

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

M.N., Appellant	)	
	)	
and	)	<b>Docket No. 26-0104</b>
	)	<b>Issued: April 16, 2026</b>
U.S. POSTAL SERVICE, CAROL STREAM	)	
POSTAL & DISTRIBUTION CENTER,	)	
Carol Stream, IL, Employer	)	
	)	

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Chief Judge  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On November 13, 2025, appellant filed a timely appeal from a May 19, 2025 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from the last merit decision dated March 27, 2025, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act (FECA)<sup>1</sup> and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of the case.<sup>2</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).

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that, following the May 19, 2025 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.*

## **FACTUAL HISTORY**

On December 27, 2011, appellant, then a 55-year-old manual distribution clerk, filed an occupational disease claim (Form CA-2) alleging that after working for 33 years she developed pain in her back, hip, and left leg/foot due to factors of her federal employment, which included lifting, pushing, pulling, and keying on the flat sorter machine. OWCP accepted the claim for thoracic or lumbosacral neuritis or radiculitis, and degeneration of lumbar or lumbosacral intervertebral disc.<sup>3</sup>

On June 22, 2013, appellant filed a claim for compensation (Form CA-7) for a schedule award.

By decision dated November 20, 2013, OWCP granted appellant a schedule award for five percent permanent impairment of the right lower extremity and five percent permanent impairment of the left lower extremity due to the effects of her low back condition. The date of maximum medical improvement (MMI) was April 1, 2013. The period of the award ran for 28.8 weeks covering the period August 3, 2013 to February 20, 2014.

By decision dated August 22, 2019, OWCP expanded acceptance of the claim to include aggravation of other intervertebral disc degeneration, lumbar region, and aggravation of radiculopathy, lumbosacral region.<sup>4</sup>

On September 16, 2022, appellant filed a Form CA-7 claim for an increased schedule award.

In an October 21, 2022 report, appellant's attending physician, Dr. Samuel J. Chmell, a Board-certified orthopedic surgeon, referred to the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*)<sup>5</sup> and *The Guides Newsletter, Rating Spinal Nerve Extremity Impairment* (July/August 2009) (*The Guides Newsletter*) and opined that appellant had 30 percent permanent impairment of the left lower extremity and 26 percent permanent impairment of the right lower extremity as a result of her accepted back conditions.

In reports dated January 9 and July 11, 2023, Dr. Michael M. Katz, a Board-certified orthopedic surgeon serving as a district medical adviser (DMA), reviewed the medical record.<sup>6</sup> He explained that the degree of motor weakness that Dr. Chmell used in his impairment calculation

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<sup>3</sup> OWCP assigned the present claim OWCP File No. xxxxxx289. Appellant has prior claims before OWCP. Under OWCP File No. xxxxxx677, OWCP accepted appellant's occupational disease claim for lesion of the left plantar nerve, left calcaneal spur, and left tarsal tunnel syndrome. By decision dated January 29, 2014, OWCP granted appellant an additional four percent permanent impairment of the left lower extremity, for a total of nine percent. Under OWCP File No. xxxxxx429, OWCP accepted appellant's occupational disease claim for tarsal tunnel syndrome, right foot, plantar fascial fibromatosis, right foot, and tenosynovitis, right ankle and foot. By decision dated March 12, 2019, OWCP found appellant had an additional one percent permanent impairment of the right lower extremity, or a total of six percent.

<sup>4</sup> Appellant retired effective September 1, 2022.

<sup>5</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2009).

<sup>6</sup> On February 7, 2023, OWCP administratively combined appellant's claims under OWCP File Nos. xxxxxx677, xxxxxx429 and xxxxxx289, with the latter serving as the master file.

was in excess of what would be expected for disc disease and appellant's degree of herniation. Dr. Katz cited the February 4, 2021 lumbar magnetic resonance imaging (MRI) scan report, noting findings such as a mild foraminal narrowing with no significant spinal stenosis. He recommended appellant undergo a second-opinion examination.

On December 22, 2023, OWCP referred appellant, together with the case file and the February 3, 2023 SOAF, to Dr. John Koehler, a physician Board-certified in occupational medicine, for a second opinion evaluation assessment of appellant's employment-related conditions and any resulting permanent impairment for schedule award purposes.

In a report dated February 5, 2024, Dr. Koehler reviewed the statement of accepted facts (SOAF), appellant's history of employment-related injuries, appellant's medical records and set forth appellant's physical examination findings. He opined that MMI was reached on February 5, 2024. Dr. Koehler indicated that, based on his examination findings, appellant was not being rated for spinal nerve impairment as she did not have any sensory or motor deficits in her lower extremities. He stated that she had lumbar radiculopathy with left leg radiculopathic pain, intervertebral disc degeneration and left-sided tarsal tunnel syndrome and opined, under Table 17-4 of the A.M.A., *Guides*, she had 12 percent permanent impairment of the left lower extremity under the diagnosis-based impairment (DBI) methodology. Dr. Koehler also found that she had zero percent impairment under the range of motion (ROM) methodology. Following the April 1, 2024 review by Dr. Katz, the DMA, OWCP requested a supplemental report from Dr. Koehler with a rating in accordance with the *The Guides Newsletter*.

In a supplemental report dated June 26, 2024, Dr. Koehler stated that based on his February 5, 2024 examination, appellant did not have any sensory or motor deficits in her lower extremities. Thus, there was no evidence of permanent impairment related to spinal nerve root impairment.

In a July 13, 2024 report, Dr. Katz, the DMA, concurred with Dr. Koehler that appellant had no additional permanent impairment. He explained that Dr. Koehler found no myotomal motor/dermatomal sensory deficits in either lower extremity; thus, there was no ratable impairment of any spinal nerve and no ratable impairment for the accepted spinal conditions. Dr. Katz also explained that the key diagnostic factors utilized in determination of DBI for the accepted conditions in this claim were not eligible for an alternative ROM impairment calculation based on the A.M.A., *Guides*. He thus concluded that appellant had zero percent impairment of the left lower extremity and zero percent impairment of the right lower extremity, due to her accepted lumbar conditions.

By decision dated July 26, 2024, OWCP denied appellant's claim for an increased schedule award, finding that the medical evidence of record was insufficient to establish greater than the six percent permanent impairment of the right lower extremity and nine percent permanent impairment of the left lower extremity previously awarded.

In an August 22, 2024 progress report, Dr. Chmell repeated his findings and diagnoses.

In an August 23, 2024 letter, Dr. Chmell opined that Dr. Koehler's reports were of no probative value as he was not an appropriate specialist for rating permanent impairment.

On September 10, 2024, appellant requested reconsideration.

By decision dated September 18, 2024, OWCP denied modification of the July 26, 2024 decision.

In a report dated October 5, 2024, Dr. Chmell related that his findings of sensory and motor deficits in appellant's lower extremities were indicated in the February 19, 2021 electromyogram/nerve conduction velocity (EMG/NCV) study, which found bilateral lumbosacral radiculopathy. In progress reports dated October 17 and December 12, 2024, Dr. Chmell related that on physical examination appellant had diminished strength and sensation of her ankles and feet.

On December 31, 2024, appellant requested reconsideration.

An October 31, 2024 EMG/NCV study indicated abnormal findings consistent with a moderate mixed demyelinating and axonal sensory-motor peripheral neuropathy. Sensory nerve conduction study of the bilateral sural and peroneal nerves revealed no responses, and motor nerve conduction study of the right and left peroneal and tibial nerves revealed normal to prolonged distal latency. Mild right S1 radiculopathy was also suspected.

On February 11, 2025, OWCP requested that DMA, Dr. Katz, review the medical evidence of record and provide an opinion regarding the degree of appellant's permanent impairment due to her accepted conditions.

In a February 15, 2025 report, Dr. Katz, the DMA, opined that appellant reached MMI on February 5, 2024, the date of Dr. Kohler's impairment examination. He opined that appellant had one percent permanent impairment of the right lower extremity, but as the present impairment did not exceed the prior overlapping award, no additional award was due for the right lower extremity. Dr. Katz further opined that appellant had zero percent impairment of the left lower extremity.

On March 4, 2025, OWCP requested clarification and an addendum report from its DMA, Dr. Katz, regarding procedures for spinal ratings under *The Guides Newsletter*.

In a March 6, 2025 letter and March 6, 2025 report, Dr. Chmell reiterated his prior findings.

In a March 7, 2025 addendum report, Dr. Katz determined that there were no permanent impairment of any spinal nerve and no ratable impairment for the accepted spinal conditions. Thus, Dr. Katz found zero percent permanent impairment of the right lower extremity and zero percent permanent impairment of the left lower extremity. He opined that appellant reached MMI on February 5, 2024, the date of Dr. Koehler's impairment evaluation.

By decision dated March 27, 2025, OWCP denied modification.

OWCP subsequently received an April 11, 2025 note, wherein Dr. Chmell noted that an updated MRI scan was needed to document findings consistent with his contemporaneous physical examination. An April 6, 2025 request for an MRI scan of the lumbar spine was provided.

On May 7, 2025, appellant requested reconsideration and submitted additional evidence.

In a May 1, 2025 note, Dr. Chmell stated that an April 28, 2025 MRI scan showed significant disc protrusion at the L3-4 and L4-5 levels. He related that these findings were consistent with the neurological deficits found in the repeat testing of appellant's lower

extremities. He recommended that appellant's bilateral lower extremity impairment ratings be upgraded to those found in the October 21, 2022 report.

An April 28, 2025 MRI scan of the lumbar spine noted mild lumbar spondylosis, an L4-5 disc bulge and mild right neural foraminal stenosis, and a shallow disc bulge at L3-4.

A copy of the October 31, 2024 EMG/NCV study of the lower extremities was also received by OWCP.

By decision dated May 19, 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>

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).

