United States Department of Labor
Employees' Compensation Appeals Board

C.C., Appellant	)	
and	)	**Docket No. 25-0806**
	)	**Issued: June 5, 2026**
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Minneapolis, MN, Employer	)	

Appearances:
Appellant, pro se
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 August 16, 2025[1] appellant filed a timely appeal from a February 20, 2025 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from the last merit decision dated February 27, 2024 to the filing of this appeal, pursuant

[1] Pursuant to the Board's *Rules of Procedure*, an appeal is considered filed when received by the Clerk of the Appellate Boards. 20 C.F.R. § 501.3(e)-(f). However, when the date of receipt would result in a loss of appeal rights, the appeal will be considered to have been filed as of the date of the U.S. Postal Service postmark or other carriers date markings. *Id.* at § 501.3(f)(1). The 180th day following OWCP's February 20, 2025 decision was August 19, 2025. Because using August 25, 2025, the date the appeal was received by the Clerk of the Appellate Boards, would result in the loss of appeal rights, the date of the postmark is considered the date of filing. The date of the U.S. Postal Service postmark is August 16, 2025, rendering the appeal timely filed.

to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of this case.[2]

ISSUE

The issue is whether OWCP properly denied appellant's request for reconsideration of the merits of her schedule award claim, pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

This case has previously been before the Board on a different issue.[3] The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On August 27, 2006 appellant, then a 53-year-old mail processing clerk, filed a traumatic injury claim (Form CA-1) alleging that on August 27, 2006 she injured her left shoulder and right knee when she tripped and fell as she was getting on an elevator while in the performance of duty. OWCP initially accepted the claim for contusion of the right knee and lower leg; sprain of the right lumbosacral (joint) (ligament); sprain of the left shoulder and upper arm, acromioclavicular. It subsequently expanded the acceptance of the claim to include right medial meniscus tear; chondromalacia of the right patella; sprain of the right anterior cruciate ligament (ACL); left hip strain; overuse trochanteric tendinitis of the left hip and lower extremity.

By decision dated June 17, 2008, OWCP granted appellant a schedule award for 7 percent permanent impairment of the left upper extremity and 10 percent permanent impairment of the right lower extremity in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).[4] It accorded the weight of the medical evidence to an April 3, 2008 medical report of Dr. Robert Wysocki, a Board-certified orthopedic surgeon serving as an OWCP district medical adviser (DMA).

By decision dated January 30, 2009, OWCP granted appellant a schedule award for an additional 9 percent permanent impairment of the right lower extremity, for a total of 19 percent permanent impairment.

On October 1, 2019 appellant filed a claim for compensation (Form CA-7) for an increased schedule award.

In a December 4, 2019 medical report, Dr. Robert A. Wengler, an attending Board-certified orthopedic surgeon, opined that appellant had 35 percent permanent impairment of each

[2] The Board notes that, following the issuance of the February 20, 2025 decision, appellant submitted additional evidence to OWCP and the Board. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

[3] Docket No. 15-1778 (issued August 16, 2016).

[4] A.M.A., *Guides* (5th ed. 2001).

lower extremity under Table 16-23 on page 549 of the sixth edition of the A.M.A., *Guides,*[5] due to loss of range of motion (ROM). He related that he had no basis upon which to determine when she reached maximum medical improvement (MMI).

In a June 12, 2020 report, Dr. Wengler advised that appellant had reached MMI related to degenerative arthritis in her knees on November 4, 2019, unless she chose to undergo bilateral total knee arthroplasties.

On October 7, 2021 OWCP referred appellant's case, along with a statement of accepted facts (SOAF), to Dr. Michael S.K. Lockheart, Board-certified in preventive medicine specializing in occupational medicine, for a second opinion evaluation. It requested that Dr. Lockheart provide an opinion regarding appellant's permanent impairment in accordance with the sixth edition of the A.M.A., *Guides,* and that he provide the date of MMI.

OWCP received a September 27, 2021 report, wherein Dr. Wengler noted his review of anteroposterior weightbearing films of both knees dated October 29, 2020. Dr. Wengler advised that according to Table 16-3, page 511, less than one mm cartilage interval placed appellant in a Class 3 impairment. He assigned a grade modifier for functional history (GMFH) of 2 due to a moderate problem under Table 16-6, page 521, a grade modifier for physical examination (GMPE) of 2 under Table 16-7, page 517, and a grade modifier for clinical studies (GMCS) of 3 due to greater than 50 percent loss of the cartilage interval under Table 16-8, page 519. Dr. Wengler applied the net adjustment formula, which resulted in a grade E or 34 percent permanent impairment of each knee due to primary joint knee arthritis.

