bailey*, 49 ECAB 509 (1998).

### **ANALYSIS**

The Board finds that OWCP improperly denied appellant's request for reconsideration of the merits of the claim.

On reconsideration, counsel for appellant argued that appellant's claim was timely because it was a latent disability case, and therefore the time limitation did not begin to run until appellant was aware, or by the exercise of reasonable diligence should have been aware, of the causal relationship between the employment and the compensable disability. Counsel noted that the Havana Act of 2021 was not signed into law until October 8, 2021, and that the law was intended to address the AHI that occurred in Guantanamo Bay in 2017 which was later identified as Havana Syndrome. The Board finds that counsel argued that OWCP erroneously applied or interpreted a specific point of law and advanced a relevant legal argument not addressed by OWCP with regard to the timeliness of appellant's claim for a latent disability. As such, the Board finds that appellant met the first and second above-noted requirements under 20 C.F.R. § 10.606(b)(3)(i)(ii).<sup>15</sup>

Consequently, appellant is entitled to a review of the merits of his claim under 20 C.F.R. § 10.606(b)(3).<sup>16</sup> Accordingly, the Board will set aside OWCP's June 23, 2023 decision and remand the case for an appropriate merit decision.

### **CONCLUSION**

The Board finds that OWCP improperly denied appellant's request for reconsideration of the merits of his claim.

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<sup>15</sup> *Supra* note 5.

<sup>16</sup> *See S.P.*, Docket No. 23-0314 (issued December 8, 2023); *M.K.* Docket No. 22-1328 (issued July 5, 2023); *P.B.*, Docket No. 22-0544 (issued October 17, 2022).

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 23, 2023 decision of the Office of Workers' Compensation Programs is set aside and this case is remanded for further proceedings consistent with this decision of the Board.

Issued: June 5, 2025  
Washington, DC

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

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board