

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

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<b>L.K., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 22-0793</b>
	)	<b>Issued: August 26, 2022</b>
<b>U.S. POSTAL SERVICE, UNION BRIDGE</b>	)	
<b>POST OFFICE, Union Bridge, MD, Employer</b>	)	
_____	)	

*Appearances:*  
Scott B. Baron, Esq., for the appellant<sup>1</sup>  
Office of Solicitor, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
JANICE B. ASKIN, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On April 27, 2022 appellant, through counsel, filed a timely appeal from a February 11, 2022 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from OWCP's last merit decision, dated October 28, 2021, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of this case.<sup>3</sup>

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<sup>1</sup> In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

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

<sup>3</sup> The Board notes that, following the February 11, 2022 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

## ISSUE

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

## FACTUAL HISTORY

On June 24, 2019 appellant, then a 56-year-old postal clerk, filed a traumatic injury claim (Form CA-1) alleging that on that date she injured her neck, back, left shoulder, and left hip when an automated postage machine loaded with tubs fell on her while in the performance of duty. She stopped work on the date of injury. Appellant received continuation of pay from June 25 through August 8, 2019.

The employing establishment executed an authorization for examination and/or treatment (Form CA-16) on June 24, 2019. In the accompanying attending physician's report, Part B of the Form CA-16, a health provider (whose signature is illegible), indicated treating appellant on June 24, 2019 for cervical fracture, and back and neck pain due to a fall at work. The provider indicated by checking a box marked "Yes" that the diagnosed conditions were employment related. The provider referred appellant to an orthopedist and listed the period of disability as June 24 to 30, 2019.

On August 20, 2019 appellant began filing claims for compensation (Form CA-7) for total disability from work, commencing August 9, 2019 and continuing.

In support of her claim for compensation, appellant submitted a report dated July 30, 2019 by Dr. Joseph O'Brien, a Board-certified orthopedic surgeon, who noted that she related complaints of neck and lower back pain, which she attributed to the June 24, 2019 claimed work incident. Dr. O'Brien further noted that she related a history of cervical fusion surgery in 2000 and that she had undergone a computerized tomography scan of the neck on June 24, 2019, magnetic resonance imaging (MRI) scan studies of the cervical spine on July 4, 2019, and thoracic and lumbar spines on July 25, 2019. He performed a physical examination, which revealed mild tenderness to palpation and spasm in the cervical spine and tenderness and reduced range of motion in the lumbar spine. Dr. O'Brien obtained standing x-rays of the lumbar spine, which revealed degenerative disc space collapse at L5-S1 with grade 1 spondylolisthesis at L4-5, and x-rays of the thoracic spine, which revealed mild degenerative changes and the presence of anterior cervical discectomy and fusion at C6-7. He diagnosed cervical injury, lumbago, and thoracic sprain and recommended physical therapy and a consultation with an injection specialist.

Appellant began receiving physical therapy on August 2, 2019.

In a development letter dated August 28, 2019, OWCP informed appellant that the evidence submitted was insufficient to establish entitlement to compensation for the period commencing August 9, 2019. It requested that she submit medical evidence from her physician explaining how her employment-related conditions caused or contributed to her inability to work during the claimed period.

OWCP accepted the claim for sprain of ligaments of the thoracic spine.<sup>4</sup>

In a narrative report dated September 12, 2019, Dr. O'Brien noted diagnoses of cervicalgia due to whiplash, cervical radiculopathy at C6, lumbar spondylolisthesis, and lumbago. In subsequent notes dated November 12, 2019 and February 10, 2020, he recommended that appellant remain out of work until February 10, 2020. On January 15, 2020 Dr. O'Brien recommended that she remain out of work until May 11, 2020.

In a medical report dated February 17, 2020, Dr. M. H. Zamani, a Board-certified orthopedic surgeon, noted that appellant related complaints of neck and back pain, which she attributed to the June 24, 2019 employment incident. He reviewed her history of treatment and diagnostic testing and performed a physical examination, which revealed soft clicking during range of motion of the neck and pain with deep breathing and palpation of the lumbar spine. Dr. Zamani diagnosed degenerative disc disease of the cervical and lumbar spine and opined that appellant did not require any further treatment.

By decision dated April 23, 2020, OWCP denied appellant's claim for compensation, finding that she had not submitted sufficient medical evidence to establish disability from work for the period commencing August 9, 2019 and continuing due to the accepted condition.

OWCP continued to receive evidence, including a medical report dated November 1, 2019 by Dr. O'Brien, who diagnosed severe paraspinal muscle spasm and opined that appellant was unable to work.

In a further narrative letter dated November 11, 2019, Dr. O'Brien reiterated the diagnoses in his September 12, 2019 letter and recommended that appellant remain out of work for three months.

