

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

S.P., Appellant

and

**U.S. POSTAL SERVICE, BERKELEY
HEIGHTS POST OFFICE, Berkeley Heights, NJ,
Employer**

**Docket No. 24-0802
Issued: July 11, 2025**

Appearances:

John J. Rachinsky, 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 July 31, 2024, appellant, through counsel, filed a timely appeal from a February 8, 2024 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from the last merit decision dated February 8, 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 On appeal, counsel submitted additional evidence. However, the Board's *Rules of Procedures* 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 June 30, 2022, appellant, then a 34-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on June 28, 2022 she injured her right knee when she was attacked by acting supervisor, A.W., in the performance of duty.

On June 28, 2022, the employing establishment issued an authorization for examination and/or treatment (Form CA-16) for the claimed June 28, 2022 injury. It checked that there was no doubt that the employee's condition had been caused by an injury in the performance of duty or related to her employment duties.

OWCP received a June 29, 2022 work excuse note, wherein a provider with an illegible signature indicated that appellant had been seen in the emergency department that day and requesting that appellant be excused from work on June 29 and 30, 2022.

OWCP also received a June 29, 2022 local police report regarding an alleged June 28, 2022 assault by A.W., with the victim information redacted. The police officer met with appellant on June 29, 2022 where she asserted that A.W. threw a package at her, threatened her, and grabbed her hair. A physical altercation ensued with A.W. causing appellant to sprain her right knee. Appellant related that she had contacted employing establishment management, who were conducting an internal investigation.

In a statement dated June 30, 2022, A.W. asserted that, on the day in question, appellant threw a package at her which slid across the desk and hit her in the torso. She then threw the package back at appellant, and appellant remarked, "You lucky the package didn't hit me." Later that evening, appellant was on the telephone and stated that she was going to follow A.W. home and would beat her. She noted that appellant waited in her sport utility vehicle in the parking lot and followed her out of the lot, but not all the way home.

OWCP received a copy of a complaint for an assault on June 28, 2022 alleging that A.W. started a fight at work with appellant, pulled her hair, and caused appellant to fall, injuring her knee.

In a report dated July 8, 2022, Dr. Matthew Griffin, a Board-certified internist, described the injury as occurring on June 28, 2024 when a coworker fell on appellant's bent knee. He diagnosed right knee acute meniscal tear, right knee medial collateral ligament sprain, and bilateral knee tricompartmental osteoarthritis.

On July 20, 2022, Dr. David A. Porter, a Board-certified orthopedic surgeon, diagnosed right medial meniscus tear and referred appellant for physical therapy.

In a statement dated July 29, 2022, E.A., the postmaster, noted that A.W. denied that she attacked appellant. Furthermore, neither the police nor postal inspector had been contacted by appellant until the following day and no incident had been reported to her. Also, the postal inspector completed his report resulting in no findings. She noted that no criminal charges have

been filed against A.W. although a civil lawsuit had been filed. E.A. related that A.W. claimed appellant had been harassing her for some time and had followed her home. Also, inspectors had been contacted regarding appellant's threats and harassment toward A.W.

In a development letter dated July 29, 2022, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of evidence necessary and provided a questionnaire for her completion. OWCP afforded appellant 30 days to respond.

In response, appellant submitted a June 28, 2022 email from appellant to S.F., wherein appellant recounted that, at 4:30 p.m., A.W. threw a package at her. Later that day, A.W. asked appellant "what's up now" and began attacking her. She alleged that she heard a pop in her knee when A.W. sat on her knee.

OWCP also continued to receive additional medical evidence.

By decision dated September 9, 2022, OWCP denied appellant's claim, finding that she had not established that her alleged injury occurred in the performance of duty.

Following the denial of her claim, OWCP continued to receive medical evidence.

In a statement dated October 31, 2022, appellant asserted that there was no personal issue between her and A.W., but that there has always been a work-related issue from when she and A.W. started working approximately a year and one-half ago. She alleged that there had been various incidents with A.W. harassing and threatening her, and that A.W. attacked her on June 28, 2022. Appellant alleged that she had proof and witnesses of the alleged attack by A.W. on June 28, 2022.

