

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 his claim, pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On June 18, 1991, appellant, then a 34-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging on that date he injured his upper back, neck, and head when his parked postal vehicle was struck from behind while in the performance of duty. OWCP accepted the claim for acute cervical strain.

On September 3, 1996, appellant filed a notice of recurrence (Form CA-2a) alleging that on April 25, 1996 he required additional medical treatment of his accepted employment injury. OWCP accepted this recurrence claim and paid appellant wage-loss compensation on the periodic rolls commencing April 25, 1996.

In a December 10, 2020 report, Dr. William Neway, an osteopath, related appellant's history of a rear-end vehicle collision in 1991 and noted his 30-year history of cervical and upper extremity symptoms. He reviewed a cervical magnetic resonance imaging (MRI) scan and observed central canal stenosis at C3-4, C4-5, and C5-6 with bilateral foraminal stenosis at C4-5 and C5-6. Dr. Neway diagnosed cervical radiculopathy and cervical spine degeneration.

On March 11, 2022, OWCP referred appellant, along with the medical record, a statement of accepted facts (SOAF), and a series of questions to Dr. Jon D. Donshik, a Board-certified orthopedic surgeon, for a second opinion evaluation.

In an April 5, 2022 report, Dr. Donshik reviewed the SOAF, medical treatment records, and electrodiagnostic studies, and performed a physical examination. He reported no evidence of any sensory or motor deficit in the bilateral upper extremities. Dr. Donshik opined that appellant's subjective complaints greatly outweighed his objective findings. He diagnosed neck pain and cervical radiculopathy and concluded that appellant could return to his date-of-injury position.

On May 18, 2022, OWCP received an April 4, 2022 report by Dr. Neway, who recounted that appellant had no use of his hands, weakness, balance changes, intermittent dizziness, and was unable to look to the left. On physical examination he found neck rotation to 70 degrees in either direction with no spasm in the cervical paraspinal muscles.

On June 8, 2022, OWCP requested a supplemental report from Dr. Donshik providing all diagnoses and medical reasoning in support of his conclusions.³

In a September 22, 2022 supplemental report, Dr. Donshik diagnosed persistent neck pain and degenerative discs in the cervical spine. He determined that these conditions were not the result of the 1991 employment injury which was accepted for cervical strain. Dr. Donshik opined

³ On June 27, 2022, appellant underwent a cervical MRI scan, which demonstrated disc bulges at C3-4, C4-5, and a disc herniation at C5-6.

that the accepted condition had resolved years prior to his examination, and that there were no current diagnoses causally related to the work injury. He related that acute cervical strains did not last 30 years and that continuation of this condition was “biologically impossible.” Dr. Donshik opined that appellant could return to his date-of-injury position without restrictions.

On October 20, 2022, OWCP proposed to terminate appellant’s wage-loss compensation and medical benefits. It found that Dr. Donshik’s reports were entitled to the weight of the medical evidence. OWCP afforded appellant 30 days to submit additional evidence or argument in writing if he disagreed with the proposed termination.

OWCP continued to receive evidence. Dr. Neway completed treatment notes on June 9, September 22, and November 2, 2022 diagnosing cervical radiculopathy and cervical spine degeneration.

Appellant submitted a November 2, 2022 narrative statement disagreeing with the proposed termination.

On February 9, 2023, OWCP referred appellant, along with the medical record and SOAF to Dr. Donshik for an additional second opinion evaluation and report.

In a March 10, 2023 report, Dr. Donshik reviewed the medical evidence and performed a physical examination. He observed restricted range of motion in the cervical spine with diffuse tenderness to palpation. Dr. Donshik reported no muscle spasms in the cervical spine. He recounted appellant’s significant pain with arm motion and found no evidence of any sensory or motor deficit in the bilateral upper extremities. Dr. Donshik opined that there was no evidence that the accepted employment injury caused or aggravated his cervical disc conditions and that these conditions were more consistent with degenerative pathology. He diagnosed a cervical strain but found that appellant’s continued complaints were no longer related to the accepted June 18, 1991 employment-related cervical strain, but rather were the result of degenerative pathology in combination with symptom magnification. Dr. Donshik determined that there were no current diagnoses causally connected to the work injury. He found that appellant could return to work in his date-of-injury position with no restrictions.

