

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

K.G., Appellant

and

**U.S. POSTAL SERVICE, LEVITTOWN MAIN
OFFICE, Levittown, PA, Employer**

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**Docket No. 25-0854
Issued: July 9, 2026**

Appearances:

Kristin Williams, for the appellant¹

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 September 7, 2025 appellant filed a timely appeal from a July 25, 2025 nonmerit decision of the Office of Workers' Compensation Programs (OWCP).² As more than 180 days has elapsed from OWCP's last merit decision, dated September 17, 2024, to the filing of this

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; see also 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² Appellant, through her representative, submitted a timely request for oral argument before the Board. 20 C.F.R. § 501.5(b). The representative argued on behalf of appellant that oral argument should be granted in order to highlight the evidence which was not adequately addressed by OWCP. 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 does not have jurisdiction over the merits of this case. As such, the arguments on appeal can be adequately addressed in a decision based on a review of the case record. Oral argument in this appeal would not serve a useful purpose. Therefore, the oral argument request is denied and this decision is based on the case record as submitted to the Board.

appeal, pursuant to the Federal Employees' Compensation Act³ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of this case.⁴

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 January 27, 2001 appellant, then a 27-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that she sustained injuries on that date when she slipped on ice on a path/driveway and fell to the ground while in the performance of duty. She stopped work on January 27, 2001. Appellant intermittently worked in a limited-duty position from March 27 to May 7, 2001, and stopped work on May 8, 2001. OWCP assigned the present claim OWCP File No. xxxxxx636 and accepted it for contusion of the face, scalp, and neck (except the eyes), aggravation of cervical degenerative disc disease, sprain of the thoracic region of back, and neck sprain.⁵

On September 14, 2020 OWCP referred appellant, along with the medical record, a statement of accepted facts (SOAF), and a series of questions, to Dr. Noubar A. Didizian, a Board-certified orthopedic surgeon, for a second opinion examination and an opinion on work-related residuals/disability and the nature of any conditions which had been caused or aggravated by the accepted January 27, 2001 employment injury.

In an October 14, 2020 report, Dr. Didizian reported the findings of his physical examination and opined that appellant's accepted January 27, 2001 employment injury had resolved and that she ceased to have residuals of it. He further indicated that appellant could return to her preinjury job as a letter carrier. In an October 14, 2020 work capacity evaluation (Form OWCP-5c), Dr. Didizian noted that appellant could perform her usual job without restrictions on a full-time basis.

In a December 26, 2020 report, Dr. Guillermo J. Bernal, a Board-certified physiatrist, indicated that appellant continued to experience chronic and intermittent symptoms of neck pain and radicular symptoms into the right shoulder and shoulder blade. He opined that her symptoms could be explained by the right foraminal disc herniation at C4-5 and the bulging disc at C5-6, together with the underlying degenerative changes, which were aggravated by the

³ 5 U.S.C. § 8101 *et seq.*

⁴ As noted, the Board does not have jurisdiction over the September 17, 2024 merit decision, which addressed OWCP's termination of wage-loss compensation and medical benefits. The Board further notes that more than 180 days has also elapsed from the last merit decision concerning OWCP's rescission of the acceptance of the condition of aggravation of cervical degenerative disc disease, *i.e.*, OWCP's July 12, 2024 decision, to the filing of this appeal. Therefore, pursuant to FECA and 20 C.F.R. §§ 501.2(c) and 501.3, the Board also lacks jurisdiction over the merits of the rescission issue.

⁵ On March 14, 2002 appellant filed an occupational disease claim (Form CA-2) which OWCP assigned OWCP File No. xxxxxx282. OWCP administratively combined OWCP File Nos. xxxxxx636 and xxxxxx282, with the latter designated as the master file.

January 27, 2001 fall at work. Dr. Bernal indicated that he had reviewed the report of Dr. Didizian and disagreed with his opinions and recommendations regarding appellant. He opined that appellant continued to have residual symptoms caused by the January 27, 2001 employment injury and required repeat diagnostic work-up and medical treatment for “the chronic and persistent symptoms and injuries as a result of the work injury on [January 27, 2001].”

In February 2021 OWCP determined that there was a conflict in the medical opinion evidence between appellant’s attending physician, Dr. Bernal, and OWCP’s referral physician, Dr. Didizian, regarding work-related residuals/disability and the nature of any conditions caused or aggravated by the accepted January 27, 2001 employment injury. On March 26, 2021 it referred appellant, along with the medical record, a SOAF, and a series of questions, to Dr. Stanely R. Askin, a Board-certified orthopedic surgeon, for an impartial medical examination and opinion on work-related residuals/disability and the nature of any conditions which had been caused or aggravated by the accepted January 27, 2001 employment injury.

In an April 26, 2021 report, Dr. Askin, serving as the impartial medical examiner (IME), reported the findings of his physical examination and opined that appellant’s medical conditions, including her cervical intervertebral disc disease, were age related. He opined that her January 27, 2001 employment injury did not cause her to develop “middle-aged degenerative changes” and stated that this injury “should not be considered to have caused aggravated, accelerated, or precipitated any of the conditions asserted by Dr. Bernal to be the allegedly competent explanation for her continuing complaints.” Dr. Askin further opined that appellant’s accepted January 27, 2001 employment injury had resolved and that she had no work restrictions that would be necessitated by that injury. In an April 26, 2021 Form OWCP-5c, he noted that appellant could perform her usual job without restrictions on a full-time basis.

OWCP requested that Dr. Askin clarify his April 26, 2021 opinion.

