

	)	
T.S., Appellant	)	
	)	
and	)	Docket No. 26-0416
	)	Issued: July 14, 2026
U.S. POSTAL SERVICE, CLEVELAND	)	
PROCESSING & DISTRIBUTION CENTER,	)	
Cleveland, OH, Employer	)	
	)	

Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On April 1, 2026 appellant, through counsel, filed a timely appeal from a March 26, 2026 nonmerit decision of the Office of Workers' Compensation Programs (OWCP).² 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.

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 The case record also contains an October 9, 2025 merit decision. As counsel did not appeal from that decision, the Board will not review it in this appeal. *See* 20 C.F.R. § 501.3; *see also T.S.*, Docket No. 23-1127 (issued December 27, 2023); *T.L.*, Docket No. 22-0881 (issued December 14, 2022); *D.E.*, Docket No. 21-0531 (issued June 16, 2021).

³ 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 April 22, 2025 appellant, then a 54-year-old delivery/sales and service distribution associate, filed an occupational disease claim (Form CA-2) alleging that she developed a torn right rotator cuff due to factors of her federal employment. She indicated that the injury "gradually increased over time from doing my job every day." Appellant noted that she first became aware of her condition on February 12, 2025, and realized its relationship to her federal employment on March 5, 2025. She did not stop work.

In an April 25, 2025 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence required and provided a questionnaire for her completion. OWCP afforded appellant 60 days to submit the necessary evidence. In a separate letter of even date, it requested that the employing establishment provide comments from a knowledgeable supervisor regarding the accuracy of appellant's allegations. OWCP afforded the employing establishment 30 days to respond.

OWCP subsequently received a March 5, 2025 visit summary by Dr. Harkeet Sandhu, Board-certified in sports and internal medicine, who noted an impression of "tear of right rotator cuff, unspecified tear extent, unspecified whether traumatic."

An x-ray of the right shoulder dated March 10, 2025 demonstrated mild acromioclavicular (AC) joint osteoarthritis and evidence of rotator cuff tendinosis. The report indicated it was compared to a prior study of June 26, 2023.

A magnetic resonance imaging (MRI) scan of the right shoulder dated March 18, 2025 demonstrated significant subluxation/mild dislocation of the intra-articular long head of the biceps tendon from the bicipital groove and increased signal at the distal insertion of the supraspinatus tendon.

In a medical report dated May 15, 2025, Dr. Brett W. McCoy, a Board-certified orthopedic surgeon, noted that appellant related complaints of pain in the right trapezius and shoulder, which she attributed to "an injury at work on February 12, 2024." He performed a physical examination of the right shoulder and observed a positive O'Brien's test. Dr. McCoy reviewed the March 18, 2025 MRI scan and diagnosed right shoulder partial rotator cuff tear, biceps instability, and a likely cervical strain.

In a medical report dated May 21, 2025, Dr. Katherine Burke noted appellant's complaints of right shoulder pain, which she attributed to repeatedly lifting and moving heavy parcels, pushing and pulling loaded wire baskets, and handling large letter holders at work on February 12, 2025.⁴ She also noted that appellant had no symptoms prior to February 12, 2025 and that she had worked for the employing establishment for 28 years. Dr. Burke documented physical examination

⁴ The Board notes that the physician's specialty could not be determined.

findings and diagnosed unspecified rotator cuff tear of the right shoulder, strain of thorax wall, and cervical radiculopathy. She opined that appellant's symptoms were consistent with cumulative trauma and repetitive strain due to her long-term job duties, which placed forceful mechanical wear and tear on the shoulder joint and rotator cuff muscles.

On May 27, 2025 OWCP received a response to its development letter from the employing establishment, which provided a photograph of appellant's work area and indicated that "the employee lifts trays and tubs that contain mail, moving them from one container to another. Pushing equipment to the dock areas for customer pick-ups."

In a follow-up letter dated June 10, 2025, OWCP advised appellant that it had conducted an interim review, and the evidence remained insufficient to establish her claim. It specifically requested that she provide a statement of the work factors that she believed had caused her alleged condition. OWCP noted that appellant had 60 days from the April 25, 2025 letter to submit the necessary evidence. It further advised her 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 physical therapy reports and a May 29, 2025 report by Jim O'Reilly, a chiropractor, who diagnosed a partial right rotator cuff tear, strain of thorax wall, and cervical radiculopathy.

By decision dated July 8, 2025, OWCP denied appellant's occupational disease claim, finding that the evidence of record was insufficient to establish the factors of federal employment, as alleged. Therefore, it concluded that the requirements had not been met to establish an injury as defined by FECA.

OWCP continued to receive evidence, including follow-up medical reports and an attending physician's report (Form CA-20) by Dr. Burke dated July 9 through August 28, 2025. It also received massage and physical therapy reports.

On September 25, 2025 appellant requested reconsideration of OWCP's July 8, 2025 decision and submitted additional massage/physical therapy reports and follow-up medical reports by Dr. Burke.

By decision dated October 9, 2025, OWCP denied modification of its July 8, 2025 decision.

On December 3, 2025 appellant requested reconsideration of OWCP's October 9, 2025 decision. In support thereof, she submitted additional massage/physical therapy reports and follow-up medical reports by Dr. Burke dated October 29 through December 31, 2025. Dr. Burke reiterated her opinion that appellant's diagnosed conditions were caused by the job duties that she had described in her previous reports.

By decision dated March 26, 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 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 her claim, pursuant to 5 U.S.C. § 8128(a).

On December 3, 2025 appellant requested reconsideration of OWCP's October 9, 2025 decision. 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).¹⁰

On reconsideration, appellant submitted medical reports by Dr. Burke dated October 29 through December 31, 2025. The Board finds that these reports, although new, are cumulative and substantially similar to her previously submitted reports. The Board has held that the submission of evidence, which repeats or duplicates evidence already in the case record, does not constitute a

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 T.V.*, Docket No. 19-1504 (issued January 23, 2020); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

¹⁰ *See L.W.*, Docket No. 21-0607 (issued October 18, 2022).

basis for reopening a case.¹¹ Appellant also submitted massage and physical therapy reports. However, this medical evidence is irrelevant to the underlying issue in this case, which is factual in nature, *i.e.*, whether appellant has established an injury in the performance of duty, as alleged.¹² The Board has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.¹³ Because appellant did not submit relevant and pertinent new evidence with her request for reconsideration, 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).¹⁴

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).

¹¹ See *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).

¹² See *B.E.*, Docket No. 26-0211 (issued May 29, 2026).

¹³ *S.W.*, Docket No. 26-0106 (issued April 29, 2026); *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).

¹⁴ See 20 C.F.R. § 10.606(b)(3)(iii); see also *S.W.*, Docket No. 25-0261 (issued February 24, 2025).

ORDER

IT IS HEREBY ORDERED THAT the March 26, 2026 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 14, 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