

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

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<b>S.W., Appellant</b>	)	
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<b>and</b>	)	<b>Docket No. 25-0611</b>
	)	<b>Issued: July 21, 2025</b>
<b>U.S. POSTAL SERVICE, RICHMOND POST OFFICE, Richmond, VA, 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

PATRICIA H. FITZGERALD, Deputy Chief Judge

VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On June 9, 2025 appellant, through counsel, filed a timely appeal from a March 11, 2025 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days elapsed from OWCP's last merit decision, dated March 8, 2024, 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.

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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.*

## **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 May 28, 2021 appellant, then a 49-year-old rural carrier associate, filed a notice of traumatic injury claim (Form CA-1) alleging that on April 23, 2021 she injured her left knee when she fell while in the performance of duty. She stopped work on the date of injury and returned to work on April 26, 2021. By decision dated July 19, 2021, OWCP accepted the claim for contusion of left knee.

OWCP continued to receive evidence. In a form report dated November 18, 2021, Dr. Joseph Kim, a Board-certified orthopedic surgeon, diagnosed lumbar spondylolisthesis, disc herniation, and radiculitis. He indicated that appellant had undergone lumbar spinal fusion and recommended that she remain off work for 12 weeks.

On December 10, 2021 OWCP received an undated narrative report by Dr. Kim, who noted that appellant related low back pain with radiating pain and numbness down her left leg since April 2021. Dr. Kim reviewed diagnostic studies, including lumbar x-rays which revealed degenerative disc disease with spondylolisthesis at L3-4; an electromyography and nerve conduction velocity study of the lower extremities which revealed evidence of severe left L5-S1 radiculopathy; and a magnetic resonance imaging (MRI) scan of the lumbar spine, which revealed moderate canal stenosis at L3-4, severe canal stenosis at L4-5, and moderate-to-severe canal stenosis at L5-S1. On November 30, 2021 he performed laminectomy of L3-S1, L3-L5 fusion, and bone graft placement. Dr. Kim opined that appellant's "leg pain was due to lumbar radiculitis as a result of her lumbar stenosis."

In a notice of recurrence (Form CA-2a) dated February 14, 2022, appellant asserted that on November 22, 2021 she sustained a recurrence of the need for medical treatment and disability causally related to her accepted April 23, 2021 employment injury. She noted that she had pain in her entire left leg after she fell on April 23, 2021, but the full extent of her injuries were not diagnosed until she was seen by a neurologist and had surgery on her lumbar spine. Appellant indicated that she performed light-duty work as of April 23, 2021, and then stopped work on November 22, 2021.

In a development letter dated February 17, 2022, OWCP informed appellant of the deficiencies of her recurrence claim. It advised her of the type of factual and medical evidence needed. OWCP also provided a questionnaire for appellant's completion and afforded her 30 days to submit the necessary evidence.

In a February 23, 2022 response to OWCP's development questionnaire, appellant indicated that she was off work from June 10 through August 15, 2021, and then returned to work as a postal support employee. She related that she was unable to obtain an appointment with neurology until October 14, 2021.

By decision dated May 16, 2022, OWCP denied appellant's recurrence claim, finding that the medical evidence of record was insufficient to establish a recurrence of disability commencing November 22, 2021, causally related to her accepted April 23, 2021 employment injury.

On June 14, 2022 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

On June 23, 2022 OWCP received an undated narrative by Jessica Womack, a physician assistant, who opined that appellant's "leg pain and weakness were due to lumbar radiculitis." Ms. Womack also noted that appellant did not have radicular leg pain or weakness prior to the April 23, 2021 employment injury.

A hearing was held on October 20, 2022. The hearing representative held the record open for 30 days for submission of additional evidence. No further evidence was received.

By decision dated December 29, 2022, OWCP's hearing representative affirmed the May 16, 2022 decision.

OWCP thereafter received x-rays of the lumbar spine dated May 20, 2022, which revealed a lumbar fusion.

OWCP also received physical therapy reports.

On December 15, 2023 appellant, through counsel, requested reconsideration of OWCP's December 29, 2022 decision.

By decision dated March 8, 2024, OWCP denied modification of the December 29, 2022 decision.

On March 8, 2025 appellant, through counsel, requested reconsideration of OWCP's March 8, 2024 decision, arguing that OWCP failed to properly develop appellant's expansion claim.

In support thereof, appellant submitted a January 31, 2024 medical report by Dr. Anup K. Gangavalli, a Board-certified orthopedic surgeon, who noted that she related complaints of low back pain radiating into her left lower extremity and neck pain radiating into her left upper extremity following a lumbar fusion by Dr. Kim. Physical examinations of the cervical and lumbar spine revealed reduced range of motion and neurological deficits. Dr. Gangavalli obtained x-rays of the cervical and lumbar areas of the spine and diagnosed lumbar radiculopathy, lumbar spine pain, back muscle spasm, history of lumbar spinal fusion, lumbar radiculitis, spinal stenosis of lumbar region, retrolisthesis, and neck muscle spasm.

In a March 20, 2024 follow-up report, Dr. Gangavalli noted appellant's complaints and physical examination findings, and reviewed a March 13, 2024 lumbar MRI scan and a March 19, 2024 lumbar computerized tomography scan. He performed transforaminal epidural steroid injections at L4 and L5 on the left.

By decision dated March 11, 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>3</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>4</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>5</sup> If it chooses to grant reconsideration, it reopens and reviews the case on its merits.<sup>6</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>7</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>8</sup> and the submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.<sup>9</sup>

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<sup>3</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).

<sup>4</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>5</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>6</sup> *Id.* at § 10.608(a); *see D.C.*, Docket No. 19-0873 (issued January 27, 2020); *M.S.*, 59 ECAB 231 (2007).

<sup>7</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>8</sup> *N.L.*, Docket No. 18-1575 (issued April 3, 2019); *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

<sup>9</sup> *M.K.*, Docket No. 18-1623 (issued April 10, 2019); *Edward Matthew Diekemper*; 31 ECAB 224, 225 (1979).

## **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, counsel did not allege or demonstrate that OWCP erroneously applied or interpreted a specific point of law. He argued that OWCP failed to properly develop appellant's expansion claim. However, this argument is irrelevant to the underlying issue of recurrence. As explained above, the submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.<sup>10</sup> Consequently, appellant is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under 20 C.F.R. § 10.606(b)(3).

In support of appellant's request for reconsideration, counsel submitted January 31 and March 20, 2024 reports from Dr. Gangavalli, who noted appellant's history of lumbar fusion surgery by Dr. Kim and provided assessments of lumbar radiculopathy, lumbar spine pain, back muscle spasm, lumbar pain, history of lumbar spinal fusion, lumbar radiculitis, spinal stenosis of lumbar region, retrolisthesis, and neck muscle spasm. However, Dr. Gangavalli did not address the underlying issue of recurrence.<sup>11</sup> As appellant has not provided relevant and pertinent new evidence, she is not entitled to a merit review based on the third requirement under 20 C.F.R. § 10.606(b)(3).

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.

## **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>10</sup> *Id.*

<sup>11</sup> *Id.*

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 11, 2025 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 21, 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