By decision dated May 26, 2023, OWCP terminated appellant’s wage-loss compensation, effective May 26, 2023.

OWCP continued to receive evidence. In a March 20, 2023 note, Dr. Neway repeated his diagnoses of cervical radiculopathy and cervical spine degeneration. On June 9, 2023, Dr. Fernando L. Narvaez, a Board-certified family medicine practitioner, examined appellant and diagnosed cervical spine degeneration, herniated cervical disc with radiculopathy, and cervical radiculopathy.

On August 15, 2023, appellant requested reconsideration and submitted additional evidence. In an August 9, 2023 attending physician’s report (Form CA-20) Dr. Neway diagnosed cervical disc degeneration and indicated by checking a box marked “Yes” that the condition was caused or aggravated by the work-related motor vehicle accident.

By decision dated November 9, 2023, OWCP denied modification.

OWCP continued to receive evidence. Dr. Carlos Casas, a Board-certified neurosurgeon, completed a May 15, 2024 treatment note and listed appellant's symptoms of chronic and persistent cervicgia radiating into the bilateral upper extremities. He reviewed electrodiagnostic studies and performed a physical examination noting a limited upper extremity examination due to poor effort secondary to pain and symptoms of hypoesthesia in the bilateral upper extremities not following a particular dermatomal distribution. Dr. Casas diagnosed cervical radiculopathy, chronic pain syndrome, and cervical disc herniation with radiculopathy. He noted appellant's 25-year history of employment-injury and indicated that the cervical MRI scan demonstrated multilevel spondylotic changes. Dr. Casas related that he could not determine whether appellant's current symptomatology was related to the accepted employment injury which occurred in 1991.

On November 9, 2024, appellant, through counsel, requested reconsideration. Counsel contended that OWCP failed to meet its burden of proof to terminate appellant's wage-loss compensation and medical benefits as his claim should have been accepted for disc pathology as causally related to the accepted employment injury. Counsel further alleged that Dr. Donshik's opinion was not credible as disc bulges and herniations were demonstrated on a 1994 MRI scan.

By decision dated November 18, 2024, OWCP denied appellant's request for reconsideration of the merits of his 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

⁴ 5 U.S.C. § 8128(a); *see 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 L.D.*, *id.*; *see also K.L.*, Docket No. 17-1479 (issued December 20, 2017); *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. 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).

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 his claim, pursuant to 5 U.S.C. § 8128(a).

Appellant has not established that OWCP erroneously applied or interpreted a specific point of law, or advanced a relevant legal argument not previously considered by OWCP. In his timely request for reconsideration, counsel contended OWCP failed to meet its burden of proof to terminate appellant's wage-loss compensation and medical benefits as his claim should have been accepted for disc pathology as causally related to the accepted employment injury. Counsel further alleged that Dr. Donshik's opinion was not credible as disc bulges and herniations were demonstrated on a 1994 MRI scan. However, as the underlying issues of termination and continuing disability and residuals are medical in nature, they can only be resolved through the submission of medical evidence from a qualified physician.⁹ 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).

On reconsideration, appellant submitted a report May 15, 2024, wherein Dr. Casas indicated that he could not determine whether appellant's current symptomatology was related to the accepted employment injury which occurred in 1991. However, as Dr. Casas' May 15, 2024 report is speculative in nature, it is insufficient to warrant reopening appellant's case for a merit review.¹⁰ Therefore, appellant was 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 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 his claim, pursuant to 5 U.S.C. § 8128(a).

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 *N.B.*, Docket No. 24-0790 (issued May 16, 2025); *J.H.*, Docket No. 21-1255 (issued April 28, 2022); *G.B.*, Docket No. 21-0464 (issued November 19, 2021); *D.H.*, Docket No. 19-1308 (issued January 7, 2020).

¹⁰ *See J.B.*, Docket No. 20-0145 (issued September 8, 2020).

ORDER

IT IS HEREBY ORDERED THAT the November 18, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 7, 2025
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board