

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

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<b>D.R., Appellant</b>	)	
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<b>and</b>	)	<b>Docket No. 25-0902</b>
	)	<b>Issued: December 30, 2025</b>
<b>U.S. POSTAL SERVICE, BOGGS ROAD POST OFFICE, Duluth, GA, Employer</b>	)	
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*Appearances:*

*Wayne Johnson, Esq.*, for the appellant<sup>1</sup>

*Office of Solicitor*, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge

JANICE B. ASKIN, Judge

VALERIE D. EVANS-HARRELL, Alternate Judge

On September 22, 2025 appellant filed a timely appeal from a March 26, 2025 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days elapsed from OWCP's last merit decision, dated June 29, 2023, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of this case.<sup>3</sup>

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<sup>1</sup> 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.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

<sup>3</sup> The Board notes that, following the March 26, 2025 decision, OWCP received additional evidence. 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 his claim, pursuant to 5 U.S.C. § 8128(a).

## **FACTUAL HISTORY**

On October 11, 2019 appellant, then a 39-year-old city carrier assistant, filed a traumatic injury claim (Form CA-1) alleging that on September 17, 2019 he sustained injuries to his neck, right shoulder, and lower back when the mail truck he was operating was struck by an oncoming vehicle while in the performance of duty. He stopped work on the date of injury. On December 2, 2019 OWCP accepted the claim for a lower back strain. It subsequently expanded its acceptance of the claim to include intervertebral lumbar disc disorders with radiculopathy and lumbar disc displacement at L4-5.

On August 13 and 19, 2020, and July 7, 2021 appellant filed claims for compensation (Form CA-7) for disability from work for the period July 18, 2020 through July 2, 2021. In support of his claim, he submitted medical reports by Dr. Craig Mines, a Board-certified orthopedic surgeon, dated August 24, 2020 through August 11, 2021, who indicated that appellant related complaints of significant low back pain with radiation to the lower extremities. Dr. Mines documented his physical examination findings and diagnosed lumbar intervertebral disc disorder with radiculopathy, low back pain, and lumbar sprain. He indicated that appellant had been cleared for sedentary or light-duty work, but that the employing establishment was not able to accommodate him as he had pain even while sitting, so he deemed appellant totally disabled.

OWCP also received a magnetic resonance imaging scan of the lumbar spine dated July 7, 2021 and physical therapy reports.

By decision dated October 27, 2020, OWCP denied appellant's claim for disability for the period July 20 through August 14, 2020. By decision dated October 13, 2021, it denied his disability claim for the period August 15, 2020 through July 2, 2021, finding that the medical evidence of record was insufficient to establish disability from work during the claimed period due to the accepted September 17, 2019 employment injury.

On October 27, 2021 appellant, through counsel, requested reconsideration of OWCP's October 27, 2020 decision.

By decision dated November 10, 2021, OWCP denied appellant's request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

On November 12, 2021 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review with respect to the October 13, 2021 decision, which was held on March 17, 2022. OWCP received reports of Dr. Mines dated December 17, 2021 and February 11 and March 25, 2022, who continued to indicate that appellant was totally disabled.

By decision dated May 31, 2022, OWCP's hearing representative affirmed the October 13, 2021 decision denying appellant's disability claim for the period August 15, 2020 through July 2, 2021.

OWCP continued to receive evidence, including an August 24, 2021 medical report by Dr. Myung J. Yoo, Board-certified in physiatry, neuromuscular medicine, pain medicine, and sports medicine, who noted appellant's complaints of back pain, weakness, and numbness and documented physical examination findings. Dr. Yoo performed an electromyography and nerve conduction velocity study, which was suggestive of left-sided L5 and S1 radiculopathy.

On May 31, 2023 appellant, through counsel, requested reconsideration of OWCP's May 31, 2022 decision.

By decision dated June 29, 2023, OWCP denied modification of the May 31, 2022 decision, finding that the medical evidence of record was insufficient to establish disability from work during the period August 15, 2020 through July 2, 2021 due to the accepted September 17, 2019 employment injury.

On July 1, 2024 appellant, through counsel, requested reconsideration of OWCP's June 29, 2023 decision. Counsel submitted a brief in which he reviewed the medical evidence previously of record and argued that the medical evidence established that appellant was disabled for work.

By decision dated July 9, 2024, OWCP denied appellant's request for reconsideration, finding that it was untimely filed and failed to demonstrate clear evidence of error.

On January 6, 2025 appellant, through counsel, appealed to the Board. By order dated February 10, 2025, the Board set aside the July 9, 2024 decision and remanded the case to OWCP to apply the appropriate standard of review for timely requests for reconsideration as set forth at 20 C.F.R. § 10.606(b)(3).<sup>4</sup>

By decision dated March 26, 2025, OWCP denied appellant's request for reconsideration of the merits of the 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.<sup>5</sup>

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

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<sup>4</sup> *Order Remanding Case*, Docket No. 25-0129 (issued February 10, 2025).

<sup>5</sup> 5 U.S.C. § 8128(a); see *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).

OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.<sup>6</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>7</sup> If it chooses to grant reconsideration, it reopens and reviews the case on its merits.<sup>8</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>9</sup>

### ANALYSIS

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

On reconsideration, counsel submitted arguments that appellant's medical evidence was sufficient to establish a claim. However, he did not demonstrate that OWCP erroneously applied or interpreted a specific point of law, nor did he advance a relevant legal argument not previously considered by OWCP. Accordingly, the Board finds that appellant is not entitled to a review of the merits of his claim based on either the first or second above-noted requirements under 20 C.F.R. § 10.606(b)(3).<sup>10</sup>

Appellant also did not submit any relevant and pertinent new evidence with his July 1, 2024 request for reconsideration. Therefore, he 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).<sup>11</sup>

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.<sup>12</sup>

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<sup>6</sup> 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).

<sup>7</sup> 20 C.F.R. § 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.

<sup>8</sup> *Id.* at § 10.608(a); *see D.C.*, Docket No. 19-0873 (issued January 27, 2020); *M.S.*, 59 ECAB 231 (2007).

<sup>9</sup> *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).

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

<sup>11</sup> 20 C.F.R. § 10.606(b)(3).

<sup>12</sup> *See D.R.*, Docket No. 18-0357 (issued July 2, 2018); *A.K.*, Docket No. 09-2032 (issued August 3, 2010); *M.E.*, 58 ECAB 694 (2007); *Susan A. Filkins*, 57 ECAB 630 (2006).

**CONCLUSION**

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 26, 2025 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 30, 2025  
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