

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

| | | |
|---|---|-----------------------------|
| C.S., Appellant |) | |
| |) | |
| |) | |
| and |) | Docket No. 25-0502 |
| |) | Issued: June 3, 2025 |
| DEPARTMENT OF THE AIR FORCE, ELGIN |) | |
| AIR FORCE BASE, HURLBURT FIELD |) | |
| COMMISSARY, Hurlburt Field, FL, Employer |) | |
| |) | |

Appearances:

Samantha Mikolajczyk, Esq., for the appellant¹

Office of Solicitor, for the Director

Case Submitted on the Record

Before:

ALEC J. KOROMILAS, Chief Judge

JANICE B. ASKIN, Judge

VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On April 21, 2025 appellant, through counsel, filed a timely appeal from an October 29, 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 October 24, 2023, to the filing

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.

of this appeal, pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of this case.³

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 July 16, 1990 appellant, then a 36-year-old sales store checker, filed a traumatic injury claim (Form CA-1) alleging that on July 11, 1990 she injured her right upper back and shoulder when she reached for an item while in the performance of duty. OWCP accepted the claim for right shoulder and cervical strain, cervical spondylosis, permanent aggravation of right shoulder impingement, and complex regional pain syndrome type 1 of the right upper extremity. It paid appellant wage-loss compensation for disability from work.

On April 7, 2023 OWCP referred the case record, a statement of accepted facts, and a series of questions to Dr. Christo Koulisis, a Board-certified orthopedic surgeon, for a second opinion evaluation.

In an April 20, 2023 report, Dr. Koulisis reviewed the SOAF and medical record. He documented physical examination findings and opined that the work-related conditions had resolved. Dr. Koulisis also opined that appellant could return to work without restrictions and was not in need of any further medical treatment as it related to her accepted July 11, 1990 employment injury.

By notice dated September 18, 2023, OWCP advised appellant that it proposed to terminate her wage-loss compensation and medical benefits based on Dr. Koulisis' opinion that the accepted employment-related conditions had ceased without residuals or disability. It afforded her 30 days to submit additional evidence or argument challenging the proposed termination. No further medical evidence was received.

By decision dated October 24, 2023, OWCP terminated appellant's wage-loss compensation and medical benefits, effective that date. It found that the well-rationalized opinion of Dr. Koulisis constituted the weight of the medical evidence, establishing that she no longer had disability or residuals causally related to the accepted July 11, 1990 employment injury.

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that, following the October 29, 2024 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.*

On May 28, 2024 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.

By decision dated June 6, 2024, OWCP denied appellant's request for a review of the written record, finding that it was untimely filed. It informed her that it had exercised its discretion in relation to the issues involved and determined that the issues could equally well be addressed by requesting reconsideration and submitting evidence not previously considered.

On October 24, 2024 appellant, through counsel, requested reconsideration of OWCP's October 24, 2023 termination decision and submitted diagnostic studies, including a July 3, 2014 electromyography and nerve conduction velocity (EMG/NCV) study of the bilateral upper extremities, a September 2, 2014 magnetic resonance imaging (MRI) scan of the cervical spine, an August 20, 2024 x-ray of the cervical spine, and an October 20, 2024 MRI scan of the right shoulder. In further support of the request, counsel argued that Dr. Koulisis' opinion was not sufficiently rationalized to warrant a termination of benefits and that OWCP erred in not finding a conflict in the medical evidence between the opinions of Dr. Koulisis and the enclosed diagnostic studies.

By decision dated October 29, 2024, 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 does not entitle a claimant the review of an OWCP decision as a matter of right.⁴ OWCP has discretionary authority in this regard and has imposed certain limitations in exercising its authority.⁵ One such limitation is that the request for reconsideration must be received by OWCP within one year of the date of the decision for which review is sought.⁶

A timely request for reconsideration, including all supporting documents, must set forth arguments, and contain evidence that either: (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.⁷ When a timely request for reconsideration does not meet at least one of

⁴ 5 U.S.C. § 8128(a).

⁵ 20 C.F.R. § 10.607.

⁶ *Id.* at § 10.607(a). 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.

⁷ *Id.* at § 10.606(b)(3); *see L.F.*, Docket No. 20-1371 (issued March 12, 2021); *B.R.*, Docket No. 19-0372 (issued February 20, 2020).

the above-noted requirements, OWCP will deny the request for reconsideration without reopening the case for a review on the merits.⁸

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).

Appellant has not alleged or demonstrated that OWCP erroneously applied or interpreted a specific point of law. Moreover, she has not advanced a relevant legal argument not previously considered. Counsel, in the October 24, 2024 request for reconsideration, argued that Dr. Koulisis' opinion was not sufficiently rationalized and that OWCP erred in not finding a conflict in the medical evidence between Dr. Koulisis and the various diagnostic studies. The Board notes that, in its October 24, 2023 termination decision, OWCP considered the opinions of Dr. Koulisis and found them to be well rationalized and entitled to the weight of the medical evidence. In addition, the Board has held that diagnostic studies, standing alone, lack probative value on the issue of causal relationship.⁹ 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).¹⁰

Further, appellant also did not submit any pertinent new and relevant medical evidence. The underlying issue is whether OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective October 24, 2023. The July 3, 2014 EMG/NCV study of the bilateral upper extremities, September 2, 2014 MRI scan of the cervical spine, August 20, 2024 x-ray of the cervical spine, and October 20, 2024 MRI scan of the right shoulder, although new, standing alone, lack probative value on the issue of causal relationship.¹¹ The Board has held that the submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.¹² Thus, appellant is not entitled to further review of the merits of her claim based on the third requirement under 20 C.F.R. § 10.606(b)(3).¹³

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.

⁸ *Id.* at § 10.608.

⁹ *F.D.*, Docket No. 19-0932 (issued October 3, 2019); *J.S.*, Docket No. 17-1039 (issued October 6, 2017).

¹⁰ *C.B.*, Docket No. 18-1108 (issued January 22, 2019).

¹¹ *Supra* note 9.

¹² See *K.H.*, Docket No. 25-0242 (issued March 4, 2025); *O.A.*, Docket No. 22-1350 (issued May 24, 2023); *A.M.*, Docket No. 20-1417 (issued July 30, 2021); *E.J.*, Docket No. 19-1509 (issued January 9, 2020); *M.K.*, Docket No. 18-1623 (issued April 10, 2019); *Edward Matthew Diekemper*, 31 ECAB 224-25 (1979).

¹³ *Y.L.*, Docket No. 20-1025 (issued November 25, 2020); *Eugene F. Butler*, 36 ECAB 393 (1984); *Edward Matthew Diekemper, id.*

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).

ORDER

IT IS HEREBY ORDERED THAT the October 29, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 3, 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