

**United States Department of Labor
Employees' Compensation Appeals Board**

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| M.M., Appellant |) | |
| |) | |
| and |) | Docket No. 21-1125 |
| |) | Issued: December 27, 2021 |
| DEPARTMENT OF THE AIR FORCE, TINKER |) | |
| AIR FORCE BASE, OK, Employer |) | |
| |) | |

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On July 16, 2021 appellant filed a timely appeal from a March 16, 2021 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from OWCP's last merit decision, dated February 3, 2020, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act¹ (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

On April 23, 2019 appellant, then a 66-year-old patternmaker, filed an occupational disease claim (Form CA-2) alleging that he developed inflammatory polyarthritis, osteoarthritis of the

¹ 5 U.S.C. § 8101 *et seq.*

wrists, left carpal tunnel syndrome, shoulder stiffness, and knee stiffness due to factors of his federal employment. He noted that he first became aware of his conditions and realized their relation to factors of his federal employment on January 1, 1980.

Appellant was treated by Dr. Gabriela Bahr, a Board-certified internist, on April 10, 2019 for polyarthralgia in the right wrist and elbow. He reported performing manual labor at work that included sheet metal and sanding activities that increased his symptoms. Dr. Bahr diagnosed inflammatory polyarthritis, osteoarthritis of bilateral wrists, and acute carpal tunnel syndrome of left wrist. She recommended a series of x-rays and nighttime wrist splinting.

In a development letter dated May 1, 2019, OWCP informed appellant of the deficiencies of his claim. It advised him of the factual and medical evidence required and provided a questionnaire for completion. In a separate letter of even date, OWCP requested that the employing establishment provide details related to appellant's claim and whether they concurred with his allegations. It afforded both parties 30 days to respond.

On May 3, 2019 OWCP received a position description for a patternmaker.

Appellant was evaluated by Dr. Edmond L. Hooks, a Board-certified internist, on November 29, 2017 and December 13, 2018 for an annual Chromate examination. In reports dated April 2 and 19, 2019, Dr. Hooks treated appellant in follow up for bilateral shoulder, right elbow, and left wrist pain that progressed over the last 10 years while performing sheet metal and sanding activities. He diagnosed multiple joint pain, right shoulder, right elbow, and left wrist that he opined were not job related. Dr. Hooks returned appellant to work without restrictions.

X-rays of the feet dated April 10, 2019 revealed mild osteoarthritis of the bilateral ankle joint and bilateral calcaneal osteophyte formation. X-rays of the hands of even date revealed periarticular osteopenia and enthesophyte formation. X-rays of the elbows taken the same date revealed osteoarthritis of the right elbow.

On May 16, 2019 appellant responded to the development letter and noted beginning his civilian career in 1978 as an aircraft sheet metal worker performing structural repair projects with daily use of drill motors, rivet guns, and pneumatic impact wrenches to cut, grind, drill and hammer. He also noted working off of scaffolding using pneumatic impact tools.

By decision dated June 10, 2019, OWCP denied appellant's occupational disease claim, finding that the medical evidence of record was insufficient to establish a diagnosed medical condition causally related to the accepted factors of his federal employment.

OWCP subsequently received additional evidence. In a report dated July 11, 2019, Dr. Bahr reported that on April 10, 2019 appellant's physical examination was consistent for osteoarthritis of multiple joints including the right elbow. She advised that appellant reported using pneumatic tools for sanding and drilling, which could contribute to the development of osteoarthritis.

On November 5, 2019 appellant requested reconsideration. In an accompanying statement dated October 31, 2019, he recounted a 45-year career with the Federal Government as an aircraft sheet metal mechanic, advanced composite fabricator, radome inspector, and patternmaker.

Appellant reported daily pain in his elbows, shoulders, wrists, hands, and knees that he attributed to his employment duties.

In a statement dated December 2, 2019, appellant noted that he had retired on July 1, 2019. He asserted that the employing establishment's workers' compensation specialist failed to offer assistance when filing his claim. Appellant noted that his shoulder, elbow, wrist, and knee symptoms were related to his 45-year career with the Federal Government. He indicated that his retirement life was adversely affected by his work-related injuries.

By decision dated February 3, 2020, OWCP denied modification of the June 10, 2019 decision.

On January 12, 2021 appellant requested reconsideration. In an accompanying January 8, 2021 statement, he reported visiting his orthopedic surgeon, Dr. William Stewart, who performed x-rays of the right elbow and a magnetic resonance imaging (MRI) scan of the left shoulder, which revealed damage to his right elbow. Appellant indicated that Dr. Stewart provided a statement supporting that appellant's repetitive work duties performed over the last 45 years led to the arthritic changes in his elbow. He noted submitting visit summaries from Dr. Stewart. Appellant reiterated that his jobs as an aircraft sheet metal mechanic, radome inspector, and composite fabricator were physically demanding positions that caused his right shoulder, elbow, and hand conditions. He asserted that he had proven causal relationship between his work conditions and factors of his federal employment. Appellant did not submit medical reports from Dr. Stewart or diagnostic studies with this reconsideration request. He also resubmitted an October 31, 2019 narrative statement previously of record.

By decision dated March 16, 2021, 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.²

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.³

² *Supra* note 1 at § 8128(a); *see 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).

³ 20 C.F.R. § 10.606(b)(3); *see 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).

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.⁴ If it chooses to grant reconsideration, it reopens and reviews the case on its merits.⁵ 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.⁶

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).

With his timely request for reconsideration, appellant reiterated that his jobs as an aircraft sheet metal mechanic, radome inspector, and composite fabricator were physically demanding positions that caused his right shoulder, elbow, and hand conditions. He asserted that he proved causal relationship between his work conditions and factors of his federal employment. Appellant referenced after visit summaries from Dr. Stewart and diagnostic studies supporting that his repetitive work duties performed over 45 years led to arthritic changes. However, the Board notes that appellant did not submit the summaries from Dr. Stewart with his reconsideration request. Appellant's reconsideration request does not advance a new legal argument not previously considered, nor show that OWCP erroneously applied or interpreted a specific point of law. The Board finds that the argument made by appellant on reconsideration was cumulative, duplicative, or repetitive in nature and was insufficient to warrant reopening the claim for merit review.⁷ Thus, appellant is not entitled to a review of the merits of his claim 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 has not provided any relevant and pertinent new evidence not previously considered in support of his request for reconsideration. The underlying issue in this case is medical in nature, but he did not submit relevant and pertinent new evidence in support of his request for reconsideration. As appellant failed to provide relevant and pertinent new evidence, he is not entitled to a merit review based on the third above-noted requirement under 20 C.F.R. § 10.606(b)(3).⁹

⁴ *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.

⁵ *Id.* at § 10.608(a); *see also M.S.*, 59 ECAB 231 (2007).

⁶ *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).

⁷ *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).

⁸ *G.Q.*, Docket No. 18-1697 (issued March 21, 2019); *Alan G. Williams*, 52 ECAB 180 (2000).

⁹ *T.M.*, Docket No. 19-0535 (issued July 25, 2019).

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.¹⁰

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).

ORDER

IT IS HEREBY ORDERED THAT the March 16, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 27, 2021
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

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

¹⁰ See *S.M.*, Docket No. 18-0673 (issued January 25, 2019); *A.R.*, Docket No. 16-1416 (issued April 10, 2017); *M.E.*, 58 ECAB 694 (2007); *Susan A. Filkins*, 57 ECAB 630 (2006) (when a request for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b), OWCP will deny the request for reconsideration without reopening the case for a review on the merits).