

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

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**R.M., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Ontario, CA, Employer**

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**Docket No. 19-0543  
Issued: December 23, 2019**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

CHRISTOPHER J. GODFREY, Chief Judge  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On January 2, 2019 appellant filed a timely appeal from an August 8, 2018 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from OWCP's last merit decision, dated May 11, 2017, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act<sup>1</sup> (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 March 1, 2017 appellant, then a 52-year-old rural route carrier, filed an occupational disease claim (Form CA-2) for a bilateral hip condition that appellant attributed to factors of his

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

federal employment including repetitive walking, standing, twisting, turning, pushing, pulling, and getting in and out of his long-life vehicle (LLV). He indicated that he first became aware of his condition and realized that it resulted from his federal employment on January 16, 2017. On the reverse side of the claim form, the employing establishment contended that appellant had been off work since August 10, 2016 due to a prior work-related injury.<sup>2</sup> OWCP assigned the claim File No. xxxxxx637.

In an accompanying statement, appellant explained that, over the past several years, he experienced sharp and aching pain in his hips. He asserted that the walking, standing, twisting, turning, driving, and getting in and out of his LLV caused his hip and thigh pain.

In a March 3, 2017 letter, D.B., an employing establishment customer services supervisor, alleged that appellant submitted a false statement and requested that his claim be denied. He noted that appellant had not sat upright driving an LLV for the past year and a half since he began working a modified-duty job assignment that did not require driving an LLV. D.B. also asserted that appellant did not have the opportunity to aggravate his injury for over nine months since he had been placed off work beginning August 10, 2016 due to surgery under OWCP File No. xxxxxx064.

In a March 8, 2017 letter, the employing establishment controverted appellant's claim.

In a development letter dated March 16, 2017, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence needed and provided a questionnaire for his completion. OWCP afforded appellant 30 days to provide the necessary evidence.

Dr. Edward Mittleman, a family physician, related in a February 23, 2017 report that appellant had worked as a rural letter carrier since 1989 and that he had two previous work-related injuries for his knees and for an umbilical hernia. He noted that appellant had undergone hernia surgery in August 2016 and had not worked since the surgery. Dr. Mittleman indicated that, although appellant was not currently performing mail delivery, he had been delivering his regular mail route for over 20 years without any limitations. He provided a detailed, chronological discussion of appellant's duties from when he arrived at the employing establishment until he returned from his mail delivery route. Dr. Mittleman noted that appellant was continuously standing and repetitively bending, twisting, reaching, and grabbing while casing mail. He also noted that appellant was required to lift up to 70 pounds on a regular basis when sorting and loading parcels into hampers or cages. Dr. Mittleman further reported that performing business deliveries required appellant to frequently mount and dismount his vehicle and that apartment delivery required walking and ascending and descending stairs. He also related that appellant complained of bilateral hip pain for approximately the past one and a half years.

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<sup>2</sup> Under File No. xxxxxx064, OWCP accepted appellant's prior occupational disease claim for bilateral hernias, which arose on or about October 9, 2014. Additionally, under OWCP File No. xxxxxx667, appellant has an accepted occupational disease claim for bilateral sprains of the knees and legs, which arose on or about July 7, 2013. OWCP has administratively combined File Nos. xxxxxx064 and xxxxxx667, with the latter serving as the master file. However, it has not combined those files with the current one, File No. xxxxxx637.

Upon examination of appellant's hips, Dr. Mittleman observed that toe and heel gait were performed in a slight swaying motion. He indicated that lateral pressure to both hips and passive rotation of the hips produced greater pain on the left, than on the right. Dr. Mittleman reviewed appellant's history and noted that a January 17, 2017 right hip magnetic resonance imaging (MRI) scan revealed femoroacetabular impingement (FAI) syndrome with superimposed osteoarthritis. He diagnosed left hip labral tear, right hip labral tear, and acceleration of left and right hip osteoarthritis. Dr. Mittleman explained that the hip is a "ball and socket joint" where the femur meets the pelvis. He noted that appellant had FAI; a condition in which the bones of the hip have developed abnormally. Dr. Mittleman related that because the ball (proximal head of the femur) and the socket (pelvis) of the hip do not fit together perfectly, the "out of round" conflict of the hip can cause damage to the hip joint, which had developed in appellant's right hip. He indicated that this round-on-round joint allowed for movement forwards and backward, side-to-side, and internal/external rotation, all of which were activities that appellant performed as a rural route carrier. Dr. Mittleman further explained that in a healthy hip, the femoral head (ball) fit perfectly into the acetabulum (socket), but in FAI, there is an abnormal amount of bone off the acetabulum, femoral head, or both. He reported that this conflict "can cause labral tears of the hip." Dr. Mittleman related that once the labrum is torn, the protective effectiveness of the labrum to the articular cartilage is decreased, and over time, the breakdown of articular cartilage leads to hip arthritis. He described that as appellant performed each of his employment duties, he was placing significant force and excessive compressive forces upon his hips. Dr. Mittleman concluded that the long-term repetitive pressure to appellant's hips accelerated the FAI in both of his hips. He reported that it was medically reasonable to infer a direct causal relationship between the daily activities that appellant performed as a rural route carrier and the occupational disease in both his hips. Dr. Mittleman authorized appellant to modified-duty work.

