

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

<p>J.M., Appellant</p> <p>and</p> <p>U.S. POSTAL SERVICE, SHAKESPEARE POST OFFICE, Montgomery, AL, Employer</p>	<p>))))))</p>	<p>Docket No. 25-0591</p> <p>Issued: August 22, 2025</p>
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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 May 31, 2025 appellant filed a timely appeal from a December 9, 2024 nonmerit decision and a February 11, 2025 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.²

ISSUES

The issues are: (1) whether OWCP properly denied appellant's request for reconsideration of the merits of the 20 C.F.R. § 10.500(a) termination, pursuant to 5 U.S.C. § 8128(a); and (2) whether appellant has met her burden of proof to establish the remaining claimed intermittent

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the February 11, 2025 decision, appellant submitted additional evidence to OWCP. 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.*

disability from work for the period October 23 through November 1, 2024, causally related to her accepted November 7, 2022 employment injury.

FACTUAL HISTORY

On November 9, 2022, appellant, then a 54-year-old city delivery specialist, filed a traumatic injury claim (Form CA-1) alleging that on November 7, 2022 she sustained a facial contusion and concussion when she fell while in the performance of duty. She stopped work on that date and returned to modified duty on February 10, 2023. OWCP accepted the claim for neck strain, acute post-traumatic headache, thoracic strain, left wrist and hand sprains, and concussion with loss of consciousness of 30 minutes or less. It paid appellant wage-loss compensation on the supplemental rolls, effective December 23, 2022.

On August 21, 2023, Dr. Nishant Khatri, a physician Board-certified in family practice, completed a work capacity evaluation (Form OWCP-5c) and indicated that appellant could work eight hours a day with restrictions. He noted a diagnosis of back and wrist strain and provided restrictions of no reaching, no reaching above the shoulder, and no twisting for more than four hours a day. Dr. Khatri also restricted repetitive movements of the left wrist to no more than four hours a day. He further determined that appellant had a 15-pound weight restriction for pushing, pulling, and lifting. Dr. Khatri indicated that there were restrictions on squatting, kneeling, and climbing. He completed an additional Form OWCP-5c on September 21, 2023, wherein he repeated his restrictions.

On October 4, 2023, the employing establishment offered appellant a modified city carrier position, casing mail for up to eight hours intermittently and carrying the assigned route for up to eight hours intermittently. The position required sitting, standing, and walking intermittently for up to eight hours a day; lifting, carrying, pulling, and pushing up to 15 pounds intermittently, for up to four hours a day; reaching, twisting, and reaching above the shoulder for up to four hours intermittently; and bending, stooping, kneeling, and squatting intermittently up to eight hours a day.

On October 6, 2023, appellant signed the modified city carrier position, but did not indicate whether she was accepting the position. She contended that the requirements that she bend, stoop, kneel, and squat intermittently for eight hours exceeded her work restrictions.

In an accompanying statement dated October 6, 2023, appellant disagreed that the offered position was within her restrictions as the position of city mail carrier required repetitive motions for greater than four hours a day. She also asserted that she would not be able to limit her lifting to 15 pounds. Appellant provided notes from Kimberly Frederick, a physical therapist, commencing October 4, 2023.

In an October 10, 2023 notice, OWCP informed appellant that, pursuant to 20 C.F.R. § 10.500(a), it proposed to terminate her wage-loss compensation benefits based on the determination that she could work in the “temporary” modified city carrier position offered by the employing establishment on October 4, 2023. It informed her that the opinion of her attending physician, Dr. Khatri, demonstrated that she could perform the duties of the offered position. OWCP afforded her 30 days to accept the offered position.

On October 19, 2023, Dr. Khatri completed an additional Form OWCP-5c clarifying that the restrictions of no more than four hours a day applied to repetitive movements of the left wrist and elbow; and also to pushing, pulling, lifting, squatting, kneeling, and climbing.

By decision dated November 29, 2023, OWCP terminated appellant's wage-loss compensation, effective October 10, 2023, pursuant to 20 C.F.R. § 10.500(a). It determined that the weight of the medical opinion evidence established her ability to perform the October 4, 2023 "temporary" modified city carrier position as established by Dr. Khatri's September 21, 2023 report.

