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

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| **M.B., Appellant** | ) | |
| **and** | ) | **Docket No. 25-0612** |
| | ) | **Issued: July 17, 2025** |
| **ARCHITECT OF THE CAPITOL, EMPLOYEE BENEFITS & SERVICES BRANCH, Washington, DC, Employer** | ) | |

*Appearances:*
*Wayne Johnson, Esq.,* for the appellant[1]
*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 the last merit decision, dated March 8, 2024, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act[2] (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 his claim, pursuant to 5 U.S.C. § 8128(a).

## ***FACTUAL HISTORY***

On June 17, 2011 appellant, then a 41-year-old laborer (recycler), filed a traumatic injury claim (Form CA-1) alleging that on June 15, 2011 he inhaled toxic dust when toner dust spilled into the air as he was emptying a paper recycling can while in the performance of duty.

In support of his claim, appellant submitted a June 15, 2011 emergency department report wherein Robert Mosley, a physician assistant, documented treatment for his chest and lungs after he inhaled toxic fumes while working. He diagnosed inhalation of gas, fumes, or vapor.

In an August 4, 2020 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence required and provided a questionnaire for his completion. OWCP afforded appellant 30 days to submit the necessary evidence.

Appellant continued to submit additional medical evidence in support of his claim.

By decision dated September 23, 2020, OWCP denied appellant's claim, finding that the evidence of record was insufficient to establish a medical condition causally related to the accepted June 15, 2011 employment exposure.

On September 18, 2023 appellant requested reconsideration.

In support thereof, appellant submitted a September 11, 2023 report, wherein Dr. Ernest Africano, a Board-certified internist, discussed the June 15, 2011 employment incident. Dr. Africano explained that toner was a very fine powder and due to the very small particle size, the powder was flowable and behaved like a liquid. He further reported that toner was composed of synthetic resin, pigments, magnetizable metal oxides, and various auxiliary substances. Dr. Africano reported that as a fine powder, toner can remain suspended in the air for some period and toner dust particles were small and could be easily inhaled into the respiratory tract leading to irritation of the nose, throat, and lungs. He noted that appellant did not have any respiratory conditions or complaints prior to the June 15, 2011 employment incident and immediately after his exposure to the toner dust, he began to have respiratory symptoms of cough, chest tightness, and shortness of breath, necessitating evaluation in the emergency department. Dr. Africano diagnosed other acute and subacute respiratory condition due to chemicals, gas, fumes, and vapors. He opined that appellant's diagnosed condition was causally related to the June 15, 2011 employment incident.

By decision dated February 23, 2024, OWCP denied modification of the September 23, 2020 decision.

By decisions dated March 7, 2024, OWCP, on its own motion, set aside and vacated the September 23, 2020, and February 23, 2024 decisions. It found that appellant did not receive the

September 23, 2020 decision, which was returned as undeliverable and rendered him unable to pursue his appeal rights within a reasonable time frame.

By *de novo* decision dated March 8, 2024, OWCP denied appellant's claim, finding that the evidence of record was insufficient to establish a medical condition causally related to the accepted June 15, 2011 employment exposure. Therefore, it concluded that the requirements had not been met to establish an injury.

On March 8, 2025 appellant, through counsel, requested reconsideration. Counsel reiterated that appellant was exposed to toxic dust on June 15, 2011 causing him to inhale toxic fumes while in the performance of duty. He contended that the medical evidence of record was sufficient to establish appellant's claim.

In support of his request for reconsideration, appellant submitted a February 12, 2018 Final Order of the District of Columbia Office of Administrative Hearings, which found that appellant had voluntarily separated from his employment and was qualified to receive unemployment compensation benefits. The decision also discussed the circumstances surrounding the June 15, 2011 employment incident.

By decision dated March 11, 2025, 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.[3]

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.[4]

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.[5] If it chooses to grant reconsideration, it reopens

[3] 5 U.S.C. § 8128(a); *see R.C.*, Docket No. 22-0612 (issued October 24, 2022); *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).

[4] 20 C.F.R. § 10.606(b)(3); *see R.C., id.*; *L.D., id.*

[5] *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.

and reviews the case on its merits.[6] 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.[7]

## ***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 March 8, 2025 appellant, through counsel, filed a request for reconsideration of a March 8, 2024 decision denying his traumatic injury claim. Counsel reiterated that appellant was exposed to toxic dust on June 15, 2011 causing him to inhale toxic fumes while in the performance of duty. He contended that the medical evidence of record was sufficient to establish appellant's claim. The Board has held that the submission of evidence or argument which repeats or duplicates evidence or argument already in the case record does not constitute a basis for reopening a case.[8] As appellant neither established that OWCP erroneously applied or interpreted a specific point of law, nor advanced a relevant legal argument not previously considered by OWCP, the Board finds that he 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).[9]

On reconsideration, appellant submitted a February 12, 2018 Final Order of the District of Columbia Office of Administrative Hearings, which found that appellant had voluntarily separated from his employment and was qualified to receive unemployment compensation benefits. The decision also discussed the circumstances surrounding the June 15, 2011 employment incident. However, this evidence is irrelevant to the underlying issue in this case, *i.e.* whether appellant established a medical condition causally related to the accepted June 15, 2011 employment incident. This issue is medical in nature and requires rationalized medical opinion evidence to resolve the issue.[10] The Board has held that the submission of evidence, which does not address the particular issue involved does not constitute a basis for reopening a case.[11] Because appellant did not submit relevant and pertinent new evidence with his request for reconsideration, he was not entitled to a review of the merits based on the third requirement under 20 C.F.R. § 10.606(b)(3).[12]

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[6] *Id.* at § 10.608(a); *see also M.S.*, 59 ECAB 231 (2007).

[7] *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).

[8] *D.S.,* Docket No. 25-0564 (issued June 25, 2025); *N.L.,* Docket No. 18-1575 (issued April 3, 2019); *Eugene F. Butler,* 36 ECAB 393, 398 (1984).

[9] *See L.W.,* Docket No. 21-0607 (issued October 18, 2022).

[10] *R.M.*, Docket No. 21-0963 (issued April 19, 2023).

[11] *P.G.,* Docket No. 24-0404 (issued September 17, 2024); *C.C.,* Docket No. 22-1240 (issued June 27, 2023); *D.P.,* Docket No. 13-1849 (issued December 19, 2013); *Edward Matthew Diekemper,* 31 ECAB 224, 225 (1979).

[12] *See* 20 C.F.R. § 10.606(b)(3)(iii); *see also S.W.,* Docket No. 25-0261 (issued February 24, 2025).

The Board, therefore, finds that appellant has not met any of the requirements of 20 C.F.R. § 10.606(b)(3).[13] Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.[14]

## ***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).

## ***ORDER***

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

Issued: July 17, 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

[13] *R.G.,* Docket No. 25-0390 (issued April 9, 2025).

[14] *W.P.,* Docket No. 25-0367 (issued April 4, 2025).