

² The Board notes that, following the November 14, 2024 decision, OWCP received additional evidence. However, 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.*

employment injury; and (2) 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.³ The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On October 21, 2022, appellant, then a 57-year-old city letter carrier, filed an occupational disease claim (Form CA-2) alleging that he sustained right hip and knee pain due to factors of his federal employment, including walking 12 miles a day for the last 28 years. He noted that he first became aware of his condition and realized its relation to his federal employment on August 5, 2022.

By decision dated December 13, 2022, OWCP denied appellant's occupational disease claim, finding that the medical evidence of record was insufficient to establish a diagnosed medical condition in connection with the accepted factors of his federal employment. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On January 26, 2023, appellant filed a timely appeal to the Board from OWCP's December 13, 2022 decision. By decision dated August 14, 2023, the Board affirmed OWCP's December 13, 2022 decision, finding that appellant had not met his burden of proof to establish a diagnosed medical condition in connection with the accepted factors of his federal employment.⁴

Following several requests for reconsideration, OWCP, by decision dated February 28, 2024, accepted appellant's claim for aggravation of osteoarthritis of the right hip. By separate decision of even date, it denied his claim for bilateral knee and back conditions.

In a note dated July 29, 2024, Dr. David Feaker, an osteopath Board-certified in orthopedic surgery, advised that appellant should be excused from work on that date and recommended work restrictions of seated work only and no standing for more than one hour per day. He further noted that appellant could not perform his current duties.

In an addendum report dated July 29, 2024, Dr. Feaker evaluated appellant's right hip. He recounted that appellant had been unable to perform the duties of his job, including ascending stairs, due to his level of pain. Dr. Feaker noted that appellant had undergone a left hip total arthroplasty several years prior. He opined that the only surgical option was right hip total arthroplasty. X-rays obtained on July 29, 2024 revealed severe osteoarthritis of the right hip with complete loss of joint space, subchondral sclerosis, subchondral cysts, and osteophyte formation.

On August 2, 2024, appellant filed a claim for compensation (Form CA-7) for disability from work during the period July 16 through August 2, 2024. A supervisor noted that appellant

³ Docket No. 23-0499 (issued August 14, 2023).

⁴ *Id.*

was in a leave without pay status from July 16 through 26, 2024 and used sick leave from July 29 through August 2, 2024.

In a development letter dated August 6, 2024, OWCP requested that appellant submit additional medical evidence to support disability from work commencing July 16, 2024, noting that the July 29, 2024 note only provided work restrictions effective on that date. It further advised that it would request information from the employing establishment regarding whether it could accommodate the work restrictions by Dr. Feaker beginning July 29, 2024. OWCP afforded appellant 30 days to submit the requested evidence.

On August 8, 2024, an employing establishment representative informed OWCP that there was no work available for appellant within his July 29, 2024 medical restrictions.

In a report dated August 11, 2024, Dr. Eric Orenstein, a Board-certified orthopedic surgeon serving as second opinion physician, noted that appellant had stopped work on July 16, 2024. He recounted that appellant's symptoms, physical findings, and radiographic findings were severe enough to warrant right total hip replacement surgery. He concluded that appellant had end-stage bone-on-bone osteoarthritis of the right hip and that no further conservative treatment measures were indicated. Dr. Orenstein opined that right total hip replacement surgery was medically necessary, causally related to his accepted unilateral primary osteoarthritis of the right hip, and that authorization for the surgery should be approved.

In a note dated August 12, 2024, Dr. Feaker recommended work restrictions as of July 29, 2024, including no prolonged standing or walking, kneeling, squatting, bending, twisting, or stretching; no use of the right hip and leg; seated work only; and ability to ice and elevate. He noted that these restrictions would apply until after surgery.

By decision dated September 12, 2024, OWCP denied appellant's claim for disability from work during the period July 16 through 28, 2024, finding that the medical evidence of record was insufficient to establish causal relationship between the claimed disability and the accepted employment injury.

On September 17, 2024, appellant underwent OWCP-authorized anterior right total hip arthroplasty and fluoroscopy performed by Dr. Feaker.

In an October 7, 2024 statement, appellant noted that July 16, 2024 was the first day that he could not perform his duties as a letter carrier due to his injury. He contended that he was under the care of his treating physician with work restrictions recommended as of July 16, 2024, and that no work was available within those restrictions.

In a letter dated November 12, 2024, appellant requested reconsideration of OWCP's September 12, 2024 decision. He submitted a statement asserting that Dr. Feaker had placed him under medical restrictions since July 16, 2024, the last day he was able to work due to his accepted August 5, 2022 employment injury. No additional medical evidence was received.

By decision dated November 14, 2024, 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

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim including that any disability or specific condition for which compensation is claimed is causally related to the employment injury.⁵ For each period of disability claimed, the employee has the burden of proof to establish that he or she was disabled from work as a result of the accepted employment injury.⁶ Whether a particular injury causes an employee to become disabled from work, and the duration of that disability, are medical issues that must be proven by a preponderance of probative and reliable medical opinion evidence.⁷

Under FECA the term “disability” means the incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.⁸ Disability is thus not synonymous with physical impairment, which may or may not result in an incapacity to earn wages. An employee who has a physical impairment causally related to a federal employment injury, but who nevertheless has the capacity to earn the wages he or she was receiving at the time of injury, has no disability as that term is used in FECA.⁹

The Board will not require OWCP to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so, would essentially allow an employee to self-certify their disability and entitlement to compensation.¹⁰

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met his burden of proof to establish disability from work for the period July 16 through 28, 2024 causally related to his accepted August 5, 2022 employment injury.