On December 14, 2023, Dr. Khatri completed an additional Form OWCP-5c further restricting appellant to no more than four hours a day of carrying the mail.

On January 15, 2024, Dr. Khatri completed a Form OWCP-5c repeating his December 14, 2023 work restrictions. Appellant also provided a series of reports commencing January 15, 2024 from David Graham, a nurse practitioner, and Ms. Frederick.

In a June 12, 2024 letter, appellant submitted an amended October 4, 2023 modified city carrier job offer which she accepted "under duress" on October 26, 2023. She asserted that the October 4, 2023 job offer was amended on October 20, 2023 to more-closely comport with Dr. Khatri's October 19, 2023 Form OWCP-5c, including restrictions of no more than four hours a day of kneeling, and squatting. Appellant disagreed with the amended October 4, 2023 job offer as it did not include the four-hour restriction on climbing.

OWCP subsequently received a December 14, 2023 report from Dr. Khatri diagnosing acute post-traumatic headache, sprain of the neck, sprain of the thoracic spine, and sprain of the left wrist and hand. On July 13, 2024, Dr. Khatri repeated his diagnoses of acute post-traumatic headache, sprain of the neck, sprain of the thoracic spine, and sprain of the left wrist and hand.

On October 9, 2024, appellant requested reconsideration. She asserted that she accepted the amended October 4, 2023 job offer on October 26, 2023, but that the employing establishment did not provide her with work within these restrictions and that she had not received wage-loss compensation. Appellant explained that on October 20, 2023 the employing establishment emailed her an updated version of the October 4, 2023 job offer, but that it had refused to modify the date of the position to October 20, 2023, and reported to OWCP that she had denied the job offer. She alleged that when the job offer was modified, the date of the offer had to be modified as well, and that she had improperly been denied benefits since October 2023.

In an October 22, 2024 report, Dr. Khatri recounted appellant's increased symptoms of recurring work-related pain in the left wrist and neck with intense headaches. He diagnosed neck strain, left wrist and hand sprain, thoracic spine sprain, acute post-traumatic headache, and concussion with loss of consciousness. In a note of even date, Dr. Khatri prescribed additional physical therapy.

On October 25 and 28, 2024, Tyson Crisman, a physical therapist, provided treatment.

On November 11, 2024, appellant filed a claim for wage-loss compensation (Form CA-7) claiming intermittent disability from work during the period October 19 through November 1, 2024.

In a November 19, 2024 development letter, OWCP informed appellant of the deficiencies of her disability claim. It advised her of the type of medical evidence needed to establish her claim and afforded her 30 days to submit the necessary evidence.³

Subsequently, Mr. Crisman treated appellant on November 14 and 26, 2024.

On November 28, 2024, appellant again requested reconsideration of the November 29, 2023 termination decision. She asserted that the employing establishment provided her with a modified version of the October 4, 2023 job offer on October 20, 2023, which included additional physical requirements. Appellant presented both job offers to her manager, and the employing establishment denied that the October 4, 2023 job offer had been modified.

Appellant submitted a Form OWCP-5c dated November 15, 2023, wherein Dr. Khatri continued to indicate that appellant had restrictions on pushing, pulling, lifting, squatting, kneeling, and climbing.

By decision dated December 9, 2024, OWCP denied appellant's request for reconsideration of the merits of the 20 C.F.R. § 10.500(a) termination, pursuant to 5 U.S.C. § 8128(a).

On January 6, 2025, Dr. Khatri related appellant's increased symptoms of recurring work-related pain in the left wrist and neck with intense headaches. He diagnosed neck strain, left wrist and hand sprain, thoracic spine sprain, acute post-traumatic headache, and concussion with loss of consciousness. In a January 9, 2025 report, Dr. Khatri repeated his diagnoses.

On February 5, 2025, OWCP expanded the acceptance of appellant's claim to include cervical and lumbar disc degeneration.

