

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

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**T.J., Appellant**

**and**

**U.S. POSTAL SERVICE, PROCESSING &  
DISTRIBUTION CENTER, North Houston, TX,  
Employer**  
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**Docket No. 22-0729  
Issued: November 15, 2022**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On April 4, 2022 appellant filed a timely appeal from a November 1, 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 January 19, 2021, 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).

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

## **FACTUAL HISTORY**

On August 17, 2019 appellant, then a 56-year-old tractor trailer operator, filed a traumatic injury claim (Form CA-1) alleging that on that date he sprained the left side of his lower back when his left foot slipped on a step while in the performance of duty. He stopped work on that date.

In a work excuse note signed August 18, 2019, Dr. Joseph Snow, an osteopath Board-certified in emergency medicine, excused appellant from work on that date.

In a work status note dated August 23, 2019, Dr. William Chen, a Board-certified family medicine specialist, indicated that appellant was unable to work from August 24 through September 1, 2019.

In a work status note dated August 30, 2019, Dr. Alex Chen, a Board-certified family medicine specialist, advised that appellant was unable to work from August 24 through September 5, 2019. He recommended that appellant return to work with restrictions on September 6, 2019.

In an urgent care summary report and duty status report (Form CA-17) dated September 4, 2019, William T. Johnson, a certified nurse practitioner, indicated that appellant was evaluated after an August 17, 2019 employment incident when he slipped off the bottom step of his truck and felt back pain. He noted appellant's complaints of lower back and left leg pain and conducted an examination. Mr. Johnson diagnosed lumbar sprain and indicated that appellant could work with restrictions.

A September 4, 2019 lumbar spine diagnostic imaging report indicated no fracture.

In an urgent care visit summary report and Form CA-17 dated September 18, 2019, Mei Lene T. Ranada, a physician assistant, indicated that appellant was evaluated for complaints of lower back and left leg pain. She diagnosed lumbar sprain and noted that appellant could work with restrictions.

In an urgent care visit summary report and Form CA-17 dated September 26, 2019, Mr. Johnson described the August 17, 2019 employment incident and conducted an examination. He diagnosed lumbar sprain and indicated that appellant could work with restrictions.

By decision dated October 11, 2019, OWCP denied appellant's claim, finding that the evidence of record was insufficient to establish that the claimed August 17, 2019 employment incident occurred as alleged. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

OWCP subsequently received additional medical evidence, including an urgent care visit summary report and Form CA-17 dated October 10, 2019 by Ms. Ranada.

In a new patient evaluation report and Form CA-17 dated October 17, 2019, Dr. Steven B. Inbody, a neurology specialist, described the August 17, 2019 employment incident and reported that appellant immediately experienced severe pain in the left lumbosacral area. He diagnosed

lumbar pain with sciatica. Dr. Inbody opined that appellant sustained a “traumatic injury from the forceful descent of the left foot as it slipped from the step.” He indicated that appellant could not work.

On November 14, 2019 appellant requested reconsideration.

In a report and Form CA-17 dated December 11, 2019, Dr. Qi Li Ye, a Board-certified physiatrist and rehabilitation specialist, indicated that appellant was evaluated for treatment of low back pain after he slipped while stepping down from his tractor trailer and felt pain in his lower back. He conducted an examination and diagnosed lumbosacral radiculopathy, low back pain, and chronic pain syndrome. Dr. Ye noted that appellant could work with restrictions.

In a January 13, 2020 Form CA-17, Dr. Ye indicated that appellant was unable to work.

By decision dated January 31, 2020, OWCP denied modification of the October 11, 2019 decision.

Appellant subsequently submitted a report and Form CA-17 dated February 12, 2020, by Dr. Hai Nguyen, an osteopath and pain management specialist, who recounted appellant’s complaints of low back and bilateral knee pain and described the August 17, 2019 employment incident. Dr. Nguyen conducted an examination and diagnosed radiculopathy of the lumbosacral region, other intervertebral disc displacement of the lumbar region, lumbar intervertebral disc disorder with radiculopathy, and bilateral knee traumatic arthropathy. He indicated that appellant could not work.

In a report dated March 16, 2020, Dr. Nguyen noted appellant’s complaints of low back and left knee pain, provided his examination findings, and diagnosed radiculopathy of the lumbosacral region, other intervertebral disc displacement of the lumbar region, lumbar intervertebral disc disorders with radiculopathy, and bilateral knee traumatic arthropathy. He provided forms CA-17 dated March 16 and April 20, 2020, which indicated that appellant could not work.

On March 19, 2020 appellant requested reconsideration and submitted a statement, which further described the August 17, 2019 employment incident.

Appellant submitted a January 13, 2020 report by Dr. Phong Q. Le, a Board-certified anesthesiologist, who indicated that appellant had returned for reevaluation of low back pain following an August 17, 2019 employment incident. Dr. Le conducted an examination and diagnosed radiculopathy of the lumbar region, other intervertebral disc displacement of the lumbar region, lumbar intervertebral disc disorders with radiculopathy, and bilateral knee traumatic arthropathy.

By decision dated May 7, 2020, OWCP modified the January 31, 2020 decision, finding that appellant had established the factual component of fact of injury. However, it denied appellant’s claim as the medical evidence of record was insufficient to establish causal relationship between the accepted August 17, 2019 employment incident and the diagnosed medical conditions.

On June 1, 2020 appellant requested reconsideration.

Appellant submitted diagnostic imaging reports, including October 18, 2019 and April 24, 2020 lumbar spine magnetic resonance imaging scans.

