

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

T.E., Appellant)	
and)	Docket No. 25-0616
DEPARTMENT OF THE NAVY, MILITARY SEALIFT COMMAND, Norfolk, VA, Employer)	Issued: July 16, 2025
)	

Appearances:

Alan J. Shapiro, 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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On June 12, 2025 appellant, through counsel, filed a timely appeal from a May 27, 2025 nonmerit decision² of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from the last merit decision, dated February 10, 2025, to the filing of this

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 an 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 The Board notes that counsel did not appeal OWCP's February 10, 2025 merit decision. Therefore, that decision is not presently before the Board. See 20 C.F.R. § 501.3.

appeal, pursuant to the Federal Employees' Compensation Act³ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of this case.⁴

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 November 14, 2024 appellant, then a 34-year-old engine department maintenance worker (wiper), filed a traumatic injury claim (Form CA-1) alleging that on January 13, 2023 he developed a left foot plantar abscess and bacterial infection while in the performance of duty. On the reverse side of the claim form, K.C., appellant's supervisor, controverted the claim as appellant had not reported the alleged injury until after his termination from the employing establishment.

In a November 18, 2024 statement, the employing establishment further controverted the claim, asserting that it was unaware of the injury until after appellant had been removed effective October 2, 2024. Additionally, appellant was not aboard ship on January 8, 2023. He had been suspended for the periods January 15 through 28, and May 7 through 27, 2023, and reassigned to a ship effective June 18, 2023.

In a November 20, 2024 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence needed to establish his claim and provided a questionnaire for his completion. OWCP afforded appellant 60 days to submit the necessary evidence. No additional evidence was received.

In a follow-up letter dated December 9, 2024, OWCP advised appellant that it had conducted an interim review, and the evidence remained insufficient to establish his claim. It noted that he had 60 days from the November 20, 2024 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.

In a December 17, 2024 report, Dr. Yasmin Ahmed, Board-certified in family medicine, recounted that appellant injured his left foot on January 13, 2023 when the bottom of the ship in which he worked as an engineer filled with dirty seawater to mid-calf depth, exposing appellant to parasites and harmful pathogens. She opined that this exposure caused an infection in the left foot, resulting in development of a plantar abscess. Appellant was hospitalized for the period January 23 through 30, 2023 and underwent a drainage procedure at bedside. As a magnetic resonance imaging (MRI) scan of the left foot demonstrated a residual abscess, he underwent an

³ 5 U.S.C. § 8101 *et seq.*

⁴ The Board notes that, following the May 27, 2025 decision, appellant submitted additional evidence to OWCP. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

incision and draining procedure in an operating room on January 22, 2023. Dr. Ahmed noted that appellant was disabled from work for an extended period. She opined that the history of the January 13, 2023 injury, including prolonged exposure to unsanitary water, and standing and maneuvering in confined spaces, “likely compromised the skin’s integrity on his left foot. The pressure and friction from his work activities would have exacerbated any minor abrasions or cuts, providing an entry point for the pathogens present in the seawater.” The cutaneous abscess developed “as the bacteria infiltrated the compromised skin, resulting in a localized infection characterized by pus accumulation.” In a work capacity evaluation (Form OWCP-5c) and attending physician’s report (Form CA-20) of even date, Dr. Ahmed restricted appellant to sedentary-duty work with no standing.

Thereafter, OWCP received a January 26, 2023 hospital case management form, an unsigned hospital discharge summary dated January 30, 2023, illegible form reports, and medical literature.

In a January 16, 2025 response to OWCP’s development questionnaire, appellant asserted that he sustained the claimed left foot injury due to prolonged standing in “drudge water” during an 8- to 10-week period in late 2022. He developed a lump on the plantar surface of his left foot during the period January 8 through 13, 2024, which ended his ship assignment. Appellant contended that he was not provided waterproof boots. He explained that he delayed filing his claim as he was unsure how to proceed, although he notified the employing establishment of the injury in June 2023.

In a January 22, 2025 letter, OWCP requested that the employing establishment provide information regarding appellant’s claim, including a statement from a knowledgeable supervisor. It afforded the employing establishment 14 days to respond.

The employing establishment subsequently provided a January 23, 2025 memorandum controverting appellant’s claim. It contended that appellant should have claimed an occupational disease as he alleged that the injury developed from January 8 through 13, 2023 after prolonged “wet work,” and that details of his work description were inconsistent, deceptive, or fraudulent. The employing establishment noted that while Dr. Ahmed referred to appellant as an “engineer,” his job title was “wiper.” It also submitted e-mails to appellant dated July 7 through and August 21, 2023 with instructions for filing a FECA claim.

Thereafter, OWCP received a January 22, 2025 follow-up report, wherein Dr. Ahmed noted that appellant had been off work commencing in April 2023 due to a shoulder injury. Appellant also had continued pain and swelling in his left foot. In a Form OWCP-5c of even date, Dr. Ahmed returned appellant to sedentary-duty work with restrictions.

By decision dated February 10, 2025, OWCP denied appellant’s traumatic injury claim, finding that the factual evidence of record was insufficient to establish that the events occurred as alleged. Therefore, it concluded that the requirements had not been met to establish an injury as defined by FECA.

OWCP subsequently received additional evidence. In a report dated February 18, 2025, Dr. Ahmed noted clinical findings of a dime-sized callous on the plantar surface of the left foot,

and pain with weight bearing. She opined that “[t]he direct causation between [appellant’s] job duties and the cutaneous abscess is unequivocal. The physical demands and environmental exposures” of appellant’s duties, “particularly the exposure to contaminated seawater, have directly led to the development and persistence of the abscess.” Dr. Ahmed returned appellant to sedentary-duty work with restrictions. In March 25 and April 22, 2025 reports, Dr. Ahmed repeated her findings and continued to opine that there was direct causation between appellant’s diagnosed abscess and his job duties.

On May 13, 2025, appellant, through counsel, requested reconsideration. Counsel resubmitted a copy of Dr. Ahmed’s February 18, 2025 report.

By decision dated May 27, 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.⁵

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.⁶

A request for reconsideration must be received by OWCP within one year of the date of OWCP’s decision for which review is sought.⁷ If it chooses to grant reconsideration, it reopens and reviews the case on its merits.⁸ 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.⁹

⁵ 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).

⁶ 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).

⁷ 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.

⁸ *Id.* at § 10.608(a); *see D.C.*, Docket No. 19-0873 (issued January 27, 2020); *M.S.*, 59 ECAB 231 (2007).

⁹ *Id.* at § 10.608(b); *B.W.*, Docket No. 25-0475 (issued May 30, 2025); *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).

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's May 13, 2025 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, counsel submitted February 18, March 25, and April 22, 2025 reports, wherein Dr. Ahmed noted clinical findings of a dime-sized callous on the plantar surface of the left foot, and pain with weight bearing. She opined that “[t]he direct causation between [appellant's] job duties and the cutaneous abscess is unequivocal. The physical demands and environmental exposures” of appellant's duties, “particularly the exposure to contaminated seawater, have directly led to the development and persistence of the abscess.” Dr. Ahmed returned appellant to sedentary-duty work with restrictions. However, while these reports are new, they are irrelevant to the underlying issue which is factual in nature.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).

¹⁰ See *D.S.*, Docket No. 25-0564 (issued June 25, 2025); *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 May 27, 2025 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 16, 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