On October 31, 2022, OWCP received a May 24, 2022 statement from R.H. who described an incident on May 21, 2022 where appellant and A.W. got into a heated discussion and argument. It also received a statement dated October 30, 2022 from J.B. describing the June 28, 2022 incident. J.B. stated that she had been on the telephone with appellant and overheard a female inviting appellant to fight. Subsequently she heard appellant's telephone fall down and appellant asking the female to get off her hair. Appellant came to J.B.'s house after work and she told appellant to go to the emergency room for treatment.

On November 14, 2022, appellant requested reconsideration.

By decision dated February 8, 2023, OWCP denied modification, finding that the alleged incident was a result of personal difficulty and was not in the performance of duty.

Following the February 8, 2023 decision, OWCP received additional medical evidence and appellant's authorization for counsel to represent her before OWCP.

On February 5, 2024, appellant requested reconsideration. No further evidence was received.

By decision dated February 8, 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 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 OWCP 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, it will deny the request for reconsideration.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).

Appellant's reconsideration request did not show that OWCP erroneously applied or interpreted a specific point of law and did not advance a relevant legal argument not previously considered by OWCP. Consequently, she is 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

Following the February 8, 2023 merit decision, OWCP continued to receive medical evidence. Appellant did not submit any new factual evidence with her request for reconsideration. As the underlying issue is factual in nature, the medical evidence is irrelevant. The Board has held that the submission of evidence which does not address the particular issue involved does not

⁴ 5 U.S.C. § 8128(a); *see T.K.*, Docket No. 23-0766 (issued May 8, 2025); *L.J.*, Docket No. 22-0348 (issued April 28, 2023); *T.K.*, Docket No. 19-1700 (issued April 30, 2020); *L.D.*, Docket No. 18-1468 (issued February 11, 2019); *W.C.*, 59 ECAB 372 (2008).

⁵ 20 C.F.R. § 10.606(b)(3); *see T.K.*, *id.*; *P.M.*, Docket No. 20-0780 (issued November 24, 2020); *L.D.*, *id.*; *see also L.G.*, Docket No. 09-1517 (issued March 3, 2010); *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. For merit decisions issued on or after August 29, 2011, a request for reconsideration must be received by OWCP within one year of OWCP's decision for which review is sought. 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); *T.K.*, *supra* note 4; *F.V.*, Docket No. 18-0230 (issued May 8, 2020); *see also M.S.*, 59 ECAB 231 (2007).

⁸ *Id.* at § 10.608(b); *T.K.*, *id.*; *S.K.*, Docket No. 22-0248 (issued June 27, 2022); *B.S.*, Docket No. 20-0927 (issued January 29, 2021); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

⁹ *See D.B.*, Docket No. 22-1241 (issued April 27, 2023); *M.O.*, Docket No. 19-1677 (issued February 25, 2020); *C.B.*, Docket No. 18-1108 (issued January 22, 2019).

constitute a basis for reopening a case.¹⁰ Appellant did not submit any relevant and pertinent new evidence not previously considered by OWCP in support of her reconsideration request.¹¹ Therefore, appellant was not entitled to a review of the merits based on the third requirement under 20 C.F.R. § 10.606(b)(3).

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.¹²

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).¹³

¹⁰ See *D.C.*, Docket No. 21-0947 (issued February 6, 2023); *F.H.*, Docket No. 20-0309 (issued January 26, 2021); *T.T.*, Docket No. 19-0319 (issued October 26, 2020); *Alan G. Williams*, 52 ECAB 180 (2000); *Jacqueline M. Nixon-Steward*, 52 ECB 140 (2000); *Edward Matthew Diekemper*, 31 ECAB 224-25 (1979).

¹¹ *Supra* note 8.

¹² *M.E.*, 58 ECAB 694 (2007); *Susan A. Filkins*, 57 ECAB 630 (2006) (when a request for reconsideration does not meet at least one of the three requirements enumerated under 20 C.F.R. § 10.606(b), OWCP will deny the request without reopening the case for a review on the merits).

¹³ The Board notes that the employing establishment provided an undated Form CA-16. A completed Form CA-16 authorization may constitute a contract for payment of medical expenses to a medical facility or physician, when properly executed. The form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. See 20 C.F.R. § 10.300(c); *S.G.*, Docket No. 23-0552 (issued August 28, 2023); *J.G.*, Docket No. 17-1062 (issued February 13, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).

ORDER

IT IS HEREBY ORDERED THAT the February 8, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 11, 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