On July 29, 2024, Dr. Feaker evaluated appellant’s right hip. He related that x-rays obtained on that day revealed severe osteoarthritis of the right hip, and he opined that the only surgical option was right hip total arthroplasty. In a note dated July 29, 2024, Dr. Feaker advised that appellant should be excused from work on that date and recommended work restrictions of seated work only and no standing for more than one hour per day. He further noted that appellant could not perform his current duties. On August 12, 2024, Dr. Feaker recommended work restrictions as of July 29, 2024, which he noted would apply until after appellant underwent

⁵ See *D.S.*, Docket No. 20-0638 (issued November 17, 2020); *F.H.*, Docket No. 18-0160 (issued August 23, 2019); *C.R.*, Docket No. 18-1805 (issued May 10, 2019); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁶ *B.O.*, Docket No. 19-0392 (issued July 12, 2019); *D.W.*, Docket No. 18-0644 (issued November 15, 2018).

⁷ 20 C.F.R. § 10.5(f); see also *B.O.*, *id.*; *N.M.*, Docket No. 18-0939 (issued December 6, 2018).

⁸ *Id.* at § 10.5(f); see also *B.K.*, Docket No. 18-0386 (issued September 14, 2018).

⁹ *Id.*

¹⁰ *A.W.*, Docket No. 18-0589 (issued May 14, 2019); *Fereidoon Kharabi*, 52 ECAB 291, 293 (2001).

surgery. Dr. Feaker's reports addressed work restrictions as of July 29, 2024. As such, he did not specifically address the period of disability at issue in this case from July 16 through 28, 2024. As previously noted, OWCP does not pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed.¹¹ As he did not address appellant's disability status during the specific dates of disability for which compensation was claimed, Dr. Feaker's reports are of no probative value and are insufficient to establish appellant's disability claim.¹²

In a report dated August 11, 2024, Dr. Orenstein noted that appellant had stopped work on July 16, 2024. He opined that right total hip replacement surgery was medically necessary, causally related to his accepted unilateral primary osteoarthritis of the right hip, and that authorization for the surgery should be approved. Dr. Orenstein did not, however, provide an opinion regarding appellant's disability status during the time period in question. His report is therefore also insufficient to establish appellant's disability claim.

As the medical evidence of record is insufficient to establish disability from work for the period July 16 through 28, 2024 causally related to his accepted August 5, 2022 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 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.¹³

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.¹⁴

¹¹ *Id.*

¹² *See R.W.*, Docket No. 25-0096 (issued January 31, 2025); *C.B.*, Docket No. 18-0400 (issued May 7, 2019); *C.S.*, Docket No. 17-1686 (issued February 5, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹³ 5 U.S.C. § 8128(a); *see also 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).

¹⁴ 20 C.F.R. § 10.606(b)(3); *see also L.D., id.*; *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.¹⁵ If it chooses to grant reconsideration, it reopens and reviews the case on its merits.¹⁶ 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.¹⁷

ANALYSIS -- ISSUE 2

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's November 12, 2024 request for reconsideration neither alleged nor demonstrated that OWCP erroneously applied or interpreted a specific point of law. Additionally, the Board finds that it did not advance a relevant legal argument not previously considered by OWCP. Consequently, appellant is not entitled to further review of the merits of his claim based on either the first or second above-noted requirements under 20 C.F.R. § 10.606(b)(3).

In support of his reconsideration request, appellant submitted a statement contending that Dr. Feaker had placed him under medical restrictions since July 16, 2024, the last day he was able to work due to his accepted injury. While his statement is new, the underlying issue in this case is medical in nature, as OWCP found in its September 12, 2024 decision that he had not submitted sufficient medical evidence to establish disability from work for the period July 16 through 28, 2024. Appellant did not submit relevant and pertinent new medical evidence supporting disability during the period July 16 through 28, 2024. His own lay opinion is not relevant to the medical issue in this case, which can only be resolved through the submission of probative medical evidence from a physician.¹⁸ 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.¹⁹ As appellant failed to provide relevant and pertinent new evidence, he is not entitled to a merit review based on the third requirement under 20 C.F.R. § 10.606(b)(3).

¹⁵ *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.

¹⁶ *Id.* at § 10.608(a); *see also F.V.*, Docket No. 18-0230 (issued May 8, 2020); *M.S.*, 59 ECAB 231 (2007).

¹⁷ *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).

¹⁸ *See G.C.*, Docket No. 18-0506 (issued August 15, 2018).

¹⁹ *A.J.*, Docket No. 20-0926 (issued January 26, 2021); *Jimmy O. Gilmore*, 37 ECAB 257 (1985); *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

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.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish disability from work for the period July 16 through 28, 2024 causally related to his accepted August 5, 2022 employment injury. The Board further 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 September 12 and November 14, 2024 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: March 7, 2025
Washington, DC

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

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

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