

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

C.V., Appellant))
)
and)	Docket No. 25-0596
		Issued: July 10, 2025
DEPARTMENT OF HOMELAND SECURITY,)	
U.S. CITIZENSHIP AND IMMIGRATION)	
SERVICES, Tampa, FL, Employer)	
)

Appearances:

Daniel DeCiccio, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge

JURISDICTION

On June 3, 2025 appellant, through counsel, filed a timely appeal from a May 29, 2025 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from OWCP's last merit decision dated July 15, 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 January 12, 2023 appellant, then a 47-year-old mail and file clerk, filed a traumatic injury claim (Form CA-1) alleging that on January 3, 2023 she experienced swelling and pain in her left hand and left upper extremity when she delivered and retrieved boxes of files while in the performance of duty. She stopped work on January 10, 2023.

Thereafter, OWCP received a January 10, 2023 emergency department report, wherein Dr. Archita Dinesh Patel, Board-certified in emergency medicine, recounted that appellant lifted a box of files at work one week prior, and then developed pain and swelling of the left hand. Appellant also reported "intermittent numbness to palm and middle finger." Earlier that day while at work, the tip of appellant's left middle finger turned white and became numb. Dr. Patel diagnosed left-hand injury, pain in finger of lefthand, paresthesia of finger, skin discoloration, and Raynaud's phenomenon without gangrene.

In a state workers' compensation form of even date, Kira Peterman-Diaz, an advanced practice registered nurse (APRN), held appellant off work and referred her to an emergency department.

OWCP also received a January 10, 2023 work slip wherein Ashley Jensen, a physician assistant, recounted that appellant had been treated on that date in an emergency department. She returned appellant to work effective January 14, 2023.

January 10, 2023 x-rays of the left hand revealed a small chronic ossicle at the ulnar styloid, unremarkable soft tissues, and no acute osseous findings.

In a January 11, 2023 chart note and state workers' compensation form of even date, Vivienne Cruz, an APRN, diagnosed left-hand pain, and numbness and tingling in left hand. She referred appellant to an orthopedic surgeon. Ms. Cruz returned appellant to limited-duty work with restrictions.

In reports dated January 25, 2023, Ms. Cruz found appellant's condition unchanged.

In a February 2, 2023 chart note, duty status report (Form CA-17) and additional form report of the same date, Dr. David Hirsch, a Board-certified orthopedic surgeon specializing in hand surgery, recounted that appellant experienced sharp left-arm pain after lifting a box of files at work, with subsequent onset of paresthesias, and discoloration of her fingers. He noted new onset of Raynaud's phenomenon bilaterally at the time the employment incident occurred. Dr. Hirsch diagnosed cervical radiculopathy, Raynaud's phenomenon without gangrene, and left-hand pain. He returned appellant to full-duty work.

In a March 9, 2023 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed to establish her claim and provided a questionnaire for her completion. OWCP afforded appellant 60 days to submit the necessary evidence.

Thereafter, OWCP received an attending physician's report (Form CA-20) wherein Dr. Luis A. Vargas-Massari, an osteopath, recounted a history of the January 3, 2023 employment incident and subsequent treatment. He diagnosed arthrosis and spondylosis of the cervical spine.

In an April 3, 2023 statement, appellant asserted that during the week after the injury, she experienced sharp pain and numbness in her left hand radiating up the left upper extremity, with blanching in her fingers. She noted that a physician had diagnosed a "pinched nerve" in her neck.

An April 5, 2023 computerized tomography (CT) scan of the cervical spine revealed mild multilevel spondylosis with no neural compression, and an enlarged sella turcica with an incompletely visualized partially empty sella.

In an April 6, 2023 Form CA-20 report, Ms. Peterman-Diaz noted that appellant's care had been transferred to an orthopedist.

In a follow-up letter dated April 13, 2023, 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 March 9, 2023 letter to submit the necessary evidence. OWCP further advised that if the necessary evidence was not received during this time, it would issue a decision based on the evidence contained in the record.

Thereafter, OWCP received a March 24, 2023 electromyogram and nerve conduction velocity (EMG/NCV) study of the left upper extremity, which revealed moderate left carpal tunnel syndrome, mild left ulnar axonal neuropathy without compression at the left elbow, and severe left radial sensory axonal neuropathy suggestive of peripheral neuropathy.

An April 4, 2023 EMG/NCV study of the right upper extremity revealed mild right carpal tunnel syndrome, and mild right ulnar axonal neuropathy without compression at the elbow.

In a May 5, 2023 report, Dr. Vargas-Massari recounted a history of persistent neck pain, muscle spasm, numbness, and paresthesias in the upper extremities, greatest at the hands, "that started after she lifted some heavy boxes at work on [January 3,] 2023." A CT scan revealed mild cervical disc disease, and NCV studies revealed bilateral carpal tunnel syndrome. He explained that carpal tunnel syndrome occurred when the median nerve is pinched at the wrist "when a person performs repetitive movements" or prolonged or frequent heavy lifting. Dr. Vargas-Massari opined that based on appellant's findings, her carpal tunnel syndrome "was trigger[e]d after she injured her neck and hands when she was assigned to move some heavy boxes at work."

By decision dated May 23, 2023, OWCP denied appellant's traumatic injury claim, finding that the medical evidence of record was insufficient to establish causal relationship between her diagnosed conditions and the accepted January 3, 2023 employment incident.

On June 23, 2023, appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.

OWCP received a March 30, 2023 magnetic resonance imaging (MRI) scan of the cervical spine, which demonstrated mild multilevel spondylosis with no neural compression, and an enlarged sella turcica.

