

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

P.M., Appellant)
and) Docket No. 25-0801
U.S. POSTAL SERVICE, SAN BERNARDINO) Issued: December 5, 2025
PROCESSING & DISTRIBUTION CENTER,)
San Bernardino, CA, Employer)

)

Appearances:

Alan J. Shapiro, Esq., for the appellant¹
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 August 25, 2025 appellant, through counsel, filed a timely appeal from an August 7, 2025 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from the last merit decision dated September 5, 2024 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.

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.*

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 December 27, 2023 appellant, then a 58-year-old mail handler, filed an occupational disease claim (Form CA-2) alleging that she was exposed to COVID-19 due to factors of her federal employment. She indicated that she did not know if any of her coworkers were or had been infected with COVID-19. Appellant noted that she first became aware of the condition on December 23, 2023 and realized its relation to her federal employment on December 27, 2023. On the reverse side of the claim form, the employing establishment noted that appellant first reported her condition on December 26, 2023 and that her last date of exposure was December 23, 2023.

In support of her claim, appellant submitted a polymerase chain reaction (PCR) test result, dated December 27, 2023, indicating that she had tested positive for COVID-19.

In a development letter dated January 4, 2024 OWCP informed appellant of the deficiencies of her claim. It advised her of the type of additional factual and medical information needed and provided a questionnaire for her completion. OWCP afforded appellant 60 days to respond. In a separate development letter of even date, OWCP requested that the employing establishment provide additional information regarding appellant's claim, including comments from a knowledgeable supervisor. It afforded the employing establishment 30 days to respond.

In a statement dated January 15, 2024, T.R., a supervisor, related that appellant alleged that she had contracted COVID-19 from a coworker who had tested positive for COVID-19. She noted that there appeared to be a two-day gap from when appellant stopped working and a four-day gap from when each employee tested positive. While both employees worked in the same area, they did not work side by side or necessarily interact with each other.

In a follow-up letter dated February 1, 2024, OWCP advised appellant that it had conducted an interim review, and the evidence remained insufficient to establish her claim. It noted that she had 60 days from the January 4, 2024 letter to submit the necessary evidence. OWCP further advised that if the evidence was not received during this time, it would issue a decision based on the evidence contained in the record. No additional evidence was received.

By decision dated March 20, 2024, OWCP denied appellant's occupational disease claim, finding that she had not established the factual component of her COVID-19 condition claim, as she did not provide a factual statement sufficiently explaining the details surrounding her exposure to COVID-19 at work. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On March 26, 2024 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. A hearing was held on June 26, 2024.

By decision dated September 5, 2024, OWCP's hearing representative affirmed the March 20, 2024 decision.

OWCP subsequently received an April 15, 2024 report from Dr. Anthony T. Fenison, a Board-certified orthopedic surgeon, who diagnosed chronic right shoulder cuff tendinopathy, early adhesive capsulitis, and right shoulder internal derangement with labral tear. He related a history of a May 15, 2023 injury, summarized medical treatment pertaining to a January 24, 2018 injury, and provided right shoulder physical examination findings.

On May 12, 2025 appellant, through counsel, requested reconsideration.

By decision dated August 7, 2025, 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.³

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.⁴

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.⁵ If it chooses to grant reconsideration, it reopens and reviews the case on its merits.⁶ 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.⁷

³ 5 U.S.C. § 8128(a); *see L.C.*, Docket No. 25-0444 (issued April 23, 2025); *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).

⁴ 20 C.F.R. § 10.606(b)(3); *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).

⁵ *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.

⁶ *Id.* at § 10.608(a); *see D.C.*, Docket No. 19-0873 (issued January 27, 2020); *M.S.*, 59 ECAB 231 (2007).

⁷ *Id.* at § 10.608(b); *see P.V.*, Docket No. 25-0547 (issued June 23, 2025); *T.V.*, Docket No. 19-1504 (issued January 23, 2020); *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).

In her May 12, 2025 request for reconsideration, appellant neither alleged nor demonstrated that OWCP erroneously applied or interpreted a specific point of law. Additionally, she did not advance a relevant legal argument not previously considered by OWCP. Consequently, appellant is not entitled to further review of the merits of her claim based on either the first or second above-noted requirements under 20 C.F.R. § 10.606(b)(3).⁸

The evidence submitted on reconsideration consisted of an April 15, 2024 report from Dr. Fenison diagnosing chronic right shoulder cuff tendinopathy, early adhesive capsulitis, and right shoulder internal derangement with labral tear. However, this report is irrelevant to the underlying issue of whether appellant was exposed to COVID-19 at work. The Board has held that the submission of evidence which does not address the underlying issue involved does not constitute a basis for reopening a case.⁹ As appellant failed to provide relevant and pertinent new evidence, she is not entitled to a merit review based on the third above-noted requirement under 20 C.F.R. § 10.606(b)(3).

The Board, accordingly, finds that as 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).

⁸ *T.K.*, Docket No. 25-0644 (issued September 17, 2025); *P.V.*, *id.*; *G.Q.*, Docket No. 18-1697 (issued March 21, 2019); *Alan G. Williams*, 52 ECAB 180 (2000).

⁹ *T.K.*, *id.*; *W.P.*, Docket No. 25-0367 (issued April 4, 2025); *P.G.*, Docket No. 24-0404 (issued September 17, 2024); *C.C.*, Docket No. 22-1240 (issued June 27, 2023); *D.P.*, Docket No. 13-1849 (issued December 19, 2013); *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 7, 2025 is affirmed.

Issued: December 5, 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