A February 23, 2017 right hip MRI scan revealed osteoarthritis and a complex tear of the superolateral labrum with an adjacent small- to moderate-sized paralabral cyst.

On April 3, 2017 OWCP received appellant's response to its development letter. Appellant reported that he performed the following activities on a daily basis since he began working for the employing establishment in September 1989: standing and walking for 5½ to 6 hours, twisting for 2 to 3 hours, turning for 2+ hours, pushing for 30 to 60 minutes, pulling for 30 plus minutes, and getting in and out of his postal vehicle for 3 to 4 hours. He noted that he last drove an LLV on August 8, 2016.

By decision dated May 11, 2017, OWCP denied appellant's occupational disease claim finding that the medical evidence submitted was insufficient to establish that his diagnosed bilateral hip condition was causally related to the accepted factors of his federal employment.

On June 29, 2017 appellant requested reconsideration.

In a June 12, 2017 letter, Dr. Mittleman related that although FAI syndrome does have early orthopedic changes, it was important to note that daily weight bearing activities appellant performed as a carrier accelerated the degeneration in his hips. He pointed out that appellant's daily activities for the employing establishment placed him in a weight bearing, rather than a sedentary position. Dr. Mittleman reported: "it would be consistent to consider a 25 [percent] association of [appellant's] work activities in relationship to his bilateral hip pathology." He

requested that OWCP accept appellant's claim for bilateral hip labral tears and acceleration of left and right hip osteoarthritis.

By decision dated September 19, 2017, OWCP denied appellant's request for reconsideration of the merits his claim under 5 U.S.C. § 8128(a).

On May 10, 2018 appellant again requested reconsideration.

Appellant submitted a March 7, 2017 report by Dr. Charles Herring, a Board-certified orthopedic surgeon. Dr. Herring related appellant's complaints of an occupational injury to his hips due to the performance of his duties as a letter carrier. He indicated that appellant attributed his injury to daily repetitive activities, including casing, carrying and delivering mail, lifting up to 70 pounds for the majority of his career, and pushing/pulling heavy gurneys. Dr. Herring also related that walking, standing, twisting and turning repetitively, and "hopping" in and out of appellant's postal vehicle significantly increased the pain in both hips. Upon physical examination, he observed that appellant ambulated with a slight bilateral antalgic gait. Dr. Herring noted limited range of motion with flexion, internal rotation, and external rotation of both hips. He indicated that a review of radiographs revealed a history of severe arthritis of the bilateral hips and complex superolateral labral tears. Dr. Herring diagnosed bilateral hip osteoarthritis, bilateral hip labral tears, and bilateral FAI syndrome. He explained that appellant's work required frequent entering and exiting of the postal vehicle, walking, stooping, and lifting. Dr. Herring opined that these activities "superimposed upon the existing [FAI] impingement caused labral tears and hastened the development of the osteoarthritic changes within the hip joint."

In an October 19, 2017 letter, Dr. Mittleman expressed his disagreement with OWCP's September 19, 2017 decision. He asserted that appellant's hip condition was accelerated by his continuous weight bearing at work and that it was medically reasonable that appellant's job duties as a letter carrier caused permanent aggravation of his osteoarthritis. Dr. Mittleman noted that appellant had not experience bilateral hip pain prior to January 2017 and that he also had labral tears. He further contended that it was not medically reasonable to dismiss all the work activities that appellant had performed as a letter carrier. Dr. Mittleman explained that appellant had completed his mail delivery route for 20 years without physical limitations until his July 23, 2013 knee injury. He described the physical requirements of appellant's various employment duties. Dr. Mittleman claimed that OWCP's denial was based purely on the fact that appellant had FAI. He argued that OWCP ignored the fact that FECA does not require that employment factors prove a significant contribution to a condition for purposes of establishing causal relationship. Dr. Mittleman pointed out that if the medical evidence reveals that an employment factor contributed in any way to an employee's condition, such condition should be considered employment related. He also cited to Occupational Safety and Health Administration's (OSHA's) examination of scientific literature and epidemiological studies of the hip and knee musculoskeletal disorders regarding the relationship between long-term exposure to high levels of physical stresses and significant osteoarthritis disorders of the hip and the knee. Dr. Mittleman requested that appellant's claim be accepted for bilateral hip labral tears and aggravation of bilateral hip osteoarthritis.

In a February 8, 2018 periodic workers' compensation progress report, Dr. Mittleman indicated that appellant was examined for complaints of left hip sharpness, stiffness, aching,

burning, and stabbing sensations. He noted examination findings and diagnosed aggravation of bilateral hip osteoarthritis. Dr. Mittleman recommended that appellant return to modified-duty work.

