

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

<p>B.B., Appellant</p> <p>and</p> <p>U.S. POSTAL SERVICE, HARTFORD PROCESSING & DISTRIBUTION CENTER, Hartford, CT, Employer</p>)
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	Docket No. 25-0469
	Issued: June 4, 2025

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 April 9, 2025 appellant filed a timely appeal from a February 27, 2025 merit decision and February 20 and March 24, 2025 nonmerit decisions of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

ISSUES

The issues are: (1) whether appellant has met his burden of proof to establish a recurrence of disability for the period August 21 through 27, 2024, causally related to his accepted employment injury; (2) whether OWCP properly denied appellant's request for a review of the

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that following the March 24, 2025 decision, OWCP received additional evidence. 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.*

written record as untimely filed, pursuant to 5 U.S.C. § 8124(b); and (3) 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 15, 2017 appellant, then a 29-year-old mail handler, filed an occupational disease claim (Form CA-2) alleging an emotional condition due to factors of his federal employment, including exposure to a continual stressful, hostile work environment. He indicated that he first became aware of his condition on February 5, 2015, and that it was caused or aggravated by his federal employment on February 20, 2015. Appellant stopped work on May 19, 2017. OWCP accepted the claim for panic disorder with agoraphobia; major depressive disorder, single episode, with psychotic feature; and drug-induced erectile dysfunction condition. On March 4, 2023 appellant returned to work full time with restrictions. OWCP paid him wage-loss compensation on the periodic rolls from December 10, 2017 through February 25, 2023, and on the supplemental rolls for the period February 26 through March 3, 2023. Appellant stopped work on August 21, 2024 and returned to work on August 27, 2024.

In an August 26, 2024 report, Stephanie Kilpatrick, Psy.D., a clinical psychologist, diagnosed post-traumatic disorder (PTSD), panic disorder and major depressive disorder and opined that these conditions had a direct relationship to a traumatic work event he experienced on May 19, 2017. She indicated that appellant recently experienced a significant surge in anxiety symptoms related to the PTSD and, as a result, was unable to work for the period August 20 through 26, 2024.

On August 27, 2024 appellant filed a notice of recurrence (Form CA-2a) claiming disability from work for the period August 21 through 27, 2024 due to a worsening of his accepted employment-related conditions.

In a September 4, 2024 letter, the employing establishment challenged the recurrence claim. It contended that the claim was unrelated to the accepted employment injury. The employing establishment explained that when appellant returned to work on March 4, 2023, he was sent to a different facility and removed from working overnight shifts.

In a development letter dated September 6, 2024, OWCP informed appellant of the deficiencies of his recurrence claim. It advised him of the type of factual and medical evidence needed and provided a questionnaire for his completion. OWCP afforded appellant 30 days to submit the necessary evidence. No further evidence was provided.

By decision dated October 10, 2024, OWCP denied appellant's claim for a recurrence of disability for the period August 21 through 27, 2024, due to his accepted employment injury. It explained that the medical evidence of record was insufficient to establish that he was disabled from work commencing August 21, 2024 due to a material change/worsening of his accepted work-related conditions.

OWCP received a June 27, 2024 report from Dr. Jorge O. Moreno, a Board-certified internist, noting his treatment of appellant since 2016. He indicated that appellant was treated with various medications due to a May 19, 2017 work-related incident, which caused weight gain and

drug-induced erectile dysfunction, and that appellant had reported erectile dysfunction around September 19, 2024. Dr. Moreno opined that appellant's work-related mental health conditions required psychiatric medication.

In a November 8, 2024 report, Dr. Kilpatrick indicated that appellant has additional work-related diagnosis of PTSD and major depressive disorder causally related to a traumatic work event he experienced on May 19, 2017. She indicated that his accepted work restrictions, as reflected in her prior letters dated September 23, 2021, October 22, 2022, and March 18, 2024, address the fact that precautions help to decrease the chance of his PTSD symptoms being triggered and acknowledge the potential for occasional need for work flexibility to attend to symptoms as they arise. Dr. Kilpatrick explained that it was clinically necessary for appellant to take time away from work beginning on August 20, 2024 as his PTSD symptoms became severe after he was triggered at work by a coworker. She described his symptoms and opined that those symptoms were directly related to his work trauma and triggered by work events.

On February 17, 2025 appellant requested a review of the written record before a representative of OWCP's Branch of Hearings and Review.

On February 19, 2025 appellant requested reconsideration of the October 10, 2024 recurrence decision.

By decision dated February 20, 2025, OWCP denied appellant's request for a review of the written record, finding that it was untimely filed. It further exercised its discretion and determined that the issue in the case could equally well be addressed through a request for reconsideration before OWCP along with the submission of new evidence which established that he sustained a material worsening due to his employment injury.

By decision dated February 27, 2025, OWCP denied modification of the October 10, 2024 merit decision.

On March 14 and 19, 2025 appellant requested reconsideration of the February 27, 2025 decision. In a March 14, 2025 statement, he summarized events occurring from 2015 onwards which he believed resulted in a recurrence of disability. No additional evidence was submitted.