Initially, the Board notes that in schedule award cases, in determining timeliness of a request for further review, a distinction is made between an application for an increased schedule

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<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); *V.P.*, Docket No. 17-1287 (issued October 10, 2017); *W.C.*, 59 ECAB 372 (2008).

<sup>8</sup> 20 C.F.R. § 10.606(b)(3); *see R.K.*, Docket No. 25-0873 (issued December 1, 2025); *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).

award and a request for reconsideration of the denial of a schedule award. The Board has held that a claimant may request a schedule award or increased schedule award at any time based on evidence of a new exposure or medical evidence showing progression of an employment-related condition resulting in permanent impairment or increased impairment.<sup>12</sup> However, when a claimant does not submit any relevant evidence with respect to an increased schedule award, then OWCP may properly determine that he or she has filed a request for reconsideration of a schedule award decision.<sup>13</sup> The Board finds that appellant did not submit relevant evidence with respect to establishing an increased permanent impairment and, thus, OWCP properly considered her submission as a request for reconsideration, not a request for an increased schedule award.

In her May 7, 2025 reconsideration request, appellant did not provide evidence or an argument which shows that OWCP erroneously applied or interpreted a specific point of law.<sup>14</sup> Moreover, she did not advance a relevant legal argument not previously considered by OWCP. Consequently, appellant is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under 20 C.F.R. § 10.606(b)(3).<sup>15</sup>

With her reconsideration request, appellant submitted a May 1, 2025 note, wherein Dr. Chmell indicated that an April 28, 2025 lumbar spine MRI scan showed significant disc protrusion at the L3-4 and L4-5 levels. He related that these findings were consistent with the neurological deficits found in the repeat testing of appellant's lower extremities. Dr. Chmell recommended that appellant's bilateral lower extremity impairment ratings be upgraded to those found in his October 21, 2022 report. Appellant also submitted a copy of an October 31, 2024 EMG/NCV study, which was previously of record. The Board has held, however, that additional evidence that either repeats or duplicates information previously of record does not constitute a basis for reopening a claim.<sup>16</sup> Additionally, with her request or reconsideration, appellant submitted the following evidence: an April 11, 2025 note wherein Dr. Chmell indicated that an updated MRI scan was needed to document findings consistent with his contemporaneous physical examination; Dr. Chmell's April 6, 2025 request for an MRI scan of the lumbar spine; and the April 28, 2025 lumbar spine MRI scan. However, as none of this evidence addresses permanent impairment, it is irrelevant to the underlying issue in this case, which is whether the medical evidence of record is sufficient to establish greater permanent impairment than that which was previously awarded.<sup>17</sup> 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>18</sup> As appellant did not provide relevant and pertinent new evidence, she is not entitled to further

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<sup>12</sup> See *C.W.*, Docket No. 18-0703 (issued December 28, 2018); *R.D.*, Docket No. 18-0579 (issued September 14, 2018); *D.S.*, Docket No. 17-0407 (issued May 24, 2017).

<sup>13</sup> See *L.H.*, Docket No. 19-1415 (issued February 19, 2020); *W.J.*, Docket No. 12-1746 (issued February 5, 2013).

<sup>14</sup> See *R.K.*, *supra* note 8; *K.G.*, Docket No. 22-1358 (issued June 27, 2023).

<sup>15</sup> *R.K.*, *id.*; *L.W.*, Docket No. 21-0607 (issued October 18, 2022).

<sup>16</sup> *C.L.*, Docket No. 20-0410 (issued October 29, 2020); *S.F.*, Docket No. 18-0516 (issued February 21, 2020); *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

<sup>17</sup> *J.R.*, Docket No. 20-1224 (issued June 8, 2021); *M.P.*, Docket No. 20-0814 (issued January 26, 2021).

<sup>18</sup> *G.P.*, Docket No. 25-0822 (issued February 2, 2026); *K.H.*, Docket No. 25-0242 (issued March 4, 2025); *G.Q.*, Docket No. 18-1697 (issued March 21, 2019); *Eugene F. Butler*, *supra* note 16; *Edward Matthew Diekemper*, 31 ECAB 224-25 (1979).

review of the merits of her claim based on the third above-noted requirement under 20 C.F.R. § 10.606(b)(3).<sup>19</sup>

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.<sup>20</sup>

### **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).

### **ORDER**

**IT IS HEREBY ORDERED THAT** the May 19, 2025 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 16, 2026  
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

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<sup>19</sup> 20 C.F.R. § 10.606(b)(3)(iii); *see M.H.*, Docket No. 23-0779 (issued October 16, 2023); *D.H.*, Docket No. 22-0875 (issued December 5, 2022); *see also D.J.*, Docket No. 21-0371 (issued November 24, 2021); *T.W.*, Docket No. 18-0821 (issued January 13, 2020).

<sup>20</sup> *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 20 C.F.R. § 10.606(b), OWCP will deny the request for reconsideration without reopening the case for a review on the merits).