

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

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**A.B., Appellant** )

**and** )

**DEPARTMENT OF THE INTERIOR,** )  
**NATIONAL PARK SERVICE, BANDELIER** )  
**NATIONAL MONUMENT, Los Alamos, NM,** )  
**Employer** )

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**Docket No. 23-0919**  
**Issued: March 26, 2024**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge  
JANICE B. ASKIN, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On June 21, 2023 appellant filed a timely appeal from a January 31, 2023 nonmerit decision of the Office of Workers’ Compensation Programs (OWCP). As more than 180 days has elapsed from the last merit decision, dated November 17, 2022, 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 to review the merits of this case.

**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).

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

## **FACTUAL HISTORY**

On August 24, 2022 appellant, then a 51-year-old administrative and office support student trainee, filed a traumatic injury claim (Form CA-1) alleging that she sustained a right hand and right knee injury when she was walking on the main loop trail and stepped off the concrete causing her to fall while in the performance of duty. She did not stop work.

In an August 30, 2022 attending physician's report, Part B of an authorization for examination and/or treatment (Form CA-16), Rana Russell, a nurse practitioner, reported that appellant was walking on a path with her coworkers and accidentally stepped off the pavement causing her to fall on her right knee and hand. She diagnosed right cervicalgia, right arm pain, and right knee contusion with internal derangement. Ms. Russell provided appellant with work restrictions and recommended physical therapy.

In support of her claim, appellant also provided a September 6, 2022 x-ray scan of the right hand that revealed normal findings, and work status notes, clinic studies, and disability notes dated August 30 through October 11, 2022 from Ms. Russell.

In an October 17, 2022 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence required and provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit the requested evidence.

Appellant provided a November 9, 2022 narrative statement describing the circumstances surrounding her injury and subsequent medical treatment.

In a report dated November 8, 2022, appellant presented to the emergency room due to increased right knee pain after a work-related fall on August 24, 2022, causing her to land on her right hand, hip, arm, and knee when walking on a trail. She was first evaluated by Ms. Russell who diagnosed pain in right hand, and unspecified internal derangement of right knee.

In an October 11, 2022 report, Dr. Troy E. Watson, a Board-certified family physician, reported that he had reviewed Ms. Russell's visit notes on August 30, September 6 and 12, and October 11, 2022 and agreed with the treatment provided. He diagnosed pain in right hand, unspecified internal derangement of right knee, and cervicalgia. Dr. Watson opined that appellant's injuries resulted from her fall on August 24, 2022.

By decision dated November 17, 2022, OWCP accepted that the August 24, 2022 employment incident occurred as alleged, but denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish a diagnosed medical condition causally related to the accepted August 24, 2022 employment incident. Therefore, it concluded that the requirements had not been met to establish an injury as defined by FECA.

On January 18, 2023 appellant requested reconsideration and submitted a January 13, 2023 report, wherein Dominic Guerin, a physician assistant, noted his examination of appellant and provided home care instructions. She also resubmitted a September 6, 2022 diagnostic study of the right hand.

By decision dated January 31, 2023, OWCP denied appellant's request for reconsideration of the merits of her 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 or her 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 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 her claim, pursuant to 5 U.S.C. § 8128(a).<sup>7</sup>

On January 18, 2023 appellant filed a request for reconsideration of a November 17, 2022 decision denying her traumatic injury claim. The Board finds, however, that she neither established that OWCP erroneously applied or interpreted a specific point of law, nor did she advance a relevant legal argument not previously considered by OWCP. Accordingly, the Board

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<sup>2</sup> 5 U.S.C. § 8128(a); *see R.C.*, Docket No. 22-0612 (issued October 24, 2022); *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).

<sup>3</sup> 20 C.F.R. § 10.606(b)(3); *see R.C.*, *id.*; *L.D.*, *id.*

<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 (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 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> *T.R.*, Docket No. 23-0287 (issued June 23, 2023).

finds that appellant is not entitled to a review of the merits based on either the first or second above-noted requirements under 20 C.F.R. § 10.606(b)(3).<sup>8</sup>

The Board further finds that appellant did not submit relevant and pertinent new evidence in support of her January 18, 2023 request for reconsideration. The underlying issue in this case is whether appellant established a medical condition causally related to the accepted August 24, 2022 employment incident. This is a medical question that requires rationalized medical opinion evidence to resolve the issue.<sup>9</sup> On reconsideration, appellant submitted a January 13, 2023 report from Mr. Guerin, a physician assistant. However, while this evidence is new, it is irrelevant to the underlying issue as the Board has held that certain healthcare providers, such as physician assistants, are not considered physicians as defined under FECA.<sup>10</sup> Consequently, their medical findings and/or opinion will not suffice for purposes of establishing entitlement to FECA benefits.<sup>11</sup> Appellant also resubmitted a September 6, 2022 diagnostic study of the right hand. As noted, submission of evidence or argument that repeats or duplicates evidence or argument previously of record does not constitute a basis for reopening a case.<sup>12</sup> Because appellant did not provide any relevant and pertinent new evidence, she is not entitled to a review of the merits based on the third requirement under 20 C.F.R. § 10.606(b)(3).

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> See *L.W.*, Docket No. 21-0607 (issued October 18, 2022).

<sup>9</sup> *R.M.*, Docket No. 21-0963 (issued April 19, 2023).

<sup>10</sup> Section 8102(2) of FECA provides as follows: (2) 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. § 8102(2); 20 C.F.R. § 10.5(t). See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *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); see also *S.S.*, Docket No. 21-1140 (issued June 29, 2022) (physician assistants are not considered physicians under FECA and are not competent to provide medical opinions); *George H. Clark*, 56 ECAB 162 (2004) (physician assistants are not considered physicians under FECA).

<sup>11</sup> *Id.*

<sup>12</sup> *A.G.*, Docket No. 23-0045 (issued February 15, 2004); *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

<sup>13</sup> The record contains a Form CA-16 signed by the employing establishment official on August 29, 2022. When the employing establishment properly executes a Form CA-16 which authorizes medical treatment as a result of an employee's claim for an employment-related injury, the Form CA-16 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. The period for which treatment is authorized by a Form CA-16 is limited to 60 days from the date of issuance, unless terminated earlier by OWCP. See 20 C.F.R. § 10.300(c); *Tracy P. Spillane*, 54 ECAB 608 (2003).

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 31, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 26, 2024  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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