

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

R.A., Appellant)	
and)	Docket No. 25-0522
U.S. POSTAL SERVICE, BROUSSARD POST OFFICE, Broussard, LA, Employer)	Issued: June 18, 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 May 5, 2025 appellant filed a timely appeal from a May 1, 2025 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days elapsed from OWCP's last merit decision, dated May 14, 2024, 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.

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 February 3, 2024 appellant, then a 49-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on December 16, 2023 he contracted influenza and became

¹ 5 U.S.C. § 8101 *et seq.*

hypertensive which caused him to fall when walking to the restroom, resulting in a closed fracture of the nasal bridge while in the performance of duty. He was then transported to a hospital emergency department by ambulance. B.P., a coworker, recalled that she saw appellant fall behind her mail case. Appellant remained on the floor for approximately one minute and then rose to a kneeling position. B.P. saw blood coming from appellant's nose and called a supervisor. Appellant stopped work on December 17, 2023. His supervisor controverted the claim, asserting that he was unaware appellant had fallen and that when he first saw appellant, "he was sitting in a chair."

OWCP subsequently received a February 1, 2024 duty status report (Form CA-17) wherein Dr. Federico Del Toro, an internist, noted findings of headache, uncontrolled hypertension, dizziness, and vertigo. Dr. Del Toro diagnosed stroke and hypertension.

In a development letter dated March 14, 2024, OWCP advised appellant that the evidence submitted was insufficient to establish his claim. It informed him of the type of factual and medical evidence required to establish his claim. OWCP afforded appellant 60 days to provide the requested evidence.

OWCP subsequently received March 7, 2024 reports wherein Dr. Del Toro related that appellant had a history of prior cerebellar stroke. He experienced a dizzy spell four days previously and presented with a hypertensive emergency. Dr. Del Toro diagnosed Type 2 chronic diabetes mellitus with diabetic chronic kidney disease, hypertension, cerebrovascular accident during surgery, vertigo, and fall. He prescribed medication and held appellant off work through April 4, 2024.

In a March 20, 2024 response to OWCP's development questionnaire, appellant recounted that he felt ill on the date of injury. While walking towards the restroom, he became weak, light-headed, began to lose consciousness, then blacked out. Appellant recalled that he struck his head directly on the floor with no intervening object. He regained consciousness while on the floor and realized he was bleeding. An unknown individual found appellant, brought him to a location he could not recall, then brought him to the restroom, where he vomited for several minutes. Appellant noted that he did not have a history of fainting or other medical conditions that may have contributed to the injury, but that he may have contracted influenza or coronavirus (COVID-19) from his coworkers who had reported for duty while ill.

In a March 22, 2024 attending physician's report (Form CA-20), Dr. Del Toro recounted a history of syncope at work and loss of consciousness, status post fall with nasal fracture. He noted findings of hypertensive emergency with hospital admission, diabetes, vertigo, and chronic subacute cerebellar infarct. Dr. Del Toro opined that appellant's injury was work related as appellant continued to have headaches and the injury occurred at work.

In a follow-up letter dated April 10, 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 March 14, 2024 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.

OWCP subsequently received a December 16, 2023 emergency department report wherein Dr. Foster Kordisch, III, Board-certified in emergency medicine, related that appellant had a history of hypertension and experienced a near-syncopal event at work with weakness, nasal congestion, nausea, vomiting, and diarrhea. Appellant had systolic blood pressure “in the 200s” and blood glucose of 269 during transport to the hospital.² On examination, Dr. Kordisch observed an abrasion of the nasal bridge and normal neurologic findings. Diagnostic studies were also received. Laboratory test results were positive for influenza.

In a March 13, 2024 report, Dr. Shail Thanki, a vascular neurologist, recounted that appellant fell in the bathroom after losing balance and injured his face. He diagnosed a right cerebellar stroke that resulted in a nasal fracture.

In an April 4, 2024 work slip, Dr. Del Toro held appellant off work through May 10, 2024.

In an April 5, 2024 Form CA-20, Dr. Thanki related appellant’s assertion that the December 16, 2023 incident was caused by influenza that he had contracted from his coworkers.

In an April 12, 2024 report, Dr. Del Toro recounted that appellant had a work-related injury with nausea, vomiting, and balance problems while going to the bathroom. Appellant “lost ... balance and fell to the ground,” sustaining a nasal fracture.

