



## **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, 1994 appellant, then a 38-year-old clerk, filed an occupational disease claim (Form CA-2) alleging that she injured her right upper extremity due to factors of her federal employment, including repetitive activities performed as a clerk. OWCP accepted the claim for right lateral epicondylitis and C5 nerve root irritation.<sup>5</sup> It paid appellant wage-loss compensation.

In a January 13, 2022 medical report, