

<sup>2</sup> 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 October 13, 2020 appellant, then a 53-year-old mail processing clerk, filed a traumatic injury claim (Form CA-1) alleging that on September 10, 2020 she injured her left knee when equipment struck it while in the performance of duty.<sup>3</sup> She stopped work on that date. OWCP accepted the claim for knee contusion and tear of the medial meniscus of the left knee. Appellant returned to work on September 11, 2020.

On April 11, 2022 appellant filed claims for compensation (Form CA-7) for intermittent disability from work for the periods November 5 through 30, 2020, January 13 through September 16, 2021, and January 2 through March 31, 2022.

In an April 19, 2022 development letter, OWCP informed appellant of the deficiencies of her disability claim. It advised her of the type of medical evidence needed and afforded her 30 days to submit the necessary evidence.

OWCP subsequently received an October 19, 2020 report from Dr. Geoffrey Van Thiel, a Board-certified orthopedic surgeon, indicating that he examined appellant's left knee on that date.

On August 18 and December 20, 2021 Stephanie Leverentz, a physician assistant, examined appellant.

In a February 4, 2022 note, Dr. Thiel determined that appellant could return to work on February 6, 2022 standing for up to four hours a day. He further found that she was totally disabled from February 1 through 5, 2022.

On February 18, 2022 Dr. Frank C. Bohnenkamp, a Board-certified orthopedic surgeon, diagnosed localized osteoarthritis of the left knee and indicated that appellant could return to work on February 20, 2022 with restrictions. On April 20, 2022 he found that she was totally disabled from work causally related to increased pain and swelling from April 17 through 20, 2022.

On May 20, 2022 Michael Finigan, a physician assistant, related that appellant was scheduled for joint replacement surgery on May 26, 2022. He reported that she could not work for approximately six weeks, and that her return to work date would be July 11, 2022.

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<sup>3</sup> OWCP assigned the present claim OWCP File No. xxxxxx684. Appellant has a prior claim before OWCP. Under OWCP File No. xxxxxx418, OWCP accepted that appellant had sustained a complex tear of the medial meniscus of the left knee due to factors of her federal employment. It has administratively combined appellant's claims with OWCP File No. xxxxxx418 serving as the master file.

Beginning June 9, 2022 appellant filed additional CA-7 forms for disability from work for the period commencing April 17, 2022.

In a June 13, 2022 development letter, OWCP requested that appellant submit additional medical evidence to support disability from work commencing April 17, 2022. It afforded her 30 days to submit the requested evidence.

OWCP subsequently received a February 18, 2022 report from Dr. Van Thiel describing the history of injury on September 10, 2020 and relating that appellant underwent left knee arthroscopy with partial medial meniscectomy on May 5, 2021. Dr. Van Thiel noted that appellant stopped work on February 6, 2022. He diagnosed localized osteoarthritis of the left knee and attributed this condition to the September 10, 2020 employment injury. Dr. Van Thiel recommended a left hemi knee arthroplasty.

In a May 12, 2022 form report, Dr. Van Thiel completed a form report indicating that appellant had been experiencing ongoing pain since September 10, 2020, and that she had been partially disabled since April 17, 2022 and was expected to be totally disabled following surgery through July 25, 2022.

By decision dated July 7, 2022, OWCP denied appellant's claim for disability from work during the period November 5 through March 31, 2022, finding that the medical evidence of record was insufficient to establish causal relationship between the claimed disability and the accepted employment injury.

By decision dated September 6, 2022, OWCP denied appellant's claim for disability from work commencing April 17, 2022, finding that the medical evidence of record was insufficient to establish causal relationship between the claimed disability and the accepted employment injury.

