

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

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R.T., Appellant )  
and ) Docket No. 25-0760  
DEPARTMENT OF THE ARMY, DEFENSE ) Issued: November 17, 2025  
HEALTH AGENCY, Fort Drum, NY, Employer )  
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)

*Appearances:*

*Alan J. Shapiro, Esq.*, for the appellant<sup>1</sup>  
*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 August 4, 2025 appellant, through counsel, filed a timely appeal from a July 14, 2025 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). The most recent merit decision was a Board decision dated August 13, 2024, which became final after 30 days of issuance, and is not subject to further review.<sup>2</sup> As there is no merit decision issued within 180

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<sup>1</sup> 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.

<sup>2</sup> 20 C.F.R. § 501.6(d); *see M.S.*, Docket No. 18-0222 (issued June 21, 2018); *J.P.*, Docket No. 17-0053 (issued May 23, 2017); *R.M.*, Docket No. 14-1213 (issued October 15, 2014).

days from the filing of this appeal, pursuant to the Federal Employees' Compensation Act<sup>3</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction to review the merits of this case.<sup>4</sup>

### **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**

This case has previously been before the Board.<sup>5</sup> 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 March 15, 2021 appellant, then a 49-year-old health aid technician, filed a traumatic injury claim (Form CA-1) alleging that on March 2, 2021 she injured her right shoulder, leg, and back when she fell over a stool, while in the performance of duty. She stopped work on March 9, 2021, and returned to full-duty work on March 15, 2021.

On April 8, 2021 Heather Emmanuel, a physician assistant, diagnosed bilateral lumbago with sciatica, and placed appellant off work until May 20, 2021. This report was countersigned by Dr. Ryan Tyler, Board-certified in family practice.

By decision dated May 24, 2021, OWCP denied the claim, finding that appellant had not established a medical diagnosis in connection with the accepted March 2, 2021 employment incident.

On June 3, 2021 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review, which was held on October 7, 2021.

By decision dated December 1, 2021, OWCP's hearing representative reversed the May 24, 2021 decision in part, finding that appellant had established multiple contusions with soft tissue hematoma to the left lower leg. However, the hearing representative also affirmed the May 24, 2021 decision in part, finding that the medical evidence of record was insufficient to establish expansion of the acceptance of the claim to include additional conditions as causally related to the accepted employment injury.

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<sup>3</sup> 5 U.S.C. § 8101 *et seq.*

<sup>4</sup> The Board notes that, following the July 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.*

<sup>5</sup> Docket No. 24-0149 (issued August 13, 2024).

On December 30, 2021 OWCP formally accepted the claim for contusion of left lower leg, subsequent encounter, and hematoma left leg.

On November 3, 2022 appellant, through counsel, requested reconsideration of the December 1, 2021 denial of expansion. In support thereof, she submitted a May 19, 2022 report from Ms. Emmanuel.

On April 14, 2022 appellant filed a claim for compensation (Form CA-7) for disability from work during the period March 7, 2021 through March 1, 2022.

OWCP received treatment notes from Samantha J. Furman, a nurse practitioner, dated January 4 through May 19, 2022. Ms. Furman related appellant's diagnosis as intervertebral disc disorder with radiculopathy.

In a September 20, 2022 report, Dr. Tyler discussed appellant's history of injury and treatment, examined appellant, and noted that his findings included subjective complaints and objective findings. He diagnosed lumbar paraspinal muscle spasm, lumbar spondylosis, tremor, and reactive depression.

By decision dated November 4, 2022, OWCP denied appellant's request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a).

On November 22, 2022 appellant, through counsel, again requested reconsideration.

In an October 18, 2022 report, Dr. Jon Wat, an osteopath specializing in family medicine, recounted appellant's history of injury. He noted that appellant had a medical history of right-sided sciatica. Dr. Wat further noted that appellant had low back pain radiating into the lower extremities. He indicated that the mechanism of injury was a twisting motion, that the injury was work related, and that the history of injury was consistent with his objective findings. Dr. Wat opined that appellant was 100 percent disabled.

In a November 18, 2022 report, Dr. Wat noted that appellant reported anxiety and depression, along with her back pain, and opined that her conditions were work related.

An October 26, 2022 x-ray of the lumbar spine revealed mild degenerative spondylosis changes, and sacralization of the right L5 transverse process.

By decision dated February 14, 2023, OWCP denied modification of the December 1, 2021 denial of expansion.