In a report dated May 14, 2020, Dr. Le described the August 17, 2019 employment incident and subsequent medical treatment that appellant received. He diagnosed radiculopathy of the lumbosacral region, other intervertebral disc displacement of the lumbar region, and intervertebral disc disorders with radiculopathy of the lumbar region. Dr. Le opined that appellant's conditions were directly caused by the slip and fall incident.

In a progress report and Form CA-17 dated May 15, 2020, Dr. Anh K. Dinh, a Board-certified family medicine specialist, indicated that appellant was evaluated for follow-up of continued low back and left knee pain. He provided examination findings and diagnosed radiculopathy of the lumbar region, other intervertebral disc displacement of the lumbar region, intervertebral disc disorders with radiculopathy of the lumbar region, and bilateral knee arthropathy.

By decision dated August 27, 2020, OWCP denied modification of the May 7, 2020 decision.

OWCP subsequently received progress reports and forms CA-17 dated July 16 and September 17, 2020 by Kimberly Molitor, a nurse practitioner, who noted appellant's complaints of persistent low back and left knee pain. Ms. Molitor provided examination findings and diagnosed radiculopathy of the lumbar region, other intervertebral disc displacement of the lumbar region, intervertebral disc disorders with radiculopathy of the lumbar region, lumbar spine sprain, and bilateral knee arthropathy.

On November 9, 2020 appellant requested reconsideration.

In narrative reports and forms CA-17 dated August 17, October 19, and November 19, 2020, Dr. Le noted that appellant was evaluated for continued complaints of low back and left knee pain. He indicated that on August 17, 2019 appellant had a slip and fall incident at work. Dr. Le conducted an examination and diagnosed radiculopathy of the lumbar region, lumbar spine sprain, low back pain, other specified inflammatory spondylopathies of the lumbar region, other intervertebral disc displacement of the lumbar region, intervertebral disc disorders with radiculopathy of the lumbar region, and bilateral knee arthropathy.

By decision dated January 19, 2021, OWCP denied modification of the August 27, 2020 decision.

On August 17, 2021 appellant requested reconsideration.

In forms CA-17 dated December 21, 2020 and January 21, 2021, a provider with an illegible signature noted an August 17, 2019 date of injury and described appellant's injuries as lower lumbar sprain, lower back, left leg, and left knee. The provider checked a box marked "yes" indicating that the history of injury corresponded with appellant's injuries and reported that appellant could not work.

By decision dated November 1, 2021, OWCP denied appellant's request for reconsideration of the merits of the 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 argument that: (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.<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 properly denied appellant's request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

On reconsideration, appellant did not show that OWCP erroneously applied or interpreted a specific point of law. Moreover, he did not advance a relevant legal argument not previously

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<sup>2</sup> 5 U.S.C. § 8128(a); *see D.G.*, Docket No. 20-1203 (issued April 28, 2021); *L.D.*, Docket No. 18-1468 (issued February 11, 2019); *see also V.P.*, Docket No. 17-1287 (issued October 10, 2017); *D.L.*, Docket No. 09-1549 (issued February 23, 2010); *W.C.*, 59 ECAB 372 (2008).

<sup>3</sup> 20 C.F.R. § 10.606(b)(3); *see P.M.*, Docket No. 20-0780 (issued November 24, 2020); *J.W.*, Docket No. 19-1795 (issued March 13, 2010); *see also L.G.*, Docket No. 09-1517 (issued March 3, 2010); *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. 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.

<sup>5</sup> *Id.* at § 10.608(a); *see F.V.*, Docket No. 18-0230 (issued May 8, 2020); *M.S.*, 59 ECAB 231 (2007).

<sup>6</sup> *Id.* at § 10.608(b); *see B.S.*, Docket No. 20-0927 (issued January 29, 2021); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

considered by OWCP. As such, he is not entitled to review of the merits of his claim based on either the first or second above-noted requirements under 20 C.F.R. § 10.606(b)(3).<sup>7</sup>

In support of his request for reconsideration, appellant submitted Forms CA-17 dated December 21, 2020 and January 21, 2021 by a provider with an illegible signature. While this medical evidence is new, it is not relevant because it does not address the underlying issue of the present case, *i.e.*, whether appellant has established causal relationship between his diagnosed medical conditions and the accepted April 17, 2019 employment incident. The Board notes that the submission of evidence that does not address the particular issue involved does not constitute a basis for reopening a case.<sup>8</sup> Moreover, since the reports were signed by an unknown provider, they are of no probative value to establish appellant's claim.<sup>9</sup> Therefore, for the above reasons, appellant also failed to satisfy the third requirement under 20 C.F.R. § 10.606(b)(3).<sup>10</sup>

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.

### 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).

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<sup>7</sup> *Id.* at § 10.606(b)(3); *G.K.*, Docket No. 20-1026 (issued December 11, 2020); *D.T.*, Docket No. 20-0456 (issued September 1, 2020).

<sup>8</sup> *D.C.*, Docket No. 19-0873 (issued January 27, 2020); *E.G.*, Docket No. 18-0270 (issued August 24 2018); *Alan G. Williams*, 52 ECAB 180 (2000); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

<sup>9</sup> The Board has held that a report that is unsigned or bears an illegible signature lacks proper identification and cannot be considered probative medical evidence since the author cannot be identified as a physician. *R.C.*, Docket No. 20-1525 (issued June 8, 2021); *I.M.*, Docket No. 19-1038 (issued January 23, 2020).

<sup>10</sup> *See D.J.*, Docket No. 21-0371 (issued November 24, 2021).

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 1, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 15, 2022  
Washington, DC

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

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

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