By decision dated March 24, 2025, OWCP denied appellant's request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

LEGAL PRECEDENT -- ISSUE 1

A recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which resulted from a previous compensable injury or illness and without an intervening injury or new exposure in the work environment.³ This term also means an inability to work because a light-duty assignment made specifically to accommodate an employee's physical limitations, and which is necessary because of a work-related injury or illness, is withdrawn or altered so that the assignment exceeds the

³ 20 C.F.R. § 10.5(x); *see L.D.*, Docket No. 24-0840 (issued March 6, 2025); *J.D.*, Docket No. 18-1533 (issued February 27, 2019).

employee's physical limitations. A recurrence does not occur when such withdrawal occurs for reasons of misconduct, nonperformance of job duties, or a reduction-in-force.⁴

OWCP's procedures provide that a recurrence of disability includes a work stoppage caused by a spontaneous material change in the medical condition demonstrated by objective findings. That change must result from a previous injury or occupational illness rather than an intervening injury or new exposure to factors causing the original illness. It does not include a condition that results from a new injury, even if it involves the same part of the body previously injured.⁵

An employee who claims a recurrence of disability due to an accepted employment-related injury has the burden of proof to establish by the weight of the substantial, reliable, and probative evidence that the disability for which he or she claims compensation is causally related to the accepted injury. This burden of proof requires that a claimant furnish medical evidence from a physician who, based on a complete and accurate factual and medical history, concludes that, for each period of disability claimed, the disabling condition is causally related to the employment injury, and supports that conclusion with medical reasoning.⁶ Where no such rationale is present, the medical evidence is of diminished probative value.⁷

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met his burden of proof to establish a recurrence of disability, for the period August 21 through 27, 2024, causally related to his accepted employment injury.

In her August 26, 2024 report, Dr. Kilpatrick opined that appellant was unable to work for the period August 20 through 26, 2024 due to a surge in anxiety symptoms related to PTSD. She subsequently explained in her November 8, 2024 report, that beginning August 20, 2024, it was clinically necessary for him to take time off work as his PTSD symptoms became severe after he was triggered at work by a coworker. Dr. Kilpatrick opined that appellant's PTSD symptoms were directly related to his work trauma and triggered by work events. However, she did not explain with rationale how or why appellant's accepted PTSD condition had worsened such that he was disabled from work during the claimed period.⁸ As Dr. Kilpatrick's opinions are conclusory in nature, they are insufficient to establish appellant's recurrence claim.⁹

⁴ *Id.*

⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.2b (June 2013); *L.B.*, Docket No. 18-0533 (issued August 27, 2018).

⁶ *J.D.*, Docket No. 18-0616 (issued January 11, 2019); *see C.C.*, Docket No. 18-0719 (issued November 9, 2018).

⁷ *M.T.*, Docket No. 25-0180 (issued January 25, 2025); *H.T.*, Docket No. 17-0209 (issued February 8, 2018).

⁸ *See L.D., supra* note 3; *Y.D.*, Docket No. 16-1896 (issued February 10, 2017) (finding that a report is of limited probative value regarding causal relationship if it does not contain medical rationale describing the relation between work factors and a diagnosed condition/disability).

⁹ *Id.*

In his June 27, 2024 report, Dr. Moreno opined that appellant's employment injuries required treatment with psychotropic medications, which most likely contributed to erectile dysfunction. However, he did not explain with rationale as to how or why appellant's total disability from work for the period August 21 through 27, 2024 was due to a worsening of this accepted medical condition, nor did he explain with rationale as to how or why appellant's condition had worsened such that he was disabled from work during the claimed period.¹⁰ Thus, Dr. Moreno's opinion is insufficient to establish appellant's recurrence claim.

As the medical evidence of record is insufficient to establish causal relationship between the claimed recurrence of disability and the accepted employment injury, the Board finds that appellant has not met his burden of proof.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

LEGAL PRECEDENT -- ISSUE 2

Section 8124(b)(1) of FECA provides that "a claimant for compensation not satisfied with a decision of the Secretary is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on his [or her] claim before a representative of the Secretary."¹¹ Sections 10.617 and 10.618 of the federal regulations implementing this section of FECA provide that a claimant shall be afforded a choice of an oral hearing, or a review of the written record by a representative of the Secretary.¹² A claimant is entitled to an oral hearing or review of the written record as a matter of right only if the request is filed within the requisite 30 days as determined by postmark or other carrier's date marking, or the date received in the Employees' Compensation Operations and Management Portal (ECOMP), and before the claimant has requested reconsideration.¹³ Although there is no right to a review of the written record or an oral hearing, if not requested within the 30-day time period, OWCP may within its discretionary powers grant or deny appellant's request and must exercise its discretion.¹⁴

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied appellant's request for an oral hearing as untimely filed, pursuant to 5 U.S.C. § 8124(b).

¹⁰ *L.D.*, *supra* note 3; *Y.D.*, *supra* note 8.

