

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

D.S., Appellant)
and) Docket No. 25-0564
DEPARTMENT OF JUSTICE, BUREAU OF)
PRISONS, THE METROPOLITAN)
CORRECTIONAL CENTER, New York, NY,)
Employer)
Issued: June 25, 2025

Appearances:

Wayne Johnson, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On May 20, 2025, appellant, through counsel, filed a timely appeal from a January 14, 2025 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days elapsed from the last merit decision, dated December 20, 2023, 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.

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

FACTUAL HISTORY

This case has previously been before the Board.⁴ The facts and circumstances of the case as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On May 6, 2020, appellant, then a 47-year-old correctional officer, filed a traumatic injury claim (Form CA-1) alleging that on May 5, 2020 he sustained neck and back injuries when his vehicle came to a violent stop as he was passing through a check point while in the performance of duty. OWCP assigned the present claim OWCP File No. xxxxxx817.⁵ By decision dated May 14, 2021, OWCP accepted appellant's claim for lumbar radiculopathy and resolved sprain of cervical spine ligaments.⁶ However, it denied expansion of the acceptance of the claim to include a right shoulder strain and disc bulges at L3-4 and L5-S1 as causally related to the accepted employment injury.

On June 7, 2021, appellant, through counsel, requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.

OWCP continued to receive additional medical evidence.

Following a preliminary review, by decision dated August 19, 2021, OWCP's hearing representative set aside the May 14, 2021 decision and remanded the case for OWCP to further address whether the acceptance of appellant's claim should be expanded to include additional

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that, following the January 14, 2025 decision, appellant submitted additional evidence to OWCP. However, the Board's *Rules of Procedures* 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.*

⁴ Docket No. 22-0323 (issued September 26, 2022).

⁵ Appellant has another claim, assigned OWCP File No. xxxxxx675, for a September 12, 2013 back injury which OWCP denied; a claim, assigned OWCP File No. xxxxxx569, for a June 20, 2017 low back injury which OWCP denied; and a claim, assigned OWCP File No. xxxxxx512, for a September 20, 2019 injury which OWCP accepted for left wrist sprain/contusion and left carpal tunnel syndrome. OWCP has administratively combined OWCP File Nos. xxxxxx817, xxxxxx675, xxxxxx569, and xxxxxx512, with the latter designated as the master file.

⁶ OWCP paid appellant wage-loss compensation for disability from work on the supplemental rolls, retroactive to June 20, 2020, and on the periodic rolls, beginning October 10, 2021.

conditions as causally related to the accepted May 5, 2020 employment injury, followed by a *de novo* decision.

Appellant subsequently submitted additional medical evidence.

By *de novo* decision dated October 8, 2021, OWCP denied expansion of the acceptance of the claim to include additional conditions as causally related to the accepted May 5, 2020 employment injury.

Appellant continued to submit additional evidence.

Appellant appealed to the Board,⁷ and by decision dated September 26, 2022, the Board affirmed OWCP's October 8, 2021 decision.

Appellant continued to submit medical evidence.

On September 26, 2023, appellant, through counsel, requested reconsideration and submitted additional evidence.

By decision dated December 20, 2023, OWCP denied modification.

Appellant subsequently submitted August 14 and September 7, 2023, and April 16, 2024 reports, wherein Dr. Marygrace C. Hajec, a Board-certified occupational medicine physician, diagnosed cervical radiculopathy, thoracic spine ligaments sprain, intervertebral disc displacement of the lumbar region, and lumbar radiculopathy. He also submitted February 12 and May 20, 2024 prescriptions for physical therapy by Dr. Hajec on.

Appellant also submitted reports dated August 14, 2023, through April 4, 2024, wherein Jian Lao, an acupuncturist, discussed his treatment sessions.

In reports dated August 8 2023 through June 11, 2024, wherein Dr. Kevin Giunta, a chiropractor, discussed his treatment sessions. Dr. Giunta diagnosed cervical radiculopathy, thoracic spine ligaments sprain, intervertebral disc displacement of the lumbar region, and lumbar radiculopathy.

In an August 1, 2022 report, Sejal Patel, a physician assistant, diagnosed low back pain, lumbar radiculopathy, lumbar disc displacement without myelopathy, and lumbar facet joint syndrome. In January 12, 2023 and January 25, June 19, September 18, October 23 and December 4, 2024 reports, he diagnosed cervicalgia, cervical radiculopathy, herniated nuclei pulposus at C3-4 through C6-7, displacement of intervertebral disc of the high cervical region, lumbar disc herniation, lumbar facet joint syndrome, lumbar radiculopathy, and low back pain.

In a November 6, 2023 report, Maria Campanile, an advance practice nurse, diagnosed cervical radiculopathy, intervertebral disorders of the thoracic region, and intervertebral disc

⁷ *Supra* note 4.

disorders with radiculopathy of the lumbosacral region causally related to the May 5, 2020 accident.

In February 12, March 12, and May 20, 2024 reports, Ms. Campanile diagnosed cervical radiculopathy, thoracic spine ligaments sprain, intervertebral disc displacement of the lumbar region, and lumbar radiculopathy.