In a supplemental report dated July 17, 2023, Dr. Askin again opined that appellant ceased to have residuals of her accepted January 27, 2001 employment injury.

By decision dated January 18, 2024, OWCP rescinded its acceptance of appellant’s claim for the condition of aggravation of cervical degenerative disc disease as causally related to appellant’s accepted January 27, 2001 employment injury, effective January 18, 2024. It accorded the special weight of the medical evidence to Dr. Askin, the IME.

By decision dated March 22, 2024, OWCP terminated appellant’s wage-loss compensation and medical benefits, effective March 22, 2024, as she no longer had residuals or disability causally related to her accepted January 27, 2001 employment injury after that date. It accorded the special weight of the medical evidence to Dr. Askin, the IME.

Appellant requested an oral hearing before a representative of OWCP’s Branch of Hearings and Review regarding OWCP’s rescission decision. During the hearing held on April 3, 2024, appellant’s representative argued that Dr. Askin’s opinion was not sufficiently rationalized.

In a June 7, 2024 letter, appellant's representative argued that Dr. Askin was improperly selected as the IME and that he held a bias against employees who filed workers' compensation claims.

Appellant also requested an oral hearing before a representative of OWCP's Branch of Hearings and Review in connection with OWCP's March 22, 2024 termination decision. A hearing was held on July 5, 2024.

By decision dated July 12, 2024, OWCP's hearing representative affirmed OWCP's January 18, 2024 rescission decision.

On August 30, 2024 OWCP received an August 29, 2024 report wherein Dr. Bernal opined that, after suffering a cervical injury with cervical intervertebral disc degeneration 20 years prior, it would be expected that appellant would develop disc osteophytes at the level of that injury, which would be "a direct result of the initial work injury." He further opined that appellant's work-related cervical spine injuries had not resolved and had left her with "chronic persistent post-traumatic symptoms."

By decision dated September 17, 2024, OWCP's hearing representative affirmed the March 22, 2024 termination decision.

On June 6 and July 9, 2025 OWCP received June 10 and September 9, 2024, and January 22 and April 22, 2025 reports, wherein Dr. Bernal noted that appellant continued to have complaints of pain radiating down her right upper extremity during physical examination. Dr. Bernal diagnosed cervicalgia, headache, cervical disc degeneration, and paresthesia of the skin.

On July 10, 2025 appellant, through her representative, requested reconsideration of OWCP's July 12, 2024 rescission decision. Appellant's representative argued that the referral to Dr. Askin, the IME, was improper and that Dr. Askin held a bias against employees, such as appellant, who had filed workers' compensation claims. She further argued that the newly-submitted reports of Dr. Bernal supported that appellant sustained work-related cervical disc degeneration.

By decision dated July 25, 2025, OWCP denied appellant's request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a). It addressed her request as a request for reconsideration of the September 17, 2024 termination decision.

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.⁶

⁶ 5 U.S.C. § 8128(a); *see J.K.*, Docket No. 26-0293 (issued May 27, 2026); *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).

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.⁷

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.⁸ If it chooses to grant reconsideration, it reopens and reviews the case on its merits.⁹ 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.¹⁰

ANALYSIS

The Board finds that this case is not in posture for decision.

On July 10, 2025 appellant, through her representative, filed a timely request for reconsideration of OWCP's July 12, 2024 decision regarding the rescission of the acceptance of her claim for aggravation of cervical degenerative disc disease. By decision dated July 25, 2025, OWCP denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a). However, it misinterpreted her request as a request for reconsideration of the September 17, 2024 termination decision.

Section 8124(a) of FECA provides that OWCP shall determine and make a finding of fact and an award for or against payment of compensation.¹¹ Its regulations at 20 C.F.R. § 10.126 provide that the decision of the Director of OWCP shall contain findings and facts and a statement of reasons.¹² As well, OWCP's procedures provide that the reasoning behind OWCP's evaluation should be clear enough for the reader to understand the precise defect of the claim, and the kind of evidence which would overcome it.¹³

⁷ 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).

⁸ 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.

⁹ *Id.* at § 10.608(a); *see C.P.*, Docket No. 26-0007 (issued May 27, 2026); *F.V.*, Docket No. 18-0239 (issued May 8, 2020); *M.S.*, 59 ECAB 231 (2007).

¹⁰ *Id.* at § 10.608(b); *see G.B.*, Docket No. 26-0293 (issued May 19, 2026); *T.V.*, Docket No. 19-1504 (issued January 23, 2020); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

¹¹ 5 U.S.C. § 8124(a).

¹² 20 C.F.R. § 10.126.

¹³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.5 (February 2013) (all decisions should contain findings of fact sufficient to identify the benefit being denied and the reason for the disallowance).

In its July 25, 2025 decision, OWCP did not discharge its responsibility to set forth findings of fact and a clear statement of reasons, explaining the disposition with regard to the rescission issue, so that appellant could understand the basis for its July 12, 2024 decision.

The Board shall therefore set aside OWCP's July 25, 2025 nonmerit decision and remand the case for an appropriate decision, which describes the evidence and argument submitted and provides detailed reasons for accepting or rejecting the reconsideration request.¹⁴

CONCLUSION

The Board finds that this case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the July 25, 2025 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: July 9, 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

¹⁴ *J.S.* Docket No. 26-0220 (issued May 15, 2026); *Order Remanding Case, M.B.*, Docket No. 22-1026 (issued January 25, 2023); *Order Remanding Case, P.G.*, Docket No. 17-1461 (issued February 7, 2019); *R.T.*, Docket No. 19-0604 (issued September 13, 2019).