

ISSUE

The issue is 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

On November 29, 2019 appellant, then a 44-year-old air marshal, filed a traumatic injury claim (Form CA-1) alleging that on November 19, 2019 he injured his left buttock, hip, back, and right elbow when he slipped and fell in water on the shooting range while in the performance of duty. He stopped work on March 9, 2021, and returned to full-duty work on March 15, 2021. OWCP accepted the claim for contusions of the lower back, pelvis, right elbow, and left hip, and strain of the lower back. On December 7, 2020 it expanded acceptance of the claim to include lumbar disc displacement and lumbosacral radiculopathy.

In an April 28, 2023 report, Dr. William Jones, a Board-certified internist, related that appellant experienced a fall on February 22, 2023 when his lower back and hip "locked up" and he lost his balance causing him to injure his left knee. He diagnosed lumbosacral radiculopathy, lumbar disc displacement, cervical radiculopathy, cervical disc displacement, muscle spasm of the back, myalgia, and other muscle spasm.

In a form report dated June 7, 2023, Dr. Sabrina Strickland, a Board-certified orthopedic surgeon, related that appellant sustained a rupture of his left patella tendon and underwent left knee patella tendon repair. In separate notes of even date, she provided work restrictions.

On June 8, 2023, appellant filed a notice of recurrence (Form CA-2a) alleging that he sustained a recurrence of disability on February 22, 2023 and stopped work on February 27, 2023 causally related to his accepted November 19, 2019 employment injury. He alleged that on February 22, 2023 he bent down and then felt his hips and lower back stiffen causing him to lose control and fall to the ground injuring his left hip, lower back, and left patella.

In a development letter dated July 14, 2023, OWCP informed appellant of the deficiencies of his recurrence claim. It advised him of the type of factual and medical evidence needed and provided a questionnaire for his completion. OWCP afforded appellant 30 days to submit the necessary evidence.

In an August 4, 2023 response to OWCP's development questionnaire on August 4, 2023, appellant related that, on February 22, 2023, he fell when his lower back and left hip stiffened or locked, causing him to slip and fall. As a result of this fall, he fractured his left knee patella and underwent left knee surgery on March 7, 2023. Appellant asserted that his accepted work-related lumbar disc displacement and lumbosacral radiculopathy caused daily pain, reducing his running speed and causing lower extremity numbness and stiffness which resulted in his February 22, 2023 fall.

On August 15, 2023, Dr. Sabrina M. Strickland, a Board-certified orthopedic surgeon, described appellant's fall on February 22, 2023, and related a history of his lower back and left hip locking and causing him to fall to the ground. She noted his previous treatment for lower back and left hip injuries. Dr. Strickland reviewed the diagnostic studies and diagnosed patella

tendon avulsion with a trochlear defect. She performed patella tendon repair surgery on March 7, 2023.

In a September 1, 2023 report, Dr. Jones noted that, following the November 19, 2019 employment injury, appellant sustained a subsequent fall on February 22, 2023 resulting in an injury to his left knee. He related that the left knee injury was sustained after appellant's lower back and left hip became "locked up" causing him to lose his balance and fall onto his left knee.

On September 12, 2023, Dr. George Ackerman, a Board-certified orthopedic surgeon, related appellant's history of work-related low back conditions and his subsequent fall when his left knee collapsed due to weakness resulting in a tear of his left patellar tendon. He further noted that he had undergone a left patellar tendon repair. Dr. Ackerman diagnosed lumbar radiculopathy, rupture of the left patellar tendon, and chronic left-sided low back pain with left-sided sciatica. He determined that based on the reported history of appellant's February 22, 2023 fall and his history of severe L4 radiculopathy in the left leg, that this fall was consistent with his work-related injury to the exiting L4 nerve root. Dr. Ackerman opined that his left knee injury was consequential to his left-sided lumbar radiculopathy as this was consistent with his imaging and history.