In an August 20, 2024 report, Dr. Didier Demesmin, a Board-certified pain medicine physician, described his administration of an epidural injection at L4-5 and L5-S1. Appellant also submitted a preoperative report signed on August 20, 2024 by a person with an illegible signature.

Appellant also resubmitted evidence which was previously of record and considered by OWCP.

On December 20, 2024, appellant, through counsel, requested reconsideration of the December 20, 2023 decision. Counsel maintained that the medical evidence of record established additional conditions as causally related to the accepted May 5, 2020 employment injury, including cervical disc herniations, cervical radiculopathy, thoracic spine ligaments sprain, and lumbar facet joint syndrome.

By decision dated January 14, 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.⁸

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.⁹

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.¹⁰ If it chooses to grant reconsideration, it reopens

⁸ 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).

⁹ 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).

¹⁰ 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.

and reviews the case on its merits.¹¹ 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.¹²

The Board has held that the submission of evidence or argument which repeats or duplicates evidence or argument already in the caserecord¹³ and the submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.¹⁴

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).

On reconsideration, appellant, through counsel, argued that the medical evidence of record established that he sustained additional medical conditions causally related to the accepted May 5, 2020 employment injury, including cervical disc herniations, cervical radiculopathy, thoracic spine ligaments sprain, and lumbar facet joint syndrome. However, OWCP previously had considered this same argument when it previously denied appellant's expansion claim. Accordingly, appellant neither established that OWCP erroneously applied or interpreted a specific point of law, nor did he advance a relevant legal argument not previously considered by OWCP. Thus, 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).

With his request for reconsideration, appellant submitted August 14 and September 7, 2023 and April 16, 2024 reports, wherein Dr. Hajec diagnosed cervical radiculopathy, thoracic spine ligaments sprain, intervertebral disc displacement of the lumbar region, and lumbar radiculopathy. He also submitted prescriptions for physical therapy signed by Dr. Hajec on February 12 and May 20, 2024. In an August 20, 2024 report, Dr. Demesmin described his administration of an epidural injection at L4-5 and L5-S1. While this medical evidence is new, it is irrelevant as it does not directly address the underlying issue of the present case, *i.e.*, whether the medical evidence of record is sufficient to establish additional conditions as causally related to the accepted May 5, 2020 employment injury. 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.¹⁵ Appellant also submitted reports from Dr. Giunta, a chiropractor. However, chiropractors are physicians under FECA only to the extent that their reimbursable expenses are limited to treatment consisting of the manual manipulation of the spine to correct a subluxation as demonstrated to

¹¹ *Id.* at § 10.608(a); *see D.C.*, Docket No. 19-0873 (issued January 27, 2020); *M.S.*, 59 ECAB 231 (2007).

¹² *Id.* at § 10.608(b); *see T.V.*, Docket No. 19-1504 (issued January 23, 2020); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

¹³ *N.L.*, Docket No. 18-1575 (issued April 3, 2019); *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

¹⁴ *M.K.*, Docket No. 18-1623 (issued April 10, 2019); *Edward Matthew Diekemper*; 31 ECAB 224, 225 (1979).

¹⁵ *See supra* note 12.

exist by x-rays.¹⁶ Dr. Giunta did not diagnose a subluxation as demonstrated to exist by x-rays¹⁷ and, therefore, his reports are not relevant to the underlying issue of appellant's case and would not require reopening of the case for merit review.¹⁸ The reports by the advance practice nurse and the acupuncturist are also irrelevant as certain healthcare providers such as physician assistants, nurses, and acupuncturists are not considered physicians as defined under FECA.¹⁹ Appellant also submitted a preoperative report by a person with an illegible signature. However, this evidence is also irrelevant to the underlying issue, which is medical in nature, as the Board has held that unsigned reports and reports that bear illegible signatures cannot be considered probative medical evidence because they do not provide an indication that the person completing the report qualifies as a physician under FECA.²⁰ Appellant also resubmitted medical reports which were previously of record. However, the Board has held that the submission of evidence or argument which repeats or duplicates evidence or argument already of record does not constitute a basis for reopening a case.²¹ Therefore, appellant also failed to satisfy 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.

¹⁶ 5 U.S.C. § 8101(2). *See also* 20 C.F.R. § 10.311; *S.R.*, Docket No. 22-0421 (issued July 15, 2022).

¹⁷ *See id.*

¹⁸ *See supra* note 12.

¹⁹ Section 8101(2) provides that physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law, 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (May 2023); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants and nurses are not competent to render a medical opinion under FECA); *H.S.*, Docket No. 20-0939 (issued February 12, 2021) (physician assistants are not considered physicians as defined under FECA); *P.S.*, Docket No. 17-0598 (issued June 23, 2017) (registered nurses and nurse practitioners are not considered physicians as defined under FECA); *K.S.*, Docket No. 24-0414 (issued June 4, 2024) (acupuncturists are not considered physicians as defined under FECA).

²⁰ *See B.S.*, Docket No. 22-0918 (issued August 29, 2022); *S.D.*, Docket No. 21-0292 (issued June 29, 2021); *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

²¹ *See supra* note 11.

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 January 14, 2025 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 25, 2025
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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