

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

Y.O., Appellant

and

**U.S. POSTAL SERVICE, SEMINOLE
PROCESSING & DISTRIBUTION CENTER,
Orlando, FL, Employer**

)
)
)
)
)
)
)
)
)
)
)
)

**Docket No. 25-0396
Issued: April 16, 2025**

Appearances:

Wayne Johnson, Esq., for the appellant¹

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

VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On March 17, 2025 appellant filed a timely appeal from a September 18, 2024 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from OWCP's last merit decision, dated September 13, 2023, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of this case.³

¹ 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.

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that following the September 18, 2024 decision, and 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.*

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 October 15, 2021 appellant, then a 55-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that on October 8, 2021 she injured her neck and back performing repetitive pulling motions when using a pole to feed mail onto a belt while in the performance of duty. She explained that a semi-automated machine that usually feeds the mail at the station was not working properly, and that she developed pain in her neck, radiating into her lower back, from pulling three- to five-pound bundles of mail. Appellant stopped work on that date.

Beginning on October 8, 2021 appellant sought medical treatment from Tracy Shibla and Marie Samantha Florestal, advanced practice registered nurses. She underwent a magnetic resonance imaging (MRI) scan of the spine on October 8, 2021.

On October 18, 2021 Dr. Timothy W. Hendrix, a Board-certified family practitioner, diagnosed cervical pain, lumbar pain, lumbar radiculopathy, and spasm of the cervical paraspinous muscle. In a state workers' compensation form report, he indicated by checking a box that it was "undetermined" whether or not appellant's condition was work related.

On November 30, 2021 appellant accepted a modified mail handler position.

By decision dated January 18, 2022, OWCP denied the claim, finding that the medical evidence of record was insufficient to establish causal relationship between a diagnosed medical condition and the accepted October 8, 2021 employment incident.

On February 16, 2022 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. A hearing was held on April 26, 2022.

OWCP continued to receive medical evidence. Appellant underwent electromyogram and nerve conduction velocity (EMG/NCV) studies on March 9, 2022. In an April 15, 2022 report, Dr. Robert R. Reppy, an osteopath, diagnosed lumbar radiculopathy with lumbar disc disease, cervical radiculopathy with subtle protruding discs at two levels, torn annulus at C5-6, and bilateral ulnar entrapment neuropathy. He provided work restrictions.

By decision dated June 23, 2022, OWCP's hearing representative affirmed the January 18, 2022 OWCP decision.

OWCP continued to receive evidence. On July 6, 2022 appellant accepted a modified mail handler position.

In reports dated August 5, 2022 through May 12, 2023, Dr. Reppy reiterated his diagnosis and work restrictions. He completed duty status reports (Form CA-17) dated July 1, 2022 through May 12, 2023 diagnosing cervical and lumbar radiculopathy and providing work restrictions.

On June 23, 2023 appellant, through counsel, requested reconsideration and submitted additional evidence. He contended that the accompanying medical evidence was sufficient to establish the claim as compensable. In a report dated February 14, 2022, Dr. Reppy described the accepted October 8, 2021 employment activities. He related that appellant had a preexisting lumbar condition which was “aggravated” by the accepted employment incident. Dr. Reppy explained that, on October 8, 2021, appellant’s paracervical and paralumbar muscles became exhausted by bracing her neck and back against the force required to pull packages. These muscles reached the point where they failed from overuse and the unprotected discs bulged impinging on nerve roots resulting in loss of grip strength and sensation in the hands. Dr. Reppy opined that the diagnoses of cervical disc displacement, annular fissures in the cervical spine, and lumbar radiculopathy were related to the accepted employment incident.

On June 9, 2023 Dr. Reppy completed a narrative report diagnosing lumbar radiculopathy with lumbar disc disease, cervical radiculopathy with subtle protruding discs at two levels, torn annulus at C5-6, and bilateral ulnar entrapment neuropathy. He completed a Form CA-17 of even date diagnosing cervical radiculopathy and providing work restrictions. Dr. Reppy continued to provide similar reports and CA-17 forms dated July 21, 2023 through August 17, 2023.

By decision dated September 13, 2023, OWCP denied modification.

OWCP continued to receive medical evidence. Dr. Reppy completed a series of CA-17 forms diagnosing cervical radiculopathy and providing work restrictions from September 15, 2023 through August 9, 2024.

In narrative reports dated October 27, 2023 through August 9, 2024, Dr. Reppy diagnosed lumbar radiculopathy with lumbar disc disease, cervical radiculopathy with subtle protruding discs at two levels, torn annulus at C5-6, and bilateral ulnar entrapment neuropathy.

On September 13, 2024 appellant, through counsel, requested reconsideration and referenced Dr. Reppy’s February 14, 2022 report. He contended that *prima facie* case had been established or in the alternative that a second opinion evaluation was necessary.

By decision dated September 18, 2024, 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.⁴

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

⁴ 5 U.S.C. § 8128(a); *see 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).

considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.⁵

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.⁶ If it chooses to grant reconsideration, it reopens and reviews the case on its merits.⁷ 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.⁸

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).

In her request for reconsideration, appellant asserted that Dr. Reppy's February 14, 2022 report established *prima facie* case or, in the alternative, that it rendered a second opinion evaluation necessary. However, her reconsideration request does not advance a new legal argument not previously considered, nor does it show that OWCP erroneously applied or interpreted a specific point of law. This argument is substantially similar to counsel's June 23, 2023, argument in which he also contended that Dr. Reppy's February 14, 2022 report was sufficient to establish the claim as compensable. Thus, appellant has not provided a new and relevant legal argument not previously considered by OWCP. She is, therefore, not entitled to a review of the merits of her claim based on the first or second above-noted requirements under 20 C.F.R. § 10.606(b)(3).⁹

In support of her request for reconsideration, appellant also submitted a series of reports and form reports from Dr. Reppy. However, these documents repeat evidence already in the case record and therefore do not constitute relevant and pertinent new evidence. The Board has held that the submission of evidence or argument, which repeats or duplicates evidence or argument already of record does not constitute a basis for reopening a claim.¹⁰ Therefore, appellant is not entitled to further review of the merits of his claim based on the third above-noted requirement under 20 C.F.R. § 10.606(b)(3).

⁵ 20 C.F.R. § 10.606(b)(3); *see L.D., id.*; *see also K.L.*, Docket No. 17-1479 (issued December 20, 2017); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

⁶ *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.

⁷ *Id.* at § 10.608(a); *see also M.S.*, 59 ECAB 231 (2007).

⁸ *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).

⁹ *M.O.*, Docket No. 21-0459 (issued December 29, 2021).

¹⁰ *S.B.*, Docket No. 24-0703 (issued December 13, 2024); *G.Q.*, Docket No. 18-1697 (issued March 21, 2019); *Alan G. Williams*, 52 ECAB 180 (2000); *see also S.F.*, Docket No. 18-0516 (issued February 21, 2020); *James W. Scott*, 55 ECAB 606, 608 n.4 (2004); *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

The Board, accordingly, finds that appellant has not met any of the requirements under 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).

ORDER

IT IS HEREBY ORDERED THAT the September 18, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 16, 2025
Washington, DC

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

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

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