

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

A.B., Appellant

and

**DEFENSE AGENCIES, DEFENSE
COMMISSARY AGENCY SOUTHWEST
REGION, Fort Eustis, VA, Employer**

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**Docket No. 26-0530
Issued: August 19, 2026**

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
JANICE B. ASKIN, Judge

JURISDICTION

On May 22, 2026 appellant filed a timely appeal from a January 9, 2026 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from the last merit decision dated November 21, 2025 to the filing of this appeal, pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of this case.²

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).

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that following the January 9, 2026 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 September 1, 2025 appellant, then a 43-year-old warehouse worker, filed a traumatic injury claim (Form CA-1) alleging that on August 28, 2025 she sustained lower back spasms while lifting a trash can into a compactor while in the performance of duty.

In a September 17, 2025 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed to establish her claim and afforded her 60 days to submit the necessary evidence.

In an attending physician's report (Form CA-20) dated September 11, 2025, and in an urgent care report of even date, Dr. David Rosenberg, an osteopath Board-certified in family medicine, diagnosed lumbar strain, lumbar spondylolisthesis, and anterolisthesis L4-5. He responded "yes" to the question of whether the diagnosed conditions were caused or aggravated by the employment activity.

In a duty status report (Form CA-17) dated September 11, 2025, Dr. Rosenberg related that appellant's injury occurred on August 28, 2025 when she lifted a trash can to dump the trash into a compactor. He diagnosed lumbar strain and anterolisthesis. Dr. Rosenberg also provided work restrictions.

In a follow-up letter dated October 6, 2025, OWCP advised appellant that it had conducted an interim review, and the evidence remained insufficient to establish her claim. It noted that she had 60 days from the September 17, 2025 development letter to submit the necessary evidence. OWCP further advised that if the evidence was not received during this time, it would issue a decision based on the evidence contained in the record.

OWCP subsequently received a September 11, 2025 after-visit summary indicating that appellant was seen by Dr. Rosenberg. Appellant's diagnoses were listed as lumbar strain, and spondylolisthesis.

By decision dated November 21, 2025, OWCP denied appellant's traumatic injury claim, finding that the medical evidence of record was insufficient to establish a medical condition causally related to the accepted August 28, 2025 employment incident.

On December 19, 2025 appellant requested reconsideration.

In support thereof, appellant submitted a September 11, 2025 progress note, wherein Dr. Rosenberg related that appellant was treated for a lower back injury, which occurred on August 28, 2025 at work. The mechanism of injury was noted as lifting a heavy garbage can. On physical examination, Dr. Rosenberg observed lumbar spasms and tenderness, decreased lumbar range of motion, and negative bilateral straight leg raise. Appellant's diagnoses were listed as spondylolisthesis of the lumbar region, lumbar strain, and sacroiliac pain.

OWCP also received a copy of Dr. Rosenberg's September 11, 2025 Forms CA-17. Additionally, it received copies of the September 11, 2025 CA-20 and urgent care report, now containing handwritten annotations.

By decision dated January 9, 2026, 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 own motion or on application.³

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.⁴

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.⁵ If it chooses to grant reconsideration, it reopens and reviews the case on its merits.⁶ 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.⁷

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 December 19, 2025 appellant requested reconsideration of OWCP's November 21, 2025 decision denying her traumatic injury claim. However, she neither showed 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 of her claim based on either the first or second above-noted requirements under 20 C.F.R. § 10.606(b)(3).⁸

On reconsideration, appellant submitted a progress note dated September 11, 2025 from Dr. Rosenberg. The Board finds that this report, although new, is cumulative and substantially similar to his previously submitted medical evidence. The Board has held that the submission of

³ 5 U.S.C. § 8128(a); *see S.B.*, Docket No. 24-0703 (issued December 13, 2024); *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).

⁴ 20 C.F.R. § 10.606(b)(3); *see B.G.*, Docket No. 26-0170 (issued March 30, 2026); *S.B.*, *id.*; *L.D.*, *id.*; *see also K.L.*, Docket No. 17-1479 (issued December 20, 2017); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

⁵ *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.

⁶ *Id.* at § 10.608(a); *see also M.S.*, 59 ECAB 231 (2007).

⁷ *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).

⁸ *See V.N.*, Docket No. 26-0355 (issued June 12, 2026); *L.W.*, Docket No. 21-0607 (issued October 18, 2022).

evidence, which repeats or duplicates evidence already in the case record, does not constitute a basis for reopening a case.⁹ Appellant also submitted copies of CA-17 and CA-20 forms, and an urgent care report from Dr. Rosenberg, which were all dated September 11, 2025. These reports were previously of record. The Board has held that evidence or argument that repeats or duplicates evidence previously of record has no evidentiary value and does not constitute a basis for reopening a case.¹⁰ Therefore, as appellant did not submit new and relevant evidence, she was 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).

⁹ See *V.N.*, *id.*; *M.C.*, Docket No. 18-0841 (issued September 13, 2019); *A.G.*, Docket No. 19-0113 (issued July 12, 2019); *L.R.*, Docket No. 18-0400 (issued August 24, 2018); *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

¹⁰ See *C.V.*, Docket No. 25-0596 (issued July 10, 2025); *T.K.*, Docket No. 23-0766 (issued May 8, 2025); *C.L.*, Docket No. 20-0410 (issued October 29, 2020); *M.G.*, Docket No. 18-0654 (issued October 17, 2018); *D.K.*, 59 ECAB 141 (2007); *Kenneth R. Mroczkowski*, 40 ECAB 855 (1989); *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

ORDER

IT IS HEREBY ORDERED THAT the January 9, 2026 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 19, 2026
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