By decision dated September 21, 2023, OWCP denied appellant's recurrence claim, finding that the medical evidence of record was insufficient to establish disability commencing February 27, 2023 casually related to his accepted November 19, 2019 work-related injury.

On October 11, 2023 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

In an October 30, 2023 report, Dr. Jones again described the February 22, 2023 fall, noting that while trying to get up from a sitting position appellant experienced lower back pain radiating to the left hip, buttock and leg with complete numbness and weakness of the left lower extremity causing him to lose balance and fall injuring his left knee.

An oral hearing was held before a representative of OWCP's Branch of Hearings and Review on January 12, 2024.

By decision dated March 28, 2024, OWCP's hearing representative affirmed the September 21, 2023 decision.

In reports dated April 8 through May 21 2024, Dr. James Anderson, a Board-certified orthopedist, described appellant's accepted November 19, 2019 employment injury. He noted that he sustained a slip and fall in February 2023 resulting in a patellar tendon injury requiring surgery. Dr. Anderson opined that if appellant had not been experiencing pain in his hip and knee, he might have been stable enough to protect himself from that fall. He explained that it was "very feasible" that weakness after the initial injury resulted in inability to brace himself from falling and consequentially the left knee injury on February 22, 2023. Dr. Anderson diagnosed tear of the left acetabular labrum, left hip impingement syndrome, and left-sided sciatica.

On November 25, 2024 appellant requested reconsideration of the March 28, 2024 OWCP decision.

In a March 24, 2023 attending physician's report (Form CA-20), Dr. Jones addressed the diagnoses resulting from the accepted November 19, 2019 employment injury. He further related that limitations from that injury caused a subsequent injury on February 22, 2023 as appellant lost his balance after his lower back locked and his left lower extremity collapsed causing him to fall and sustain worsening lower back pain, left knee, and hip pain.

By decision dated December 2, 2024, OWCP denied modification of the March 28, 2024 hearing representative's decision.

On December 6, 2024 Dr. Jones recounted appellant's history of injury on February 22, 2023, relating that his lower back and left hip locked, causing him to lose balance and fall onto his left knee.

On January 24, 2025 Dr. Jones recounted appellant's history of injury on February 22, 2023. He related that as appellant attempted to arise from a sitting position he experienced lower back pain with pain radiating to the left hip, left buttock area, and left leg and complete numbness and weakness of his left lower extremity causing him to lose balance and to fall on his left leg injuring his left knee. Dr. Jones diagnosed lumbosacral radiculopathy, lumbar disc displacement, muscle spasm of the back, myalgia, and other muscle spasm.

In a report dated February 21, 2025, Dr. Anderson diagnosed left hip impingement syndrome and tear of the left acetabular labrum as a result of the November 19, 2019 employment injury.

In a report dated April 3, 2025, Dr. Anderson repeated his findings and diagnosis of left hip impingement syndrome and tear of the left acetabular labrum.

On March 28 and April 23, 2025, Dr. Hewitt A. Steinberg, a chiropractor, diagnosed segmental and somatic dysfunction of the lumbar region, segmental and somatic dysfunction of the sacral region, low back pain, lumbar radiculopathy, and lumbar disc degeneration.

OWCP subsequently received an April 25, 2025 lumbar magnetic resonance imaging (MRI) scan which demonstrated an annular disc bulge at L4-5. Dr. Steinberg continued to provide treatment on April 28, 2025.

On June 24, 2025, appellant, through counsel, requested reconsideration of the December 2, 2024 OWCP decision. He contended that Dr. Jones' January 24, 2025 report was sufficient to establish a consequential injury. Appellant further alleged that on May 6, 2025 OWCP had accepted that he sustained lumbar disc herniation and that his February 22, 2023 fall was a consequence of the accepted employment-related injuries and conditions requiring the OWCP-authorized lumbar surgery.

By decision dated June 30, 2025, OWCP denied appellant's request for reconsideration of the merits of the 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.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 his claim, pursuant to 5 U.S.C. § 8128(a).

