

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

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<b>S.S., Appellant</b>	)	
	)	
<b>and</b>	)	
	)	<b>Docket No. 26-0046</b>
	)	<b>Issued: February 11, 2026</b>
<b>U.S. POSTAL SERVICE, BROOKLYN POST OFFICE, Brooklyn, NY, Employer</b>	)	
	)	
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*Appearances:*  
*Appellant, pro se*  
*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 October 21, 2025 appellant filed a timely appeal from a June 23, 2025 nonmerit decision of the Office of Workers' Compensation Programs (OWCP).<sup>1</sup> As more than 180 days has elapsed from the last merit decision dated June 13, 2024, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of this case.

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<sup>1</sup> Appellant submitted a timely request for oral argument before the Board. 20 C.F.R. § 501.5(b). Appellant requested that the Board give her the opportunity to present her medical history to prove that her compensation benefits were terminated in error by OWCP and should be reinstated. Pursuant to the Board's *Rules of Procedure*, oral argument may be held in the discretion of the Board. 20 C.F.R. § 501.5(a). The Board, in exercising its discretion, denies appellant's request for oral argument because the Board lacks jurisdiction over the merits of this case and, thus, the arguments on appeal can adequately be addressed in a decision based on a review of the case record. Oral argument in this appeal would further delay issuance of a Board decision and not serve a useful purpose. As such, the oral argument request is denied, and this decision is based on the case record as submitted to the Board.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## **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**

On December 30, 2022 appellant, then a 32-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on December 29, 2022 she injured her right hand, wrist, arm, shoulder, and back when a mailbox fell out of the wall as she unlocked and opened it, while in the performance of duty. OWCP accepted the claim for right shoulder rotator cuff strain and cervical spine sprain. It paid appellant compensation benefits on the supplemental rolls commencing March 7, 2023 and on the periodic rolls commencing August 13, 2023.

On June 13, 2023 Dr. Alan J. Dayan, a Board-certified orthopedic surgeon, performed an OWCP-authorized right shoulder arthroscopic decompression. In an October 16, 2023 note, Dr. Dayan performed a physical examination and found that appellant had difficulty in overhead activity and right-sided neck pain without radicular symptoms due to the December 29, 2022 employment injury. He recommended additional physical therapy.

On November 3, 2023 OWCP referred appellant, along with the medical record, a statement of accepted facts (SOAF), and a series of questions to Dr. Leon Sultan, an osteopath and Board-certified orthopedic surgeon, for a second opinion evaluation.

On November 21, 2023 Natalya Kashevskaya, a family nurse practitioner, examined appellant. In a separate note of even date, Dr. Dayan found that appellant was temporarily totally disabled from work.

In a November 22, 2023 report, Dr. Sultan noted his review of the SOAF and medical record, and performed a physical examination. He diagnosed musculoskeletal sprain/and or strain involving the cervical spine and derangement of the right shoulder that required surgical decompression and found that these conditions were clinically resolved without need for further medical treatment. Dr. Sultan opined that appellant could return to work in her date-of-injury position without restrictions. He completed a work capacity evaluation (Form OWCP-5c) of even date, finding that she was capable of performing her date-of-injury job without restrictions and that she could perform heavy strength level work.

By notice dated December 20, 2023, OWCP advised appellant that it proposed to terminate her wage-loss compensation and medical benefits based on Dr. Sultan's opinion that the accepted employment-related conditions had ceased without residuals or disability. It afforded her 30 days to submit additional evidence or argument challenging the proposed termination.

OWCP subsequently received additional evidence. In December 19, 2023 and January 16, 2024 notes, Dr. Ranga C. Krishna, a Board-certified neurologist, found that appellant was totally disabled from work.