By decision dated August 8, 2018, OWCP denied appellant's request for reconsideration of the merits of his claim under 5 U.S.C. § 8128(a).

### **LEGAL PRECEDENT**

Section 8128(a) of FECA does not entitle a claimant to review of an OWCP decision as a matter of right.<sup>3</sup> OWCP has discretionary authority in this regard and has imposed certain limitations in exercising its authority.<sup>4</sup> One such limitation is that the request for reconsideration must be received by OWCP within one year of the date of the decision for which review is sought.<sup>5</sup>

A timely request for reconsideration, including all supporting documents, must set forth arguments and contain evidence that either: (i) shows that OWCP erroneously applied or interpreted a specific point of law; (ii) advances a relevant legal argument not previously considered by OWCP; or (iii) constitutes relevant and pertinent new evidence not previously considered by OWCP.<sup>6</sup>

When a timely request for reconsideration does not meet at least one of the above-noted requirements, OWCP will deny the request for reconsideration without reopening the case for a review on the merits.<sup>7</sup>

### **ANALYSIS**

The Board finds that OWCP improperly denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).<sup>8</sup>

The underlying issue in this case was whether appellant had established causal relationship between his diagnosed bilateral hip condition and the accepted factors of his federal employment. Along with his May 10, 2018 reconsideration, appellant submitted a March 7, 2017 report by Dr. Herring. Dr. Herring noted that appellant's daily employment activities had involved casing,

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<sup>3</sup> This section provides in pertinent part: [t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application. 5 U.S.C. § 8128(a).

<sup>4</sup> 20 C.F.R. § 10.607.

<sup>5</sup> *Id.* at § 10.607(a). 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 (February 2016). 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. *Id.* at Chapter 2.1602.4b.

<sup>6</sup> *Id.* at § 10.606(b)(3).

<sup>7</sup> *Id.* at § 10.608(a), (b).

<sup>8</sup> *See S.C.*, Docket No. 19-0479 (issued August 8, 2019); *C.F.*, Docket No. 18-0583 (issued October 16, 2018).

carrying, and delivering mail, lifting, pushing, and pulling heavy gurneys, and walking, standing, and twisting. He diagnosed bilateral hip osteoarthritis, bilateral hip labral tears, and bilateral FAI syndrome. Dr. Herring opined that these activities “superimposed upon the existing [FAI] impingement caused labral tears and hastened the development of the osteoarthritic changes within the hip joint.” Appellant also submitted an October 29, 2017 letter by Dr. Mittleman who noted his disagreement with OWCP’s denial decision. He argued that OWCP’s denial was based purely on the fact that appellant had an underlying FAI hip condition and pointed out that under FECA, a medical condition is considered employment related if the medical evidence reveals that an employment factor contributed in any way to the condition. Dr. Mittleman asserted that appellant’s hip condition was accelerated by continuous weight bearing at work and that it was medically reasonable that appellant’s job duties as a letter carrier caused permanent aggravation of his osteoarthritis.

The Board finds that the reports of Dr. Herring and Dr. Mittleman constitute relevant and pertinent new evidence not previously considered by OWCP. In their new reports, Dr. Herring and Dr. Mittleman discussed the issue of causal relationship between appellant’s employment factors and his current bilateral hip symptoms, in light of appellant’s underlying FAI hip condition.<sup>9</sup>

In support of a request for reconsideration, a claimant is not required to submit all evidence necessary to discharge his or her burden of proof.<sup>10</sup> He or she needs only to submit relevant, pertinent evidence not previously considered by OWCP.<sup>11</sup> As the current record includes relevant and pertinent new evidence not previously considered by OWCP in its May 11, 2017 merit decision, appellant has met the third above-noted requirement of 20 C.F.R. § 10.606(b)(3). Consequently, the Board finds that OWCP improperly denied merit review pursuant to 20 C.F.R. § 10.608.<sup>12</sup>

The case will be remanded for OWCP to properly conduct a merit review of the claim. Following this and such other additional development as deemed necessary, it shall issue an appropriate merit decision.

### **CONCLUSION**

The Board finds that OWCP improperly denied appellant’s request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

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<sup>9</sup> See *K.J.*, Docket No. 19-0146 (issued July 10, 2019); see also *E.R.*, Docket No. 17-1055 (issued August 17, 2017).

<sup>10</sup> *T.G.*, Docket No. 18-1064 (issued April 26, 2019); *M.C.*, Docket No. 17-1983 (issued August 17, 2018).

<sup>11</sup> *L.S.*, Docket No. 18-0811 (issued November 13, 2018); *Mark H. Dever*, 53 ECAB 710 (2002).

<sup>12</sup> *W.D.*, Docket No. 18-1530 (issued February 14, 2019); *K.M.*, Docket No. 15-1290 (issued September 23, 2015).

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 8, 2018 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: December 23, 2019  
Washington, DC

Christopher J. Godfrey, 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