On reconsideration, counsel submitted arguments that appellant's medical evidence was sufficient to establish a consequential injury claim. However, he did not demonstrate that OWCP erroneously applied or interpreted a specific point of law, nor did he 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 his claim based on either the first or second above-noted requirements under 20 C.F.R. § 10.606(b)(3).

The underlying issue in this case is whether appellant has met his burden of proof to establish a recurrence of disability commencing February 27, 2023 causally related to his accepted November 19, 2019 employment injury. On reconsideration, he submitted December 6, 2024 and January 24, 2025 reports from Dr. Jones which recounted his fall on

³ 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).

⁴ 20 C.F.R. § 10.606(b)(3); *see R.C.*, *id.*; *L.D.*, *id.*

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).

February 22, 2023. On February 21 and April 3, 2025, Dr. Anderson diagnosed left hip conditions due to the accepted November 19, 2019 employment injury. While these reports are new, this evidence is cumulative or duplicative in nature, and is therefore insufficient to warrant reopening the case for a merit review.⁸ Appellant also submitted treatment notes dated March 28 and April 23, 2025 from Dr. Steinberg, a chiropractor. However, chiropractors are physicians under FECA only to the extent that their reimbursable expenses are limited to treatment consisting of the manual manipulation of the spine to correct a subluxation as demonstrated to exist by x-rays.⁹ As Dr. Steinberg did not diagnose a subluxation as demonstrated to exist by x-rays, he is not considered a physician as defined under FECA and his reports do not constitute competent medical evidence.¹⁰ Therefore, these reports are irrelevant to the underlying issue of recurrence.¹¹

Appellant also submitted an April 25, 2025 lumbar MRI scan. Although new, the Board has also held that standing alone diagnostic studies lack probative value on the issue of causal relationship.¹² The submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.¹³

Because appellant did not provide any relevant and pertinent new evidence, he is not entitled to a review of the merits based on the third requirement under 20 C.F.R. § 10.606(b)(3).

The Board, accordingly, finds that as appellant has not met any of the requirements under 20 C.F.R. § 10.606(b)(3), pursuant to 20 C.F.R. § 10.608 OWCP properly denied merit review.

CONCLUSION

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).

⁸ *S.B.*, Docket No. 24-0703 (issued December 13, 2024); *G.Q.*, Docket No. 18-1697 (issued March 21, 2019); *Alan G. Williams*, 52 ECAB 180 (2000); *S.F.*, Docket No. 18-0516 (issued February 21, 2020); *James W. Scott*, 55 ECAB 606, 608 n.4 (2004); *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

⁹ 5 U.S.C. § 8101(2). See also 20 C.F.R. § 10.311; *D.S.*, Docket No. 25-0564 (issued June 25, 2025); *M.N.*, Docket No. 25-0271 (issued March 11, 2025); *E.L.*, Docket No. 24-0924 (issued November 14, 2024); *S.R.*, Docket No. 22-0421 (issued July 15, 2022); *S.L.*, Docket No. 21-0760 (issued January 6, 2022); *T.T.*, Docket No. 18-0838 (issued September 19, 2019); *Thomas W. Stevens*, 50 ECAB 288 (1999); *George E. Williams*, 44 ECAB 530 (1993).

¹⁰ *M.N.*, *id.*; *E.L.*, *id.*; *J.D.*, Docket No. 22-0240 (issued June 8, 2022); *R.P.*, Docket No. 19-0271 (issued July 24, 2019); *George E. Williams*, *id.*

¹¹ See *K.H.*, Docket No. 25-0242 (issued March 4, 2025); *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).

¹² *C.S.*, Docket No. 25-0502 (issued June 3, 2025); *F.D.*, Docket No. 19-0932 (issued October 3, 2019); *J.S.*, Docket No. 17-1039 (issued October 6, 2017).

¹³ *Supra* note 11.

ORDER

IT IS HEREBY ORDERED THAT the June 30, 2025 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 2, 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