

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

### **FACTUAL HISTORY**

This case has previously been before the Board on a different issue.<sup>2</sup> The facts and circumstances of the case as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On October 15, 2019 appellant, then a 26-year-old law enforcement agent, filed a traumatic injury claim (Form CA-1) alleging that on October 3, 2019 she sustained rhabdomyolysis during a required physical training class while in the performance of duty. On the reverse of the claim form, C.A., appellant's supervisor, indicated that he concurred with her account of events and acknowledged that she was injured while in the performance of duty.

In an October 3, 2019 hospital emergency department report, Dr. Robert Evans Fines, Jr., Board-certified in emergency medicine, diagnosed myalgia, dehydration, and elevated liver function tests following physical training at the employing establishment.

OWCP received an authorization for examination and/or treatment (Form CA-16) completed and signed by C.A. on October 4, 2019.

In an October 4, 2019 hospital emergency department report, Dr. Timothy D. Weber, Board-certified in emergency medicine, diagnosed myalgia, dehydration, and elevated liver function tests.

OWCP also received October 3 and 4, 2019 laboratory test results and discharge instructions.

In a development letter dated October 28, 2019, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence necessary to establish her claim and provided a questionnaire for her completion. OWCP afforded appellant 30 days to respond. No response was received.

By decision dated November 29, 2019, OWCP denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish that the incident occurred as she described. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On December 26, 2019 appellant requested reconsideration. She submitted a February 5, 2020 letter noting a change of address. On February 13, 2020 appellant indicated that she was attempting to obtain a medical narrative report.

By decision dated March 20, 2020, OWCP denied modification of the November 29, 2019 decision.

In an August 9, 2020 statement, appellant responded to the deficiencies noted in OWCP's November 29, 2019 decision. She explained that, during the October 3, 2019 physical defense

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<sup>2</sup> Docket No. 21-0841 (issued October 26, 2021).

training and strenuous exercise, she became achy and fatigued. After class, appellant noticed blood in her urine. The class counselor sent her to an employing establishment nurse, who obtained a urine sample indicative of rhabdomyolysis and then sent her to a hospital emergency department. As appellant's symptoms recurred the following day, the nurse sent appellant's back to the hospital emergency department. She noted that she had submitted additional medical evidence, including October 3 and 4, 2019 hospital emergency department reports from a physician. Appellant submitted additional medical evidence.

In an April 23, 2020 report, Dr. Weber reviewed appellant's October 3, 2019 chart notes. He recalled that she had presented with an elevated creatinine kinase (CK) level "in line with a vigorous workout." Dr. Weber opined that appellant's physical training certainly "could have contributed to dehydration and the elevated CK, but [appellant's] kidneys" were not in danger and there was no "lasting disability from that episode." He noted that her emergency department treatment with intravenous fluids, with instructions to rest and recover for a few days, was appropriate for her clinical presentation.

On April 15, 2021 appellant requested reconsideration. She also submitted an April 15, 2021 letter from C.A., requesting that OWCP review the medical evidence of record. C.A. asserted that a timely reconsideration request had been "mailed out within the deadline," and that the COVID-19 pandemic had made it difficult to obtain medical evidence.

By decision dated April 27, 2021, OWCP denied appellant's request for reconsideration, finding that it was untimely filed and failed to demonstrate clear evidence of error.

On May 13, 2021 appellant appealed to the Board. By decision dated October 26, 2021,<sup>3</sup> the Board set aside the April 27, 2021 OWCP decision, finding that she had filed a timely request for reconsideration on August 9, 2020 within one year of OWCP's March 20, 2020 merit decision. The Board remanded the case for review of the evidence under the proper standard of review for a timely reconsideration request.

By decision dated December 2, 2021, OWCP found that the additional evidence established that the October 3, 2019 employment incident occurred, as alleged. It denied the claim, however, as the medical evidence was insufficient to establish causal relationship.

On July 18, 2022 appellant requested reconsideration. She submitted additional evidence.

In a July 18, 2022 report, Dr. Shaun Lillig, a Board-certified family practitioner, noted that on October 3 and 4, 2019 appellant had been diagnosed with myalgias, elevated creatine phosphokinase (CPK), and hematuria consistent with rhabdomyolysis. He noted that her symptoms commenced with training at the employing establishment on the day of diagnosis. Dr. Lillig opined that the "training contributed to [appellant's] symptoms and it was appropriate" for appellant to have sought medical care.

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<sup>3</sup> *Id.*

By decision dated October 13, 2022, OWCP denied modification of the December 2, 2021 decision.

On September 5, 2023 appellant requested reconsideration. She asserted that the October 3 and 4, 2019 medical reports of record were sufficient to establish causal relationship and, therefore, her entitlement to reimbursement for emergency department medical expenses incurred on October 3 and 4, 2019.

OWCP received October 4 and 7, 2019 employing establishment training activity restriction forms signed by Amanda O'Donnell, a certified family nurse practitioner.

By decision dated September 8, 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 own motion or on application.<sup>4</sup>

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or 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>5</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>6</sup> If it chooses to grant reconsideration, it reopens and reviews the case on its merits.<sup>7</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>8</sup>

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<sup>4</sup> 5 U.S.C. § 8128(a); *see R.G.*, Docket No. 21-1098 (issued March 28, 2022); *T.K.*, Docket No. 19-1700 (issued April 30, 2020); *L.D.*, Docket No. 18-1468 (issued February 11, 2019); *W.C.*, 59 ECAB 372 (2008).

<sup>5</sup> 20 C.F.R. § 10.606(b)(3); *see L.D.*, *id.*; *see also L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

<sup>6</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>7</sup> *Id.* at § 10.608(a); *F.V.*, Docket No. 18-0230 (issued May 8, 2020); *see also M.S.*, 59 ECAB 231 (2007).

<sup>8</sup> *Id.* at § 10.608(b); *N.K.*, Docket No. 23-0435 (issued September 28, 2023); *C.P.*, Docket No. 22-1004 (issued February 24, 2023); *Y.M.*, Docket No. 22-0327 (issued August 29, 2022); *B.S.*, Docket No. 20-0927 (issued January 29, 2021); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

## 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's September 5, 2023 request for reconsideration does not demonstrate that OWCP erroneously applied or interpreted a specific point of law. Moreover, she has not advanced a relevant legal argument not previously considered by OWCP. Consequently, the Board finds that appellant is not entitled to a review of the merits based on the first and second above-noted requirements under 20 C.F.R. § 10.606(b)(3).<sup>9</sup>

The Board further finds that appellant has not provided any relevant and pertinent new evidence with her September 5, 2023 request for reconsideration. The underlying issue is whether appellant met her burden of proof to establish a causal relationship between physical training at work on October 3, 2019 and the diagnosed conditions. This is a medical issue, which may only be addressed by relevant medical evidence not previously considered.<sup>10</sup> Appellant submitted October 4 and 7, 2019 activity restriction forms, signed solely by Ms. O'Donnell, a nurse practitioner. These documents do not constitute medical evidence as nurse practitioners are not considered physicians under FECA and are not competent to provide a medical opinion.<sup>11</sup> The submission of evidence or argument, which does not address the particular issue involved does not constitute a basis for reopening the case.<sup>12</sup> No other relevant and pertinent new evidence was submitted. For these reasons, 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>13</sup>

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<sup>9</sup> *Id.* at § 10.606(b)(3); *N.K.*, *id.*; *see K.D.*, Docket No. 22-0756 (issued November 29, 2022); *L.D.*, *supra* note 4; *see also L.G.*, *supra* note 5; *C.N.*, *supra* note 5.

<sup>10</sup> *C.C.*, Docket No. 22-1064 (issued February 14, 2023); *L.S.*, Docket No. 21-1286 (issued April 6, 2022); *Y.L.*, Docket No. 20-1025 (issued November 25, 2020); *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Edward Matthew Diekemper*, 31 ECAB 224,225 (1979).

<sup>11</sup> Section 8102(2) of FECA provides as follows: 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 supra* note 6 at *Causal Relationship*, Chapter 2.805.3a (May 2023); *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 B.D.*, Docket No. 22-0503 (issued September 27, 2022) (nurse practitioners are not considered physicians as defined under FECA and their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits); *L.S.*, Docket No. 19-1231 (issued March 30, 2021) (a nurse practitioner is not considered a physician as defined under FECA).

<sup>12</sup> *M.B.*, Docket No. 17-1980 (issued May 14, 2019); *E.G.*, Docket No. 18-0270 (issued August 24, 2018); *Eugene F. Butler*, *supra* note 10; *Edward Matthew Diekemper*, *supra* note 10.

<sup>13</sup> *N.K.*, *supra* note 8; *see S.A.*, Docket No. 21-0813 (issued December 27, 2021); *E.V.*, Docket No. 16-0080 (issued June 21, 2016).

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.<sup>14</sup>

**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>15</sup>

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 8, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 14, 2024  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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

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<sup>14</sup> See *Y.M.*, *supra* note 8; *D.G.*, Docket No. 19-1348 (issued December 2, 2019).

<sup>15</sup> The Board notes that the employing establishment executed a Form CA-16 on October 4, 2019. 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); *S.G.*, Docket No. 23-0552 (issued August 28, 2023); *J.G.*, Docket No. 17-1062 (issued February 13, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).