

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

This case has previously been before the Board. The facts and circumstances of the case as set forth in the Board's prior decisions are incorporated herein by reference.⁴ The relevant facts are as follows.

On November 14, 2024 appellant, then a 34-year-old engine department maintenance worker (wiper), filed a traumatic injury claim (Form CA-1) alleging that on January 13, 2023 he developed a left foot plantar abscess with bacterial infection while in the performance of duty. On the reverse side of the claim form, K.C., appellant's supervisor, controverted the claim as appellant had not reported the alleged injury until after his termination from the employing establishment.

In a November 18, 2024 statement, the employing establishment further controverted the claim, asserting that it was unaware of the injury until after appellant had been removed effective October 2, 2024. Additionally, appellant was not aboard ship on January 8, 2023. He had been suspended for the periods January 15 through 28 and May 7 through 27, 2023, and reassigned to a ship effective June 18, 2023.

In a November 20, 2024 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence needed to establish his claim and provided a questionnaire for his completion. OWCP afforded appellant 60 days to submit the necessary evidence. No additional evidence was received.

In a follow-up development letter dated December 9, 2024, OWCP advised appellant that it had conducted an interim review, and the evidence remained insufficient to establish his claim. It noted that he had 60 days from the November 20, 2024 letter to submit the requested 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.

In a December 17, 2024 report, Dr. Yasmin Ahmed, Board-certified in family medicine, recounted that appellant injured his left foot on January 13, 2023 when the bottom of the ship in which he worked as an engineer filled with dirty seawater to mid-calf depth, exposing appellant to parasites and harmful pathogens. She opined that this exposure caused an infection in the left foot, resulting in development of a plantar abscess. In a work capacity evaluation (Form OWCP-5c) and attending physician's report (Form CA-20) of even date, Dr. Ahmed restricted appellant to sedentary-duty work, with no standing.

In a January 16, 2025 response to OWCP's development questionnaire, appellant asserted that he sustained the claimed left foot injury due to prolonged standing in "drudge water" during an 8- to 10-week period in late 2022. He developed a lump on the plantar surface of his left foot during the period January 8 through 13, "2024," which ended his ship assignment. Appellant

⁴ Docket No. 25-0616 (issued July 16, 2025).

contended that he was not provided waterproof boots. He explained that he delayed filing his claim as he was unsure how to proceed.

In a January 22, 2025 development letter, OWCP requested that the employing establishment provide a statement regarding appellant's claim, including a statement from a knowledgeable supervisor. OWCP afforded the employing establishment 14 days to respond.

The employing establishment subsequently provided a January 23, 2025 memorandum controverting appellant's claim. It contended that he should have claimed an occupational disease as he alleged that the injury developed from January 8 through 13, 2023 after prolonged "wet work," and that details of his work description were inconsistent, deceptive, or fraudulent. The employing establishment noted that while Dr. Ahmed referred to appellant as an "engineer," his job title was "wiper." It also submitted e-mails to appellant dated July 7 through August 21, 2023 with instructions for filing a FECA claim.

Thereafter, OWCP received a January 22, 2025 follow-up report wherein Dr. Ahmed noted that appellant had been off work commencing in April 2023 due to a shoulder injury.

By decision dated February 10, 2025, OWCP denied appellant's traumatic injury claim, finding that the factual evidence of record was insufficient to establish that the events occurred as alleged. Therefore, it concluded that the requirements had not been met to establish an injury as defined by FECA.

OWCP subsequently received additional evidence. In February 18, March 25, and April 22, 2025 reports, Dr. Ahmed repeated her findings and continued to opine that there was direct causation between appellant's diagnosed abscess and his job duties.

On May 13, 2025 appellant, through counsel, requested reconsideration. Counsel resubmitted a copy of Dr. Ahmed's February 18, 2025 report.

By decision dated May 27, 2025, OWCP denied reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

Appellant, through counsel, then appealed the May 27, 2025 nonmerit decision to the Board.