In a development letter dated March 8, 2023, OWCP noted receipt of appellant's Form CA-7 claim for disability from work during the period March 7, 2021 through March 1, 2022, and advised appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence necessary to establish her claim and provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit the necessary evidence. No additional evidence was received.

By decision dated April 21, 2023, OWCP denied appellant's claim for wage-loss compensation during the period March 7, 2021 through March 1, 2022, finding that the medical

evidence of record was insufficient to establish disability from work during the claimed period causally related to the accepted employment injury.

On May 2, 2023 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review, which was held on September 27, 2023.

Dr. Wat continued to treat appellant and saw her on March 3 and June 16, 2023. In a September 15, 2023 report, he opined that appellant had lumbar radiculopathy from her March 2, 2021 employment injury, and was disabled from work.

On November 20, 2023 appellant, through counsel, again requested expansion of the acceptance of the claim to include additional medical conditions. He submitted additional evidence including reports dated from April 11, 2023 by Dr. Michelle Johnston, Board-certified in anesthesiology and pain medicine. In her April 11, 2023 report, Dr. Johnston diagnosed lumbar radiculopathy and radiculopathy, lumbar region. She responded "Yes" as to whether appellant's complaints were consistent with the history of injury and objective findings and opined that appellant was 100 percent disabled. Dr. Johnston continued to treat appellant on May 31, July 18, and September 12, 2023. She indicated that an October 26, 2022 lumbar spine x-ray revealed mild degenerative changes, and a September 21, 2021 magnetic resonance imaging (MRI) scan revealed mild facet osteoarthritis at L4-5 and L5-S1 with no stenosis. Dr. Johnston diagnosed work-related lumbar radiculopathy and noted that appellant resigned from her employment in March 2022 and was not working.

By decision dated November 24, 2023, OWCP's hearing representative affirmed the April 21, 2023 OWCP decision, finding that the medical evidence of record was insufficient to establish disability from work during the period March 7, 2021 through March 1, 2022 causally related to the accepted employment injury. The hearing representative also denied expansion of the acceptance of the claim as the medical evidence of record was insufficient to establish causal relationship between appellant's additional diagnosed condition(s) and the accepted employment injury.

On December 8, 2023 appellant, through counsel, appealed the November 24, 2023 decision to the Board.

During the pendency of the appeal, appellant continued to submit additional medical evidence to OWCP.

In a December 15, 2023 report, Dr. Wat diagnosed lumbar radiculopathy and right-sided sciatica which he opined was work related. He found that appellant was 75 percent disabled and referred her to outpatient mental health.

In medical reports dated January 8 through May 13, 2024, Dr. Johnston diagnosed lumbar radiculopathy. She indicated that appellant's complaints were consistent with the history of injury and objective findings, and opined that appellant was 75 percent disabled.

In a June 17, 2024 report, Dr. Wat evaluated appellant for complaints to the lumbar spine and noted that she was unable to sit for eight hours per day.

Appellant also submitted medical reports previously of record including a January 4, 2022 progress note from Ms. Furman, progress notes dated January 13 and May 19, 2022 from Ms. Emmanuel, and a June 20, 2023 computerized tomography (CT) scan of the abdomen and pelvis.

The Board, by decision dated August 13, 2024, affirmed OWCP's November 24, 2023 decision, finding that the medical evidence of record was insufficient to establish disability from work during the period March 7, 2021 through March 1, 2022 causally related to the accepted employment injury, and that the medical evidence of record was insufficient to establish causal relationship between appellant's additional diagnosed condition(s) and the accepted employment injury.<sup>6</sup>

Following the Board's decision, appellant continued to submit additional evidence to OWCP in support of her claim.

In a November 27, 2024 treatment note, Dr. Johnston discussed appellant's history of injury and diagnosed chronic lumbar radiculopathy and radiculopathy lumbar region.

A December 26, 2024 urine analysis and laboratory results were also provided.

In a January 6, 2025 report, Dr. Wat noted appellant's complaints of pain and provided findings related to the lumbar spine.

In medical reports dated January 30 through June 23, 2025, Dr. Johnston evaluated appellant and documented worsening lumbar symptoms. She diagnosed pain in right hip and lumbar radiculopathy, and ordered further diagnostic testing. Dr. Johnston further reported that a December 13, 2024 MRI scan of the lumbar spine revealed mild degenerative disc disease (DDD) and mild facet changes at bilateral L4-5 and L5-S1.

