



employment, including sitting, typing, and answering telephones while sitting in a wheelchair. She noted that she first became aware of her condition on September 25, 2017 and first realized its relation to her federal employment on October 1, 2017. Appellant stopped work on September 25, 2017.

In a March 14, 2018 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed to establish her claim and provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit the necessary evidence.

In a March 17, 2018 response to OWCP's development questionnaire, appellant noted that she had been a paraplegic since a 1983 car accident and had been working while sitting in a power wheelchair from 2001 through 2015 without any problems. She indicated that she got a new power wheelchair in 2015, which was not properly designed for long-term sitting. Appellant asserted that she had no other chair to work from and continued to work in an inadequate power wheelchair for approximately 27 months, 8 hours a day for 5 days per week. She noted that she began experiencing discomfort and pain in her hips and legs despite her best attempt to shift weight periodically to cope with prolonged sitting. Appellant alleged that she eventually developed "a hard knot or mass under [her] skin on the upper right side of [her] back close to [her] spine." She noted that she was diagnosed with a pressure ulcer by her physician and was referred to a plastic surgeon. Appellant underwent surgery on December 4, 2017 "to stop the ulcer from going into [her] bloodstream." She contended that working from a not well-designed wheelchair caused her ulcer on her right low back.

Appellant also submitted a February 13, 2018 Certification of Health Care Provider for Employee's Serious Health Condition form from Dr. Kelly Gallego, Board-certified in plastic surgery, who diagnosed an open wound pressure ulcer and found that appellant could not sit for prolonged periods.

By decision dated June 14, 2018, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish that her diagnosed condition was causally related to the accepted factors of her federal employment.

In medical reports dated October 11, 17, and 30, 2017, Dr. Winston J. Serrano, Board-certified in family practice, indicated that appellant was wheelchair-dependent and paraplegic. He provided multiple diagnoses, including scoliosis of the lumbar spine, chronic acute low back pain with left-sided sciatica, and a decubitus ulcer of the left buttock.

October 17, 2017 x-rays of the left hip and pelvis revealed probable bone island in the superior left acetabular region and levoscoliosis of the lower lumbar spine with moderate degenerative change. An x-ray of the lumbar spine of even date demonstrated 32 degrees levoscoliosis of the lumbar spine, moderate disc space narrowing and degenerative change at L3-L4 and L4-L5 levels and in the imaged lower thoracic spine, and bony fusion through the L5-S1 disc space.

In a series of medical reports dated November 16, 2017 through May 7, 2018, Dr. Gallego indicated that appellant was referred to him by Dr. Serrano regarding a pressure ulcer on her right

buttock. He also noted that she underwent a surgical procedure on December 4, 2017 and indicated that she was recovering well with no evidence of ongoing infection or necrosis. Dr. Gallego reported that appellant still experienced some issues and remained off work.

In a July 2, 2018 letter, Dr. Serrano noted that appellant had been dealing with a sacral decubitus pressure ulcer since November 2017. He opined that her ulcer was aggravated by prolonged sitting and that she needed a special wheelchair that allowed her to change position every one to two hours.

In a form dated and postmarked July 5, 2018, appellant requested review of the written record by an OWCP hearing representative.

By decision dated October 22, 2018, OWCP's hearing representative affirmed the June 14, 2018 decision.

On December 5, 2018 appellant requested reconsideration and submitted additional evidence.

In a November 2, 2018 medical report, Dr. Serrano diagnosed a pressure ulcer of the right buttock. He again noted that appellant had been wheelchair-dependent since her car accident in 1983. Dr. Serrano explained that appellant needed to find a comfortable position when sitting because of the weakness of her spine that prevented her from shifting easily. He indicated that her new power wheelchair made it difficult for her to recline and change her position. Dr. Serrano reported that appellant had been leaning more to her right side, which led to a sacral pressure ulcer in September 2017. He opined that because appellant's work required her to sit for eight hours each day, and as she was unable to shift her position, it led to her diagnosed pressure ulcer. Dr. Serrano noted that appellant's ulcer was now completely healed since her surgery, but concluded that it was work related given her job duties that prevented her from shifting.

By decision dated March 2, 2020, OWCP denied merit review of appellant's 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 own motion or on application.<sup>2</sup>

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

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<sup>2</sup> *Id.* 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).

OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.<sup>3</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>4</sup> If it chooses to grant reconsideration, it reopens and reviews the case on its merits.<sup>5</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 without reopening the case for review on the merits.<sup>6</sup>

### ANALYSIS

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

The underlying issue on reconsideration is the medical question of whether appellant's diagnosed pressure ulcer was causally related to the accepted factors of her federal employment. Along with the December 5, 2018 reconsideration request, appellant submitted Dr. Serrano's November 2, 2018 medical report in which he specifically opined that because appellant's work required her to sit for eight hours each day and as she was unable to shift her position, it led to her diagnosed pressure ulcer. As his report addressed the underlying issue of causal relationship between appellant's diagnosed medical condition and the accepted factors of her federal employment, the report constitutes relevant and pertinent new evidence that is not substantially similar to evidence previously considered. Therefore, the Board finds that the submission of this evidence requires reopening of appellant's claim for merit review pursuant to the third requirement of 20 C.F.R. § 10.606(b)(3).<sup>7</sup>

Consequently, the Board will set aside OWCP's March 2, 2020 decision and remand the case for an appropriate merit decision on appellant's claim.

### CONCLUSION

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

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<sup>3</sup> 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).

<sup>4</sup> *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 (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 (iFECS). *Id.* at Chapter 2.1602.4b.

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

<sup>6</sup> *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).

<sup>7</sup> *Supra* note 3; *see also M.J.*, Docket No. 20-1067 (issued December 23, 2020).

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 2, 2020 nonmerit 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: July 28, 2021  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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