During the pendency of the prior appeal, OWCP received a June 17, 2025 report by Dr. Ahmed wherein she repeated her findings and continued to opine that there was direct causation between appellant's diagnosed abscess and his job duties. Dr. Ahmed restricted appellant to sedentary-duty work, with no walking or standing.

By decision dated July 16, 2025, the Board affirmed OWCP's May 27, 2025 nonmerit decision.

In a July 15, 2025 report, Dr. Ahmed repeated her June 17, 2025 findings, opinion on causal relationship, and work restrictions. In a Form OWCP-5c of even date, she returned appellant to full-duty work without restrictions. In an August 12, 2025 report and Form OWCP-5c of even date, Dr. Ahmed returned appellant to full-duty work with no restrictions.

On September 22, 2025 appellant, through counsel, requested reconsideration of OWCP's February 10, 2025 merit decision. Counsel submitted a copy of Dr. Ahmed's June 17, 2025 report.

By decision dated October 7, 2025, OWCP denied appellant's request for reconsideration of the merits of his 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.⁵

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.⁶

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.⁷ If it chooses to grant reconsideration, it reopens and reviews the case on its merits.⁸ 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.⁹

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).

Preliminarily, the Board notes that it is unnecessary to consider the evidence appellant submitted prior to the issuance of the May 27, 2025 decision because the Board considered that

⁵ 5 U.S.C. § 8128(a); *see 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).

⁶ 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).

⁷ 20 C.F.R. § 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.

⁸ *Id.* at § 10.608(a); *see D.C.*, Docket No. 19-0873 (issued January 27, 2020); *M.S.*, 59 ECAB 231 (2007).

⁹ *Id.* at § 10.608(b); *see D.R.*, Docket No. 25-0902 (issued December 30, 2025); *T.V.*, Docket No. 19-1504 (issued January 23, 2020); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

evidence in its July 16, 2025 decision. Findings made in prior Board decisions are *res judicata* absent any further review by OWCP under section 8128 of FECA.¹⁰

On September 22, 2025 appellant, through counsel, filed a request for reconsideration of the February 10, 2025 decision denying his traumatic injury claim. The Board finds, however, that he neither established that OWCP erroneously applied or interpreted a specific point of law, nor advanced 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).¹¹

On reconsideration, appellant submitted reports by Dr. Ahmed dated June 17, July 15, and August 12, 2025. However, these medical reports are irrelevant to the underlying factual issue of whether the January 13, 2023 employment incident occurred as alleged.¹² The Board has held that the submission of evidence which does not address the underlying issue involved does not constitute a basis for reopening a case.¹³ As appellant failed to provide relevant and pertinent new evidence, he is not entitled to a merit review based on the third above-noted requirement under 20 C.F.R. § 10.606(b)(3).

The Board, accordingly, finds that as 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 his claim, pursuant to 5 U.S.C. § 8128(a).

¹⁰ *S.R.*, Docket No. 25-0799 (issued January 29, 2026); *G.W.*, Docket No. 22-0301 (issued July 25, 2022); *M.D.*, Docket No. 19-0510 (issued August 6, 2019); *Clinton E. Anthony, Jr.*, 49 ECAB 476, 479 (1988).

¹¹ *P.M.*, Docket No. 25-0801 (issued December 5, 2025); *T.K.*, Docket No. 25-0644 (issued September 17, 2025); *Alan G. Williams*, 52 ECAB 180 (2000).

¹² *A.O.*, Docket No. 20-0360 (issued November 5, 2020); *L.C.*, Docket No. 19-0503 (issued February 7, 2020); *Alan G. Williams*, *supra* note 11; *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

¹³ *P.M.*, *supra* note 11; *T.K.*, *supra* note 11; *W.P.*, Docket No. 25-0367 (issued April 4, 2025); *P.G.*, Docket No. 24-0404 (issued September 17, 2024); *C.C.*, Docket No. 22-1240 (issued June 27, 2023); *D.P.*, Docket No. 13-1849 (issued December 19, 2013); *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

ORDER

IT IS HEREBY ORDERED THAT the October 7, 2025 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 26, 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