

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

<p>A.K., Appellant</p> <p>and</p> <p>U.S. POSTAL SERVICE, ALBANY POST OFFICE, Albany, NY, Employer</p>	<p>)))))))</p>	<p>Docket No. 25-0449</p> <p>Issued: June 2, 2025</p>
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Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge

JANICE B. ASKIN, Judge

VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On March 21, 2025 appellant filed a timely appeal from a November 18, 2024 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from OWCP's last merit decision, dated December 7, 2023, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of this case.²

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).

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that appellant submitted additional evidence on appeal. 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.*

FACTUAL HISTORY

On September 20, 2023 appellant, then a 63-year-old clerk vehicle dispatcher, filed a traumatic injury claim (Form CA-1) alleging that on July 10, 2023 he sustained a neck and shoulder injury while in the performance of duty. On the reverse side of the claim form, an employing establishment supervisor, D.P., acknowledged that appellant was injured in the performance of duty, and indicated that his knowledge of the facts about the injury agreed with the statements of appellant and/or witnesses. Appellant returned to work on July 11, 2023. No information regarding the July 10, 2023 incident was provided.

In an October 4, 2023 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. Appellant did not respond to the questionnaire or provide any evidence.

In a follow-up letter dated November 9, 2023, 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 October 4, 2023 letter to submit the necessary evidence. OWCP further advised that if the evidence was not received during this time, it would issue a decision based on the evidence contained in the record. No additional evidence was received.

By decision dated December 7, 2023, OWCP denied appellant's claim, finding that the evidence of record was insufficient to establish that the July 10, 2023 employment incident occurred, as alleged. Therefore, it concluded that the requirements had not been met to establish an injury as defined by FECA.

On November 4, 2024 appellant requested reconsideration. In an attached undated statement, he indicated that the July 10, 2023 employment incident happened while he was in the process of moving. Appellant noted that his paperwork had been misplaced and requested assistance. He also requested that OWCP pay the bills resulting from the July 10, 2023 incident.

By decision dated November 18, 2024, 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 argument which: (1) shows that OWCP erroneously applied or interpreted a

³ 5 U.S.C. § 8128(a); *see S.W.*, Docket No. 25-0261 (issued February 24, 2025); *S.B.*, Docket No. 24-0703 (issued December 13, 2024); *L.D.*, Docket No. 18-1468 (issued February 11, 2019); *W.C.*, 59 ECAB 372 (2008).

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 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 his claim, pursuant to 5 U.S.C. § 8128(a).

In a request for reconsideration dated November 4, 2024, appellant did not argue that OWCP erroneously applied or interpreted a specific point of law, or advance a relevant legal argument not previously considered by OWCP. Thus, he was not entitled to a review of the merits of his claim based on the first and second above-noted requirements under 20 C.F.R. § 10.606(b)(3).⁸

Appellant also did not submit any relevant and pertinent new evidence on reconsideration. The underlying issue in this case was whether appellant had established whether an employment incident occurred on July 10, 2023, as alleged. While appellant indicated that he was in the process of moving during the alleged July 10, 2023 employment incident, he failed to provide specific details of the traumatic employment incident which allegedly caused an injury to his neck and shoulders. 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.⁹ Because appellant's statement lacks the specific detail required to support that a July 10, 2023 employment incident

⁴ 20 C.F.R. § 10.606(b)(3); *see S.W. id.*; *see also L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

⁵ *Id.* at § 10.607(a). The one-year period begins on the next day after the date of the original contested decision. For merit decisions issued on or after August 29, 2011, a request for reconsideration must be received by OWCP within one year of OWCP's decision for which review is sought. 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.

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

⁷ *Id.* at § 10.608(b); *B.S.*, Docket No. 20-0927 (issued January 29, 2021); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

⁸ *See J.P.*, Docket No. 25-0028 (issued December 6, 2024); *C.S.*, 19-0851 (issued November 18, 2019); *J.B.*, Docket No. 17-0628 (issued June 28, 2017).

⁹ *W.P.*, Docket No. 25-0367 (issued April 4, 2025); *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 (1979).

occurred, he did not provide relevant and pertinent new evidence and, thus, he was not entitled to a review of the merits based on the third requirement under 20 C.F.R. § 10.606(b)(3).¹⁰

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 his claim, pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the November 18, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 2, 2025
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

¹⁰ See 20 C.F.R. § 10.606(b)(3)(iii); *see also* J.P., *supra* note 8.