

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

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**D.D., Appellant** )

**and** )

**U.S. POSTAL SERVICE, POST OFFICE,** )  
**Milwaukee, WI, Employer** )  
\_\_\_\_\_ )

**Docket No. 22-1109**  
**Issued: November 30, 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 July 11, 2022 appellant filed a timely appeal from a June 10, 2022 nonmerit decision of the Office of Workers’ Compensation Programs (OWCP).<sup>1</sup> As more than 180 days has elapsed from the last merit decision, dated August 9, 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 to review 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> The Board notes that, on appeal, appellant submitted 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.*

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

## **FACTUAL HISTORY**

On December 3, 2020 appellant, then a 59-year-old general expeditor, filed a traumatic injury claim (Form CA-1) alleging that on November 9, 2020 he contracted COVID-19 while in the performance of duty. He stopped work on November 9, 2020.

On April 5, 2021 OWCP accepted the claim for COVID-19.

In a development letter dated April 21, 2021, OWCP advised appellant that the evidence submitted was insufficient to support a possible consequential injury of vasculitis, neuropathy, and aortic aneurysm due to the accepted employment injury. It requested that he submit a report from his physician addressing how the diagnosed conditions were related to the November 9, 2020 employment injury. OWCP afforded appellant 30 days to submit the necessary evidence.

OWCP subsequently received a report dated March 18, 2021, wherein Dr. Yoon Young Qiu, a rheumatologist, diagnosed vasculitis and recounted that she had examined appellant on February 4 and March 18, 2021.

On May 26, 2021 Dr. Ghannam noted that appellant had an abnormal stress test and opined that he continued to be totally disabled from work.

By decision dated June 14, 2021, OWCP denied appellant's request to expand the acceptance of his claim to include additional conditions due to, or as a consequence of, his accepted employment injury.

On July 1, 2021 appellant requested reconsideration of the June 14, 2021 OWCP decision. He provided additional medical evidence including a July 1, 2021 note from Dr. Qiu diagnosing vasculitis involving the celiac artery and its branches. Dr. Qiu diagnosed this condition in January 2021 and noted that appellant had COVID-19 infection in November 2020. She noted that there were reports of vasculitis occurring in patients infected with COVID-19, but that vasculitis could also occur in the absence of infection, such that it was not possible to know if his vasculitis was related to his prior COVID-19 infection. In a June 29, 2021 report, Dr. Ghannam found that appellant was disabled.

By decision dated August 9, 2021, OWCP denied modification of its June 14, 2021 decision.

OWCP subsequently received a note dated August 20, 2021, wherein Christina L. Starks, a physician assistant, found that appellant was totally disabled.

On May 28, 2022 appellant requested reconsideration.

By decision dated June 10, 2022, OWCP denied appellant's request for reconsideration, pursuant to 5 U.S.C. § 8128.

## 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>3</sup>

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or an 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>4</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>5</sup> If it chooses to grant reconsideration, it reopens and reviews the case on its merits.<sup>6</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>7</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).

Appellant did not show that OWCP erroneously applied or interpreted a specific point of law, nor did he advance a relevant legal argument not previously considered by OWCP. Consequently, he 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).<sup>8</sup>

In support of his request for reconsideration, appellant submitted a note dated August 20, 2021 from a physician assistant. However, certain healthcare providers such as physician assistants are not considered physicians as defined under FECA.<sup>9</sup> Consequently, their medical

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<sup>3</sup> *Id.* at § 8128(a).

<sup>4</sup> 20 C.F.R. § 10.606(b)(3).

<sup>5</sup> *Id.* at § 10.607(a).

<sup>6</sup> *Id.* at § 10.608(a).

<sup>7</sup> *Id.* at § 10.608(b).

<sup>8</sup> *Supra* note 4 at § 10.606(b)(3)(i) and (i); *see A.N.*, Docket No. 22-0617 (issued August 26, 2022); *M.L.*, Docket No. 22-0120 (issued May 12, 2022); *P.S.*, Docket No. 20-1090 (issued September 9, 2021); *A.G.*, Docket No. 20-0290 (issued June 24, 2020); *C.B.*, Docket No. 18-1108 (issued January 22, 2019).

<sup>9</sup> Section 8101(2) of FECA provides that physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *L.W.*, Docket No. 21-0789 (issued March 25, 2022) (physician assistants are not considered physicians as defined under FECA); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA); *C.P.*, Docket No. 19-1716 (issued March 11, 2020) (a physician assistant is not considered a physician as defined under FECA).

findings and/or opinions will not suffice for purposes of establishing causal relationship.<sup>10</sup> The Board has held that the submission of evidence or argument, which does not address the particular issue involved, does not constitute a basis for reopening a claim.<sup>11</sup> As the evidence submitted on reconsideration is not relevant and pertinent new medical evidence not previously considered by OWCP, appellant is not entitled to a review of the merits of his claim based on the third requirement under 20 C.F.R. § 10.606(b)(3).<sup>12</sup>

The Board, therefore, finds that OWCP properly determined that appellant was not entitled to further review of the merits of his claim pursuant to any of the three requirements under 20 C.F.R. § 10.606(b)(3). Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.<sup>13</sup>

### 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>10</sup> *Id.*

<sup>11</sup> *T.D.*, Docket No. 21-1381 (issued June 21, 2022); *T.M.*, Docket No. 19-0535 (issued July 25, 2019); *Edward Matthew Diekemper*, 31 ECAB 224-25 (1979).

<sup>12</sup> 20 C.F.R. § 10.606(b)(3)(iii).

<sup>13</sup> *D.C.*, Docket No. 22-0098 (issued August 26, 2022); *D.S.*, Docket No. 18-0353 (issued February 18, 2020); *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).

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 10, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 30, 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