In a medical report dated May 15, 2020, Dr. O'Brien documented appellant's complaints and examination findings and diagnosed left shoulder pain and status post cervical fusion. He noted that she related that she felt that she was unable to return to work. Dr. O'Brien recommended additional physical therapy and an MRI scan of the left shoulder.

On December 10, 2020 appellant, through counsel, requested reconsideration of OWCP's April 23, 2020 decision. In support of the request, counsel submitted: (1) legal argument seeking payment of compensation benefits for total disability and expansion of the acceptance of her claim to include additional medical conditions; and (2) an undated narrative report by Dr. O'Brien, who diagnosed cervical and thoracic sprain, lumbago and exacerbation of stenosis and spondylolisthesis in the cervical and lumbar spines and opined that appellant was unable to work.

OWCP also received a report of an MRI scan of the left shoulder dated May 27, 2020, which was read as normal.

By decision dated March 4, 2021, OWCP denied modification of its April 23, 2020 decision.

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<sup>4</sup> OWCP subsequently accepted the claim for sprain of ligaments of the cervical spine.

OWCP continued to receive evidence, including reports of Patricia Duke, a nurse practitioner, dated February 17 and March 10, 2021, reports of MRI scans of the cervical and lumbar spine dated March 4, 2021, a work excuse letter by Ms. Duke recommending appellant remain out of work until March 10, 2021, and physical therapy notes.

In duty status reports (Form CA-17) dated March 24, April 28, and September 19 2021, an unknown provider indicated that appellant was capable of returning to work with restrictions.

On July 21, 2021 appellant refused an offer of part-time modified-duty work performing close out procedures.

On August 9, 2021 appellant, through counsel, requested reconsideration of OWCP's March 4, 2021 decision.

OWCP thereafter received CA-17 form reports dated June 22 and September 28, 2021 by an unknown provider who released appellant to return to work with restrictions.

By decision dated October 28, 2021, OWCP denied modification of its March 4, 2021 decision.

On December 9, 2021 appellant, through counsel, requested reconsideration of OWCP's October 28, 2021 decision *via* an appeal request form.

By decision dated February 11, 2022, OWCP denied appellant's request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a), finding that her request for reconsideration neither raised substantial legal questions, nor included new or relevant evidence.

### **LEGAL PRECEDENT**

Section 8128(a) of FECA does not entitle a claimant the review of an OWCP decision as a matter of right.<sup>5</sup> OWCP has discretionary authority in this regard and has imposed certain limitations in exercising its authority.<sup>6</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>7</sup>

A timely request for reconsideration, including all supporting documents, must set forth arguments and contain evidence that either: (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

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<sup>5</sup> 5 U.S.C. § 8128(a).

<sup>6</sup> 20 C.F.R. § 10.607.

<sup>7</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 (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.

considered by OWCP.<sup>8</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>9</sup>

### 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).

Appellant has neither alleged nor demonstrated that OWCP erroneously applied or interpreted a specific point of law. Moreover, she has not advanced a relevant legal argument not previously considered. Consequently, appellant is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under 20 C.F.R. § 10.606(b)(3).<sup>10</sup>

In support of her request for reconsideration, appellant also did not submit any evidence. The underlying issue on reconsideration is whether she has met her burden of proof to establish disability causally related to an accepted employment injury. This is a medical issue which can only be addressed by submission of rationalized medical evidence not previously considered.<sup>11</sup> Thus, appellant is not entitled to further review of the merits of her claim based on the third requirement under 20 C.F.R. § 10.606(b)(3).<sup>12</sup>

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).<sup>13</sup>

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<sup>8</sup> *Id.* at § 10.606(b)(3); *see L.F.*, Docket No. 20-1371 (issued March 12, 2021); *B.R.*, Docket No. 19-0372 (issued February 20, 2020).

<sup>9</sup> *Id.* at § 10.608.

<sup>10</sup> *C.B.*, Docket No. 18-1108 (issued January 22, 2019).

<sup>11</sup> *Y.S.*, Docket No. 19-1572 (issued March 12, 2020).

<sup>12</sup> *Supra* note 7.

<sup>13</sup> The Board notes that the employing establishment issued a Form CA-16. A completed Form CA\_16 authorization may constitute a contract for payment of medical expenses to a medical facility or physician, when properly executed. The form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. *See* 20 C.F.R. § 10.300(c); *J.D.*, Docket No. 22-0286 (issued June 15, 2022); *V.S.*, Docket No. 20-1034 (issued November 25, 2020); *J.G.*, Docket No. 17-1062 (issued February 13, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 11, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 26, 2022  
Washington, DC

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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

James D. McGinley, Alternate Judge  
Employees' Compensation Appeals Board