By decision dated February 11, 2025, OWCP denied the remaining claimed intermittent disability from work for the period October 23 through November 1, 2024, causally related to her accepted November 7, 2022 employment injury.

LEGAL PRECEDENT -- ISSUE 1

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

³ On November 19, 2024, OWCP authorized wage-loss compensation for 1.98 hours on October 25, 2024.

⁴ 5 U.S.C. § 8128(a); *see V.W.*, Docket No. 24-0750 (issued September 11, 2024); *L.D.*, Docket No. 18-1468 (issued February 11, 2019); *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).

⁵ 20 C.F.R. § 10.606(b)(3); *see V.W., id.*; *see M.S.*, Docket No. 18-1041 (issued October 25, 2018); *L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

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 The Board has held that the submission of evidence or argument which repeats or duplicates evidence or argument already in the case record,⁹ or does not address the particular issue involved, does not constitute a basis for reopening a case.¹⁰

ANALYSIS -- ISSUE 1

The Board finds that OWCP improperly denied appellant's request for reconsideration of the merits of the 20 C.F.R. § 10.500(a) termination.

On reconsideration, appellant submitted additional medical evidence from Dr. Khatri regarding appellant's physical restrictions, which was not previously of record. The underlying issue in this case is whether OWCP met its burden of proof to terminate appellant's wage-loss compensation, pursuant to 20 C.F.R. § 10.500(a), which is medical in nature. As appellant has provided relevant and pertinent new evidence not previously considered by OWCP, the submission of this evidence requires reopening of appellant's claim for merit review, pursuant to the third above-noted requirement of 20 C.F.R. § 10.606(b)(3).¹¹

The Board shall, therefore, set aside OWCP's December 9, 2024 decision and remand the case for an appropriate merit decision.

LEGAL PRECEDENT -- ISSUE 2

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim, including that any disability or specific condition for which compensation is claimed is causally related to the employment injury.¹² Whether a particular

⁶ 20 C.F.R. § 10.607(a). OWCP's procedures provide that 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). The right to reconsideration within one year also accompanies any subsequent merit decision on the issues, including any merit decision by the Board. *Id.* at Chapter 2.1602.4a (September 2020).

⁷ *Id.* at § 10.608(a); *see D.C.*, Docket No. 19-0873 (issued January 27, 2020); *M.S.*, 59 ECAB 231 (2007).

⁸ *Id.* at § 10.608(b); *see T.V.*, Docket No. 19-1504 (issued January 23, 2020); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

⁹ *J.N.*, Docket No. 23-0974 (issued May 14, 2024); *N.L.*, Docket No. 18-1575 (issued April 3, 2019); *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

¹⁰ *T.E.*, Docket No. 24-0575 (issued July 31, 2024); *M.K.*, Docket No. 18-1623 (issued April 10, 2019); *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

¹¹ *See M.K.*, Docket No. 25-0022 (issued November 21, 2024); *B.D.*, Docket No. 23-0240 (issued December 13, 2023); *R.L.*, Docket No. 21-0220 (issued October 19, 2021); *L.M.*, Docket No. 20-1185 (issued January 13, 2021); *C.H.*, Docket No. 17-1065 (issued December 14, 2017); *J.W.*, Docket No. 18-0822 (issued July 1, 2020); *D.M.*, Docket No. 10-1844 (issued May 10, 2011); *Kenneth R. Mroczkowski*, 40 ECAB 855 (1989).

¹² *See C.B.*, Docket No. 20-0629 (issued May 26, 2021); *D.S.*, Docket No. 20-0638 (issued November 17, 2020); *B.O.*, Docket No. 19-0392 (issued July 12, 2019); *D.W.*, Docket No. 18-0644 (issued November 15, 2018); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

injury causes an employee to become disabled from work, and the duration of that disability, are medical issues that must be proven by a preponderance of probative and reliable medical opinion evidence.¹³

Under FECA the term “disability” means the incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury. Disability is thus not synonymous with physical impairment, which may or may not result in an incapacity to earn wages. An employee who has a physical impairment causally related to a federal employment injury, but who nevertheless has the capacity to earn the wages he or she was receiving at the time of injury, has no disability as that term is used in FECA.¹⁴

Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical evidence.¹⁵ Rationalized medical evidence is medical evidence, which includes a physician’s detailed medical opinion on the issue of whether there is a causal relationship between the claimant’s claimed disability and the accepted employment injury. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the claimed period of disability and the accepted employment injury.¹⁶

For each period of disability claimed, the employee has the burden of proof to establish that he or she was disabled from work as a result of the accepted employment injury.¹⁷ The Board will not require OWCP to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow an employee to self-certify his or her disability and entitlement to compensation.¹⁸

ANALYSIS -- ISSUE 2

The Board finds that appellant has not met her burden of proof to establish the remaining claimed intermittent disability from work for the period October 23 through November 1, 2024, causally related to her accepted November 7, 2022 employment injury.

In October 22, 2024 notes, Dr. Khatri recounted appellant’s increased symptoms of recurring work-related pain in the left wrist and neck with intense headaches and diagnosed neck

¹³ 20 C.F.R. § 10.5(f); *B.O.*, *id.*; *N.M.*, Docket No. 18-0939 (issued December 6, 2018).

¹⁴ *Id.*

¹⁵ *J.M.*, Docket No. 19-0478 (issued August 9, 2019).

¹⁶ *D.S.*, Docket No. 18-0353 (issued February 18, 2020); *T.K.*, Docket No. 18-1239 (issued May 29, 2019); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

¹⁷ 20 C.F.R. § 10.501(a); *C.E.*, Docket No. 19-1617 (issued June 3, 2020); *M.M.*, Docket No. 18-0817 (issued May 17, 2019); *see T.A.*, Docket No. 18-0431 (issued November 7, 2018); *see also Amelia S. Jefferson*, 57 ECAB 183 (2005).

¹⁸ *T.G.*, Docket No. 23-0851 (issued October 31, 2023); *J.R.*, Docket No. 23-0215 (issued July 28, 2023); *K.G.*, Docket No. 22-1358 (issued June 27, 2023); *B.M.*, Docket No. 19-1075 (issued February 10, 2021); *R.A.*, Docket No. 19-1752 (issued March 25, 2020); *A.W.*, Docket No. 18-0589 (issued May 14, 2019); *Fereidoon Kharabi*, 52 ECAB 291, 292 (2001).

strain, left wrist and hand sprain, thoracic spine sprain, acute post-traumatic headache, and concussion with loss of consciousness. He did not offer an opinion as to whether appellant was disabled from work during the claimed period causally related to the accepted November 7, 2022 employment injury.¹⁹ Therefore, this evidence is insufficient to establish appellant's disability claims.

Appellant also submitted physical therapy notes dated in October 2024. However, certain healthcare providers such as physical therapists are not considered physicians as defined under FECA, and their reports do not constitute competent medical evidence.²⁰

As the medical evidence of record is insufficient to establish the remaining claimed intermittent disability from work for the period October 23 through November 1, 2024 as causally related to her accepted November 7, 2022 employment injury, the Board finds that appellant has not met her burden of proof.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that OWCP improperly denied appellant's request for reconsideration of the merits of the 20 C.F.R. § 10.500(a) termination. The Board further finds that appellant has not met her burden of proof to establish the remaining claimed intermittent disability from work for the period October 23 through November 1, 2024, causally related to her accepted November 7, 2022 employment injury.

¹⁹ *T.H.*, Docket No. 23-0811 (issued February 13, 2024); *F.B.*, Docket No. 22-0679 (issued January 23, 2024); *Y.S.*, Docket No. 19-1572 (issued March 12, 2020); *see also L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

²⁰ Section 8102(2) of FECA provides that the term 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). *See also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (May 2023); *A.M.*, Docket No. 20-1575 (issued May 24, 2021) (physical therapists are not physicians as defined by 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).

ORDER

IT IS HEREBY ORDERED THAT the December 9, 2024 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board. The February 11, 2025 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 22, 2025
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