

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On January 10, 2022 appellant, then a 53-year-old mail processing clerk, filed a traumatic injury claim (Form CA-1) alleging that on December 26, 2021 she contracted COVID-19 while in the performance of duty. She stopped work on December 26, 2021. OWCP accepted appellant's claim for COVID-19. It paid her wage-loss compensation on the supplemental rolls from February 10 to April 12, 2022.

On September 14, 2023 appellant filed a claim for compensation (Form CA-7) for a schedule award.

In letters dated October 23 and November 28, 2023, OWCP requested that appellant's treating physician, Dr. Michael Kraft, Board-certified in sports medicine and family medicine, provide an opinion regarding appellant's accepted COVID-19 condition and any resulting permanent impairment. It requested that Dr. Kraft address whether appellant's condition had reached MMI and if so, to provide a permanent impairment rating. No evidence was received.

By decision dated January 4, 2024, OWCP denied appellant's schedule award claim, finding that the medical evidence of record was insufficient to establish permanent impairment of a scheduled member or function of the body warranting a schedule award.

On January 3, 2025 appellant requested reconsideration. She submitted evidence in support of her request.

A May 14, 2024 chest computerized tomography (CT) scan report indicated findings of right upper lung lobe three millimeter noncalcified nodule, mild dependent atelectasis scattered left lung base more than the right, no diffuse lung disease seen, and no notable post-COVID fibrosis or other "ILD" identified.

A May 14, 2024 CT scan of appellant's sinuses reported minimal mucosal thickening in the bilateral maxillary sinuses and anterior ethmoid air cells likely chronic, no evidence of acute sinusitis, and right nasal septal deviation narrowing the right nasal cavity.

OWCP also received partially illegible documents dated May 17, 2024 noting allergen results, and illegible documents dated November 25, 2024 from a medical facility.

A November 25, 2024 upper gastrointestinal endoscopy report from Dr. Jeffrie L. Kamean, a Board-certified gastroenterologist, noted a normal esophagus, two-centimeter hernia, and normal duodenum.

By decision dated January 16, 2025, OWCP denied appellant's request for reconsideration of the merits of her schedule award claim, pursuant to 5 U.S.C. § 8128(a).

LEGAL PRECEDENT

Section 8128(a) of FECA does not entitle a claimant to review an OWCP decision as a matter of right.² OWCP has discretionary authority in this regard and has imposed certain limitations in exercising its authority.³ 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.⁴ A timely application for reconsideration, including all supporting documents, must set forth arguments and contain evidence that either: (i) shows that OWCP erroneously applied or interpreted a specific point of law; (ii) advances a relevant legal argument not previously considered by OWCP; or (iii) constitutes relevant and pertinent new evidence not previously considered by OWCP.⁵ When a timely application for reconsideration does not meet at least one of the above-noted requirements, OWCP will deny the request for reconsideration without reopening the case for a review on the merits.⁶

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).

Preliminarily, the Board finds that OWCP did not receive evidence of additional permanent impairment with appellant's request for reconsideration received on January 3, 2025. The Board shall, therefore, consider this a reconsideration request as opposed to a claim for an increased schedule award.⁷

Appellant did not show that OWCP erroneously applied or interpreted a specific point of law and did not advance a relevant legal argument not previously considered by OWCP. Consequently, she was not entitled to a review of the merits based on the first and second above-noted requirements under 20 C.F.R. § 10.606(b)(3).⁸

Further, appellant also did not submit any pertinent new and relevant medical evidence. The underlying issue in this case is whether appellant has established permanent impairment of a

² 5 U.S.C. § 8128(a).

³ 20 C.F.R. § 10.607.

⁴ *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.

⁵ *Id.* at § 10.606(b)(3).

⁶ *Id.* at § 10.608(a), (b).

⁷ *K.E.*, Docket No. 24-0483 (issued June 28, 2024); *W.V.*, Docket No. 24-0179 (issued April 2, 2024).

⁸ *K.E., id.*; *R.M.*, Docket No. 23-0748 (issued October 30, 2023); *L.W.*, Docket No. 21-0942 (issued May 11, 2022); *C.B.*, Docket No. 18-1108 (issued January 22, 2019).

scheduled member or function of the body. The May 14, 2024 chest and sinus CT scans; the partially illegible May 17, 2024 allergen test; the illegible documents from a medical facility; and the November 25, 2024 upper gastrointestinal endoscopy report from Dr. Kamean, although new, did not provide a permanent impairment rating and are, therefore, irrelevant to the underlying issue on reconsideration.⁹ 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.¹⁰ Thus, appellant is not entitled to a review of the merits of her claim based on the third above-noted requirement under 20 C.F.R. § 10.606(b)(3).¹¹

The Board, accordingly, finds that appellant did not meet 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.¹²

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).

⁹ *N.K.*, Docket No. 23-0435 (issued September 28, 2023); *R.G.*, Docket No. 21-1098 (issued March 28, 2022); *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); *Edward Matthew Diekemper*, 31 ECAB 224-25 (1979).

¹⁰ *See 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).

¹¹ *Id.*

¹² *See D.M.*, Docket No. 18-1003 (issued July 16, 2020); *D.S.*, Docket No. 18-0353 (issued February 18, 2020); *Susan A. Filkins*, 57 ECAB 630 (2006) (when a request for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b), OWCP will deny the request for reconsideration without reopening the case for a review on the merits).

ORDER

IT IS HEREBY ORDERED THAT the January 16, 2025 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 4, 2025
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board