

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

M.S., Appellant)
and) Docket No. 25-0872
DEPARTMENT OF JUSTICE, FEDERAL)
BUREAU OF PRISONS, FEDERAL)
CORRECTIONAL INSTITUTION LA TUNA,)
Anthony, TX, Employer)
Issued: December 15, 2025

)

Appearances:

Frank Lopez, 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 September 3, 2025 appellant, through her representative, filed a timely appeal from an August 7, 2025 nonmerit decision of the Office of Workers' Compensation Programs (OWCP).² As more than 180 days has elapsed from the last merit decision, dated October 28, 2024, to the

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 The Board notes that, following the August 7, 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.*

filings of this appeal, pursuant to the Federal Employees' Compensation Act³ (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).

FACTUAL HISTORY

On March 28, 2017 appellant, then a 52-year-old unit manager, filed a traumatic injury claim (Form CA-1) alleging that on March 22, 2017 she sustained an injury to the top of her left foot and right arm when she tripped while ascending stairs and fell between the rails while in the performance of duty. She stopped work on March 22, 2017. OWCP accepted the claim for strain of intrinsic muscle and tendon at left ankle and foot level, and injury to muscle, fascia and tendon at right arm and shoulder. OWCP authorized right shoulder rotator cuff repair surgery, which was performed on October 4, 2017.

On May 14, 2024 appellant filed a notice of recurrence (Form CA-2a) alleging that she sustained a recurrence of the need for medical treatment, commencing August 22, 2018 due to her accepted March 22, 2017 employment injury. She noted that she experienced pain around her ankle and foot, was limited in walking, and was constantly falling, including an April 2024 trip and fall while ascending stairs and a January 2024 fall while crossing a main intersection.

In a May 15, 2024 development letter, OWCP informed appellant of the deficiencies of her recurrence 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.

Following OWCP's development letter, appellant submitted additional medical evidence in support of her claim.

By decision dated August 7, 2024, OWCP denied appellant's claim for a recurrence of the need for medical treatment, finding that the medical evidence of record was insufficient to establish a need for medical treatment due to a worsening of the accepted work-related conditions, without intervening cause.

On September 6, 2024 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review. In support thereof, she submitted medical evidence.

By decision dated October 28, 2024, OWCP's hearing representative affirmed the August 7, 2024 decision.

³ 5 U.S.C. § 8101 *et seq.*

On July 30, 2025 appellant requested reconsideration. No evidence was submitted with her request.

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.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

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).⁹

On July 30, 2025 appellant filed a request for reconsideration of an August 7, 2024 OWCP decision denying her recurrence claim. However, she neither established that OWCP erroneously applied or interpreted a specific point of law, nor did she advance a relevant legal argument not

⁴ 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).

⁵ 20 C.F.R. § 10.606(b)(3); *see R.C.*, *id.*; *L.D.*, *id.*

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

previously considered by OWCP. Accordingly, the Board 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).¹⁰

The underlying issue on reconsideration is whether appellant has met her burden of proof to establish a recurrence of the need for medical treatment, commencing August 22, 2018, causally related to her accepted March 22, 2017 employment injury. This is a medical question that requires rationalized medical opinion evidence to resolve the issue.¹¹ Appellant, however, failed to submit any evidence with her reconsideration request. Because she 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).

¹⁰ See *L.W.*, Docket No. 21-0607 (issued October 18, 2022).

¹¹ *R.M.*, Docket No. 21-0963 (issued April 19, 2023).

ORDER

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

Issued: December 15, 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