On July 1, 2025 appellant, through counsel, requested reconsideration. Counsel referenced the newly submitted reports from Dr. Johnston.

By decision dated July 14, 2025, 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 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.<sup>7</sup>

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<sup>6</sup> *Id.*

<sup>7</sup> 5 U.S.C. § 8128(a); *see R.C.*, Docket No. 22-0612 (issued October 24, 2022); *M.S.*, Docket No. 19-1001 (issued December 9, 2019); *L.D.*, Docket No. 18-1468 (issued February 11, 2019); *see also V.P.*, Docket No. 17-1287 (issued October 10, 2017); *W.C.*, 59 ECAB 372 (2008).

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.<sup>8</sup>

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.<sup>9</sup> If it chooses to grant reconsideration, it reopens and reviews the case on its merits.<sup>10</sup> 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.<sup>11</sup>

### **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).

On July 1, 2025 appellant, through counsel, filed a request for reconsideration. The Board finds, however, that she neither established that OWCP erroneously applied or interpreted a specific point of law, nor did she advance a relevant legal argument not previously considered by OWCP. Accordingly, the Board finds that 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).<sup>12</sup>

The underlying issues in this case are whether appellant established disability from work during the period March 7, 2021 through March 1, 2022, causally related to her accepted March 2, 2021 employment injury and whether she established expansion of the acceptance of her claim to include additional conditions as causally related to the accepted March 2, 2021 employment injury. This is a medical question that requires rationalized medical opinion evidence to resolve the issue.<sup>13</sup> On reconsideration, appellant submitted medical reports dated December 15, 2023 through January 6, 2025 wherein Dr. Wat diagnosed lumbar radiculopathy and right-sided sciatica which he opined were work related. He reported that appellant was 75 percent disabled and referred her to outpatient mental health. However, these reports are substantially similar to prior reports received from Dr. Wat. The Board has held that the submission of evidence or argument

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<sup>8</sup> 20 C.F.R. § 10.606(b)(3); *see R.C., id.; L.D., id.*

<sup>9</sup> *Id.* at § 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.

<sup>10</sup> *Id.* at § 10.608(a); *see also M.S., 59 ECAB 231 (2007).*

<sup>11</sup> *Id.* at § 10.608(b); *M.S., Docket No. 19-0291 (issued June 21, 2019); E.R., Docket No. 09-1655 (issued March 18, 2010).*

<sup>12</sup> *See L.W., Docket No. 21-0607 (issued October 18, 2022).*

<sup>13</sup> *R.M., Docket No. 21-0963 (issued April 19, 2023).*

that repeats or duplicates evidence or argument previously of record does not constitute a basis for reopening a case.<sup>14</sup> As such, this evidence is insufficient to warrant merit review. Appellant also submitted medical reports dated January 8, 2024 through June 23, 2025 wherein Dr. Johnston diagnosed lumbar radiculopathy and indicated that appellant's complaints were consistent with the history of injury and objective findings, and opined that appellant was 75 percent disabled. This evidence is also substantially similar to evidence previously of record.<sup>15</sup> Therefore, this evidence is insufficient to require OWCP to reopen the case for merit review. The December 26, 2024 urine analysis and laboratory results submitted on reconsideration are also insufficient to warrant merit review as they do not address the underlying issues. 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.<sup>16</sup> Appellant also submitted medical reports previously of record. As this evidence repeats or duplicates evidence previously of record, it does not constitute a basis for reopening a claim.<sup>17</sup> Therefore, it is insufficient to require OWCP to reopen the claim for consideration of the merits. Because appellant did not provide any relevant and pertinent new evidence, she is not entitled to a review of the merits based on the third above-noted requirement under 20 C.F.R. § 10.606(b)(3).

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.

### **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).

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<sup>14</sup> *J.B.*, Docket No. 22-1166 (issued April 3, 2023); *S.H.*, Docket No. 22-1179 (issued January 17, 2023); *S.E.*, Docket No. 17-0222 (issued December 21, 2018); *T.H.* Docket Nos. 17-1578 and 17-1651 (issued April 26, 2018); *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

<sup>15</sup> *Id.*

<sup>16</sup> *E.S.*, Docket No. 23-0698 (issued November 6, 2023); *F.M.*, Docket No. 19-0672 (issued September 11, 2019); *M.B.*, Docket No. 19-0596 (issued August 6, 2019); *D.K.*, 59 ECAB 141, 147 (2007); *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

<sup>17</sup> *Supra* note 14.

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 14, 2025 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 17, 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