On April 13, 2023 appellant, through counsel, requested reconsideration of the September 6, 2022 decision. OWCP continued to receive additional evidence. On January 28, 2022 appellant underwent a left knee magnetic resonance imaging (MRI) scan, which demonstrated chondromalacia of the medial femorotibial compartment with full-thickness chondral loss and osseous erosion and degenerative changes of the remnant medial meniscus with no discrete tear. On May 26, 2022 Dr. Bohnenkamp performed a left partial knee replacement due to advanced osteoarthritis of the left knee anteromedial compartment. He examined appellant on June 10, 2022 and found that her medial partial knee prosthesis was in a satisfactory position. On July 12, 2022 Mr. Finigan examined appellant and reiterated his prior findings and diagnoses.

In an August 26, 2022 report, Dr. Bohnenkamp opined that appellant was doing well following surgery.

By decision dated July 11, 2023, OWCP denied modification of the September 6, 2022 decision.

On June 17, 2024 appellant, through counsel, requested reconsideration of the July 11, 2023 decision and submitted additional evidence. In a report dated June 8, 2024, Dr. Bohnenkamp discussed appellant's history of injury and medical treatment. He opined that

she had experienced significant problems with the median compartment of the left knee since 2017 due to her employment duties which resulted in the need for a partial medial meniscectomy which altered the joint mechanics. Dr. Bonhnenkamp further opined that altered biomechanics of the knee with altered degenerative uneven tissue resulted in progressive arthritis of the left knee and aggravation. He related that appellant's left knee osteoarthritis was more likely than not caused or aggravated by the September 10, 2020 employment injury. Dr. Bonhnenkamp explained that the resulting surgery and the altered knee mechanics following surgery, the tear in tissue, and the need for surgery altered the mechanics of the knee and caused trauma to the knee joint. He determined that since arthritis was unremitting and articular surfaces were not well vascularized, the trauma caused aggravation of the arthritis.

By decision dated September 12, 2024, OWCP denied modification of the July 11, 2023 decision.

On February 21, 2025 appellant requested reconsideration of the September 12, 2024 decision regarding the claim for disability from work commencing April 17, 2022. No additional documentation was received.

By decision dated March 6, 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.<sup>4</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 OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.<sup>5</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>6</sup> If it chooses to grant reconsideration, it reopens and reviews the case on its merits.<sup>7</sup> If the request is timely, but fails to meet at least one of the

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<sup>4</sup> 5 U.S.C. § 8128(a); *see V.W.*, Docket No. 24-0750 (issued September 11, 2024); *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).

<sup>5</sup> 20 C.F.R. § 10.606(b)(3); *see V.W.*; *id.*; *see also 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>6</sup> *Id.* at § 10.607(a). OWCP's procedures provide that 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). The right to reconsideration within one year also accompanies any subsequent merit decision on the issues, including any merit decision by the Board. *Id.* at Chapter 2.1602.4a (September 2020).

<sup>7</sup> *Id.* at § 10.608(a); *see D.C.*, Docket No. 19-0873 (issued January 27, 2020); *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.<sup>8</sup> The Board has held that the submission of evidence or argument which repeats or duplicates evidence or argument already in the case record,<sup>9</sup> or does not address the particular issue involved, does not constitute a basis for reopening a case.<sup>10</sup>

### **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 request for reconsideration neither alleged nor demonstrated that OWCP erroneously applied or interpreted a specific point of law. Additionally, it did not advance a relevant legal argument not previously considered by OWCP. Consequently, 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 also did not submit any relevant and pertinent new evidence not previously reviewed by OWCP. Therefore, she is not entitled to further review of the merits of her claim 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 her claim, pursuant to 5 U.S.C. § 8128(a).

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<sup>8</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>9</sup> *J.N.*, Docket No. 23-0974 (issued May 14, 2024); *N.L.*, Docket No. 18-1575 (issued April 3, 2019); *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

<sup>10</sup> *T.E.*, Docket No. 24-0575 (issued July 31, 2024); *M.K.*, Docket No. 18-1623 (issued April 10, 2019); *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 6, 2025 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 16, 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