In an October 13, 2021 report, Dr. Lockheart noted his review of appellant's factual and medical history, including Dr. Wengler's examination findings, and discussed his findings on physical and x-ray examination. He determined that appellant had reached MMI as of October 13, 2021, the date of his impairment evaluation. Dr. Lockheart advised that her accepted conditions of left shoulder and upper arm sprain including acromioclavicular joint, right low back lumbosacral joint sprain, right lower leg knee contusion (later described as right ACL sprain), and left hip strain, overuse trochanteric tendinitis, and quadriceps tendinitis had resolved with respect to the mild fall injury on August 27, 2006. Utilizing the sixth edition of the A.M.A., *Guides*, Table 16-3 (Knee Regional Grid), page 509, he indicated that for the diagnosis of right lower leg knee contusion (later described as right ACL sprain), muscle/tendon strain; tendinitis, or ruptured tendon, the permanent impairment rating was zero percent as there were no significant objective abnormal findings of muscle or tendon injury at MMI. Utilizing Table 15-5 (Shoulder Regional Grid), page 401, Dr. Lockheart found that appellant's left shoulder and upper arm sprain including acromioclavicular joint, contusion, or crush injury with healed minor soft tissue or skin injury was also rated as zero percent permanent impairment. He determined that appellant's diagnoses of left hip strain, overuse trochanteric tendinitis, and quadriceps tendinitis muscle/tendon strain; tendinitis; or ruptured tendon also resulted in a zero percent permanent impairment rating as she had no significant objective abnormal findings of muscle or tendon injury at MMI under Table 16-4 (Hip Regional Grid), page 512.

[5] A.M.A., *Guides* (6th ed. 2009).

On November 16, 2021 OWCP again referred the case record, along with a SOAF, to Dr. Michael M. Katz, a Board-certified orthopedic surgeon serving as the DMA.

In a November 23, 2021 report, Dr. Katz noted his review of the medical record, including Dr. Lockheart's October 13, 2021 report. For the right lower extremity, he found, under Table 16-3, page 511, a strain with no significant abnormal findings at MMI was Class 0 with a default impairment of zero percent. For the left lower extremity, Dr. Katz found, under Table 16-3, a strain, A/C joint and no significant abnormal findings at MMI was Class 0 with a default impairment of zero percent. He noted that Dr. Lockheart did not provide a probative ROM examination of appellant's left shoulder. Dr. Katz also noted that an examination of appellant's left hip was not found in the record. He recommended that OWCP obtain a supplemental report from Dr. Lockheart addressing his above-noted concerns.

Thereafter, OWCP requested that Dr. Lockheart review Dr. Katz' November 23, 2021 report and provide a supplemental permanent impairment rating.

In an addendum report dated May 5, 2022, Dr. Lockheart provided ROM measurements for appellant's shoulders, hips and knees. He determined that appellant had zero percent ROM permanent impairment of each shoulder. Dr. Lockheart advised that she had reached MMI on November 7, 2007, the date of an examination performed by Dr. John Kearns, a Board-certified orthopedic surgeon.

On May 11, 2022 OWCP again referred appellant's case, along with a SOAF, to Dr. Katz, the DMA, for determination of appellant's date of MMI and any permanent impairment of her bilateral upper and lower extremities under the sixth edition of the A.M.A., *Guides*.

Dr. Katz, in a May 12, 2022 report, noted that Dr. Lockheart's October 13, 2021 report found Class 0 impairments for appellant's left shoulder, hip, and knee. He further noted that Dr. Lockheart's May 5, 2022 report appeared to imply complete resolution of the accepted conditions without explaining his reasoning why no sequelae existed. Dr. Katz indicated that Dr. Lockheart should provide rationale explaining why appellant had no ratable impairments due to her accepted conditions. He restated the date of MMI was pending receipt of further information.

On August 18, 2022 OWCP again referred appellant to Dr. Lockheart and requested that he review Dr. Katz' May 12, 2022 report and respond to his concern regarding appellant's permanent impairment.

In a September 12, 2022 report, Dr. Lockheart explained that his findings of zero percent impairment of the right knee, left shoulder, and left hip were based on the mild nature of the mechanism of injury on August 27, 2006. In addition, he noted that appellant's knee osteoarthritis was symmetric and suggestive of a non-injury-related degenerative process rather than sequelae of a right knee injury on August 27, 2006. Dr. Lockheart found no compelling additional information to modify his prior opinion.

On October 27, 2022 OWCP requested that Dr. Katz, the DMA, review Dr. Lockheart's May 10 and September 12, 2022 reports and provide an opinion on whether he agreed or disagreed with his permanent impairment findings.