On December 27, 2023 Dr. Dayan completed an attending physician's report (Form CA-20) diagnosing cervical spondylosis with foraminal stenosis and status post right shoulder

arthroscopy. He opined that the accepted employment injury caused a labral tear in the right shoulder and aggravated cervical spine pain due to the “jerky movement of the arm and neck during the accident.” In a separate note of even date, Dr. Dayan found that appellant was totally disabled from work through February 1, 2024. On February 15, 2024 he found that appellant was totally disabled from work through March 28, 2024.

In a January 18, 2024 statement, appellant asserted that she continued to experience residuals of her accepted employment injury including stiffness, pain, and limited range of motion in her cervical spine and shoulder.

By decision dated March 25, 2024, OWCP terminated appellant’s wage-loss compensation and medical benefits, effective that date. It found that Dr. Sultan’s opinion constituted the weight of the medical opinion evidence and established that appellant no longer had disability or residuals causally related to the accepted December 29, 2022 employment injury.

OWCP continued to receive evidence. On March 26, 2024 Dr. Krishna found that appellant was totally disabled from work.

In a March 28, 2024 note, Dr. Dayan found that appellant was totally disabled from work.

OWCP also received physical therapy notes for the period August 2 through 21, 2023.

On June 10, 2024 appellant requested reconsideration.

By decision dated June 13, 2024, OWCP denied modification.

On June 4, 2025 appellant requested reconsideration.

By decision dated June 23, 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>3</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

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<sup>3</sup> 5 U.S.C. § 8128(a); *see L.C.*, Docket No. 25-0444 (issued April 23, 2025); *L.D.*, Docket No. 18-1468 (issued February 11, 2019); *V.P.*, Docket No. 17-1287 (issued October 10, 2017); *D.L.*, Docket No. 09-1549 (issued February 23, 2010); *W.C.*, 59 ECAB 372 (2008).

OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.<sup>4</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>5</sup> If it chooses to grant reconsideration, it reopens and reviews the case on its merits.<sup>6</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>7</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).

In her June 4, 2025 request for reconsideration, appellant neither alleged nor demonstrated that OWCP erroneously applied or interpreted a specific point of law. Additionally, she did not advance a relevant legal argument not previously considered by OWCP. Consequently, appellant is not entitled to further 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).<sup>8</sup>

The underlying issue on reconsideration is whether appellant has met her burden of proof to establish continuing disability or medical residuals causally related to her accepted December 29, 2022 employment injury. This is a medical question that requires rationalized medical opinion evidence to resolve the issue.<sup>9</sup> Appellant, however, failed to submit any evidence with her reconsideration request.<sup>10</sup> Because she did not provide any relevant and pertinent new evidence, she is not entitled to a review of the merits based on the third requirement under 20 C.F.R. § 10.606(b)(3).

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<sup>4</sup> 20 C.F.R. § 10.606(b)(3); *see M.S.*, Docket No. 18-1041 (issued October 25, 2018); *L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

<sup>5</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>6</sup> *Id.* at § 10.608(a); *see D.C.*, Docket No. 19-0873 (issued January 27, 2020); *M.S.*, 59 ECAB 231 (2007).

<sup>7</sup> *Id.* at § 10.608(b); *see P.V.*, Docket No. 25-0547 (issued June 23, 2025); *T.V.*, Docket No. 19-1504 (issued January 23, 2020); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

<sup>8</sup> *See B.A.*, Docket No. 25-0622 (issued August 2, 2024); *J.H.*, Docket No. 23-0485 (issued November 13, 2023); *L.W.*, Docket No. 21-0607 (issued October 18, 2022); *C.B.*, Docket No. 18-1108 (issued January 22, 2019).

<sup>9</sup> *R.M.*, Docket No. 21-0963 (issued April 19, 2023).

<sup>10</sup> *R.K.*, Docket No. 25-0873 (issued December 1, 2025); *D.B.*, Docket No. 23-0392 (issued September 1, 2023); *L.K.*, Docket No. 22-0793 (issued August 26, 2022).

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 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 June 23, 2025 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 11, 2026  
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