By decision dated May 14, 2024, OWCP denied appellant’s traumatic injury, finding that the evidence of record was insufficient to establish that the incident occurred as he described. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

OWCP subsequently received copies of the December 16, 2023 paramedic’s report previously of record.³

In a May 17, 2024 work slip, Dr. Del Toro held appellant off work through June 14, 2024.

In a December 22, 2024 report, Dr. Lorenza Diaz Garcia, a general surgeon, recounted appellant’s three-year history of hypertension. She related appellant’s account of overwork, and that while at work on December 16, 2023, he fainted, becoming unconscious in his work area, causing cranioencephalic trauma and a cardiovascular event. Appellant was admitted to the hospital with a diagnosis of influenza. He presented in May 2024 with uncontrolled hypertension, elevated blood glucose, paleness, vertigo, headache, difficulty speaking, balance problems, and muscle weakness.

OWCP also received a January 15, 2025 report by Hali Lurette-Parfait, a certified physician assistant, wherein she related appellant’s accounts of the incident. She noted that appellant related passing out at work on December 16, 2023, falling, hitting his face, and fracturing his nose. Appellant indicated that the injury occurred due to increased stress at work, noting that he was

² OWCP also received a December 16, 2023 report by the emergency response personnel who transported appellant to the hospital emergency department.

³ *Id.*

working in the warehouse and delivering for the employing establishment. He noted that his days started early, around 2:30 a.m., and that he worked around nine-hour shifts per day. Appellant believed these factors resulted in a cardiovascular accident (CVA) at work. Ms. Lurette-Parfait diagnosed essential hypertension, headache disorder, Vitamin D deficiency, iron deficiency, arm neuralgia, leukocytosis, Type 2 diabetes mellitus, bilateral Meniere's disease, and history of cerebrovascular accident.

On April 28, 2025 appellant requested reconsideration.

By decision dated May 1, 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.⁴

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.⁵

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.⁶ If it chooses to grant reconsideration, it reopens and reviews the case on its merits.⁷ 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.⁸

⁴ 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).

⁵ 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).

⁶ 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.

⁷ *Id.* at § 10.608(a); *see D.C.*, Docket No. 19-0873 (issued January 27, 2020); *M.S.*, 59 ECAB 231 (2007).

⁸ *Id.* at § 10.608(b); *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 improperly denied appellant's request for reconsideration of the merits of his claim.

The underlying issue on reconsideration is the factual question of whether the December 16, 2023 employment incident occurred, as alleged. In support of his April 28, 2025 reconsideration request, appellant submitted a December 22, 2024 report by Dr. Garcia wherein she related appellant's account of overwork, and a faint with unconsciousness while at work on December 16, 2023, causing cranioencephalic trauma and a CVA. OWCP also received a January 15, 2025 report by Ms. Lurette-Parfait, a certified physician assistant, wherein she related appellant's accounts of increased work stress, overwork, and nine-hour shifts beginning at 2:30 a.m. As these reports address the underlying issue of whether the incident occurred in the performance of duty, as alleged, they constitute relevant and pertinent new evidence that was not previously considered by OWCP. Therefore, the submission of this evidence requires reopening of appellant's claim for merit review, pursuant to the third above-noted requirement of 20 C.F.R. § 10.606(b)(3).⁹

The Board shall, therefore, reverse OWCP's May 1, 2025 decision and remand the case for an appropriate merit decision.

CONCLUSION

The Board finds that OWCP improperly denied appellant's request for reconsideration of the merits of his claim.

⁹ See *M.K.*, Docket No. 25-0022 (issued November 21, 2024); *L.K.*, Docket No. 22-0571 (issued September 27, 2024); *B.D.*, Docket No. 23-0240 (issued December 13, 2023); *R.L.*, Docket No. 21-0220 (issued October 19, 2021); *L.M.*, Docket No. 20-1185 (issued January 13, 2021); *C.H.*, Docket No. 17-1065 (issued December 14, 2017); *J.W.*, Docket No. 18-0822 (issued July 1, 2020); *D.M.*, Docket No. 10-1844 (issued May 10, 2011); *Kenneth R. Mroczkowski*, 40 ECAB 855 (1989).

ORDER

IT IS HEREBY ORDERED THAT the May 1, 2025 decision of the Office of Workers' Compensation Programs is reversed, and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: June 18, 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