¹¹ *Supra* note 1 at § 8124(b)(1).

¹² 20 C.F.R. §§ 10.616, 10.617.

¹³ *Id.* at § 10.616(a); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.4a (February 2024).

¹⁴ See *N.H.*, Docket No. 25-0281 (issued March 19, 2025); *P.G.*, Docket No. 24-0447 (issued August 12, 2024); *W.H.*, Docket No. 20-0562 (issued August 6, 2020); *Eddie Franklin*, 51 ECAB 223 (1999); *Delmont L. Thompson*, 51 ECAB 155 (1999).

OWCP's regulations provide that a request for oral hearing or review of the written record must be made within 30 days of the decision for which review is sought. Because appellant's request for an oral hearing was received on February 17, 2025, more than 30 days after OWCP's October 10, 2024 decision, it was untimely filed. He was, therefore, not entitled to a review of the written record as a matter of right.¹⁵

OWCP, however, has the discretionary authority to grant the request even if the claimant is not entitled to a review as a matter of right and it must exercise such discretion.¹⁶ The Board finds that OWCP, in its February 20, 2025 decision, properly exercised its discretion by determining that the issue in the case could be equally well addressed through a request for reconsideration, along with the submission of additional evidence.

The Board has held that the only limitation on OWCP's authority is reasonableness. An abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deduction from established facts.¹⁷ Herein, the evidence of record does not establish that OWCP abused its discretion in denying appellant's request for a review of the written record.

Accordingly, the Board finds that OWCP properly denied appellant's request for an oral hearing as untimely filed, pursuant to 5 U.S.C. § 8124(b).¹⁸

LEGAL PRECEDENT -- ISSUE 3

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 own motion or on application.¹⁹

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 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.²⁰

¹⁵ See *C.C.*, Docket No. 25-0283 (issued March 14, 2025); *G.M.*, Docket No. 24-0878 (issued November 8, 2024); *K.B.*, Docket No. 21-1038 (issued February 28, 2022); *M.F.*, Docket No. 21-0878 (issued January 6, 2022); *see also P.C.*, Docket No. 19-1003 (issued December 4, 2019).

¹⁶ See *N.H.*, *supra* note 14; *M.M.*, Docket No. 19-1171 (issued October 22, 2019); *William F. Osborne*, 46 ECAB 198 (1994).

¹⁷ See *C.C.*, *supra* note 15; *T.G.*, Docket No. 19-0904 (issued November 25, 2019); *Daniel J. Perea*, 42 ECAB 214, 221 (1990).

¹⁸ See *C.C.*, *supra* note 15; *C.G.*, Docket No. 25-0053 (issued December 12, 2024); *C.H.*, Docket No. 20-0540 (issued December 1, 2020).

¹⁹ 5 U.S.C. § 8128(a); *see B.A.*, Docket No. 24-0622 (issued August 2, 2024); *T.K.*, Docket No. 19-1700 (issued April 30, 2020); *L.D.*, Docket No. 18-1468 (issued February 11, 2019); *W.C.*, 59 ECAB 372 (2008).

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

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.²¹ If it chooses to grant reconsideration, it reopens and reviews the case on its merits.²² If the request is timely, but fails to meet at least one of the requirements for reconsideration,²³ OWCP will deny the request for reconsideration without reopening the case for review on the merits.²⁴

ANALYSIS -- ISSUE 3

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 has not alleged or demonstrated that OWCP erroneously applied or interpreted a specific point of law. Moreover, he has not advanced a relevant legal argument not previously considered. Consequently, appellant is 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).²⁵

The Board further finds that appellant did not submit relevant and pertinent new evidence in support of his request for reconsideration. The underlying issue in this case is whether appellant established a recurrence of disability for the period August 21 through 27, 2024 due to a change or worsening of his accepted work-related conditions. This is a medical question that requires rationalized medical opinion evidence to resolve the issue.²⁶ Appellant, however, did not submit any additional medical evidence in support of his claimed recurrence. Because appellant did not provide any relevant and pertinent new evidence, he is not entitled to a review of the merits 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.²⁷

²¹ *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.

²² *Id.* at § 10.608(a); *F.V.*, Docket No. 18-0230 (issued May 8, 2020); *see also M.S.*, 59 ECAB 231 (2007).

²³ *G.M.*, Docket No. 17-0345 (issued May 1, 2017); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

²⁴ *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).

²⁵ *J.H.*, Docket No. 23-0485 (issued November 13, 2023); *C.B.*, Docket No. 18-1108 (issued January 22, 2019).

²⁶ *A.B.*, Docket No. 23-0919 (issued March 26, 2024); *R.M.*, Docket No. 21-0963 (issued April 19, 2023).

²⁷ *B.A.*, *supra* note 19.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a recurrence of disability, for the period August 21 through 27, 2024, causally related to his accepted employment injury. The Board further finds that OWCP properly denied his request for an oral hearing as untimely filed, pursuant to 5 U.S.C. § 8124(b), and properly denied his request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the February 20 and 27, and March 24, 2025 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: June 4, 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