In a June 19, 2023 report, Dr. Vargas-Massari recounted that appellant had no musculoskeletal problems prior to January 2023. He related that after her duties were changed and she started to lift heavy boxes at her job she started to complain of persistent neck pain, muscle spasms and paresthesias in both hands, and decreased hand strength, greater on the left. An MRI scan of the cervical spine demonstrated mild cervical spondylosis that can be aggravated by heavy lifting. EMG/NCV studies of the bilateral upper extremities revealed mild right carpal tunnel syndrome, moderate left carpal tunnel syndrome, severe left radial sensory axonal neuropathy suggestive of peripheral neuropathy, and mild axonal neuropathy bilaterally at the elbow without compression. Dr. Vargas-Massari opined that the diagnosed condition could be exacerbated by repetitive movement and frequent, or prolonged heavy lifting. He explained that heavy lifting and repetitive movement inflamed "the wrist area or box compartment and therefore the median nerve is going to get stuck and pinch[ed]." Dr. Vargas-Massari further opined that appellant's new job duties aggravated her cervical spondylosis and caused entrapment and inflammation of the median nerves at the wrist, greater on the left.

By decision dated June 29, 2023, OWCP denied appellant's request for a review of the written record as untimely filed since it was not made within 30 days of OWCP's May 23, 2023 decision. It further exercised its discretion and determined that the issue in this case could equally well be addressed by a request for reconsideration before OWCP along with the submission of new evidence.

On May 21, 2024, appellant requested reconsideration of OWCP's May 23, 2023 decision.

By decision dated May 24, 2024, OWCP denied modification.

On July 9, 2024, appellant, through counsel, requested reconsideration.

OWCP received a May 10, 2024 report, wherein Dr. Vargas-Massari diagnosed left shoulder pain and referred appellant to a rheumatologist.

In a May 29, 2024 affidavit, appellant described her duties in the five-month period prior to January 3, 2023, including processing 250 to 800 packages a day grouped in carrier shipments, repetitive lifting and pushing of file boxes weighing approximately 35 pounds, loading file boxes into a van twice a week for delivery to a courthouse, carrying the boxes up the courthouse steps, delivering the boxes, then performing this process in reverse to deliver records to her duty station.

In a June 25, 2024 report, Dr. Vargas-Massari noted that appellant underwent left endoscopic carpal tunnel release and left ulnar nerve release at the elbow on January 17, 2024. He opined that the physiologic stresses and forces caused by the activities appellant described in her May 29, 2024 affidavit caused bilateral median nerve compression at the wrists, bilateral carpal

tunnel syndrome, left cubital tunnel syndrome, a left ulnar nerve lesion, trigger thumbs, cervical radiculopathy, and cervical spondylosis.

By decision dated July 15, 2024, OWCP denied modification.

On May 15, 2025, appellant, through counsel, requested reconsideration of OWCP's July 15, 2024 decision. Counsel contended that OWCP violated its procedures at Chapter 2.800(3)(c)²³ by denying appellant's claim as she had submitted a traumatic injury claim (Form CA-1) and not an occupational disease claim (Form CA-2). Counsel asserted that OWCP should have converted the traumatic injury claim to one for occupational disease in accordance with its procedures.

OWCP received copies of appellant's May 29, 2024 affidavit and Dr. Vargas-Massari's June 25, 2024 report previously of record.

By decision dated May 29, 2025, OWCP denied appellant's request for reconsideration of the merits of the claim, pursuant to 5 U.S.C. § 8128(a). It found that appellant had not advanced a new and relevant legal argument, nor submitted new and relevant evidence.

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

³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims, Forms Used for Initial Claims*, Chapter 2.800.3c(2) (June 2011).

⁴ 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).

⁵ 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).

⁶ 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.

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).

On reconsideration, appellant, through counsel, contended that OWCP violated its procedures by denying appellant's claim as she submitted a Form CA-1 and not a Form CA-2. Counsel asserted that OWCP should have converted the traumatic injury claim to one for occupational disease in accordance with its procedures. While this is a new legal argument, it is irrelevant to the underlying issue of whether the medical evidence of record was sufficient to establish causal relationship between her diagnosed conditions and the accepted January 3, 2023 employment incident. Consequently, appellant 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

With her request for reconsideration, appellant submitted copies of her May 29, 2024 affidavit and Dr. Vargas-Massari's June 25, 2024 report, previously of record. The Board has held that evidence or argument that repeats or duplicates evidence previously of record has no evidentiary value and does not constitute a basis for reopening a case.¹⁰ 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.¹¹

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).

⁷ *Id.* at § 10.608(a); *see D.C.*, Docket No. 19-0873 (issued January 27, 2020); *M.S.*, 59 ECAB 231 (2007).

⁸ *Id.* at § 10.608(b); *L.C.*, Docket No. 25-0444 (issued April 23, 2025); *see T.V.*, Docket No. 19-1504 (issued January 23, 2020); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

⁹ *Supra* note 5.

¹⁰ *See T.K.*, Docket No. 23-0766 (issued May 8, 2025); *C.L.*, Docket No. 20-0410 (issued October 29, 2020); *M.G.*, Docket No. 18-0654 (issued October 17, 2018); *D.K.*, 59 ECAB 141 (2007); *Kenneth R. Mroczkowki*, 40 ECAB 855 (1989); *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

¹¹ *See T.K.*, *id.*; *D.M.*, Docket No. 21-1224 (issued March 15, 2023); *J.C.*, Docket No. 21-0453 (issued December 8, 2021); *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).

ORDER

IT IS HEREBY ORDERED THAT the May 29, 2025 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 10, 2025
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board