In a November 2, 2022 report, Dr. Katz reiterated his opinion that appellant had zero percent permanent impairment of the left upper extremity and zero percent permanent impairment of each lower extremity. He related that Dr. Lockheart had provided a reasonable explanation as to why appellant's bilateral knee osteoarthritis was not consequential to the accepted injury. As appellant had no permanent impairment due to the accepted conditions, she was not entitled to a schedule award for a nonindustrial condition. Dr. Katz determined that appellant had reached MMI on October 13, 2021, the date of Dr. Lockheart's impairment evaluation.

By decision dated December 9, 2022, OWCP denied appellant's claim for an increased schedule award, finding that the medical evidence of record was insufficient to establish greater permanent impairment than that which was previously awarded.

On December 7, 2023 appellant requested reconsideration.

On January 3, 2024 OWCP requested that Dr. Katz, the DMA, clarify his November 2, 2022 report. It requested that he review Dr. Wengler's September 27, 2021 report and all of Dr. Lockheart's reports, and provide an opinion on whether he agreed or disagreed with the physicians' permanent impairment findings.

In a January 12, 2024 addendum report, Dr. Katz related that his opinion regarding appellant's permanent impairment rating remained unchanged.

By decision dated February 27, 2024, OWCP denied modification of its December 9, 2022 decision.

OWCP subsequently received a series of reports dated March 1 through December 27, 2024 from Aimee K. Heinen and Bethanie Miller, certified nurse practitioners.

On February 14, 2025 appellant requested reconsideration. In support thereof, she submitted an October 7, 2024 progress note, wherein Dr. Steven J. Ralles, a Board-certified orthopedic surgeon, diagnosed primary osteoarthritis of right knee (severe), primary osteoarthritis of left knee (mild to moderate), chronic pain of both knees. He advised that he was unable to determine whether appellant's injury 18 years ago was the direct cause of her symptoms, however, ligamentous, meniscus, and cartilage injuries could have exacerbated her symptoms and led to earlier onset degenerative arthritis.

Appellant also submitted a November 27, 2024 patient plan from a medical provider, which indicated that appellant was evaluated for low back and bilateral knee pain.

By decision dated February 20, 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.[6]

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 OWCP properly denied appellant's request for reconsideration of the merits of her schedule award claim, pursuant to 5 U.S.C. § 8128(a).

Appellant has not alleged or demonstrated that OWCP erroneously applied or interpreted a specific point of law. Moreover, she has not advanced a relevant legal argument not previously considered. Consequently, appellant is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under 20 C.F.R. § 10.606(b)(3).[11]

Further, appellant also did not submit any pertinent new and relevant medical evidence. The underlying issue in this case is whether appellant has established greater than 7 percent permanent impairment of her left upper extremity and 19 percent permanent impairment of her right lower extremity. The reports dated March 1 through December 27, 2024 from nurse

[6] 5 U.S.C. § 8128(a); *see R.A.,* Docket No. 25-0522 (issued June 18, 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).

[7] 20 C.F.R. § 10.606(b)(3); *see R.A., id.*; *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).

[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 D.C.,* Docket No. 19-0873 (issued January 27, 2020); *M.S.,* 59 ECAB 231 (2007).

[10] *Id.* at § 10.608(b); *L.C.,* Docket No. 25-0444 (issued April 23, 2025); *see T.V.,* Docket No. 19-1504 (issued January 23, 2020); *E.R.,* Docket No. 09-1655 (issued March 18, 2010).

[11] *B.M.,* Docket No. 25-0742 (issued September 4, 2025); *C.B.,* Docket No. 18-1108 (issued January 22, 2019).

practitioners, Dr. Ralles' October 7, 2024 progress note, and the November 27, 2024 patient plan from a medical provider, although new, did not provide a permanent impairment rating and are, therefore, irrelevant to the underlying issue on reconsideration.[12] The Board has held that the submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.[13] Thus, appellant is not entitled to a review of the merits of her claim based on the third above-noted requirement under 20 C.F.R. § 10.606(b)(3).

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 schedule award claim, pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the February 20, 2025 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 5, 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

[12] *K.H.,* Docket No. 25-0242 (issued March 4, 2025); *N.K.*, Docket No. 23-0435 (issued September 28, 2023); *R.G.*, Docket No. 21-1098 (issued March 28, 2022); *T.K.*, Docket No. 19-1700 (issued April 30, 2020); *L.D.*, Docket No. 18-1468 (issued February 11, 2019); *W.C.*, 59 ECAB 372 (2008); *Edward Matthew Diekemper*, 31 ECAB 224-25 (1979).

[13] *See L.A.,* Docket No. 25-0312 (issued August 4, 2025); *D.S.,* Docket No. 25-0564 (issued June 25, 2025); *M.K.,* Docket No. 18-1623 (issued April 10, 2019); *Edward Matthew Diekemper*; *id*.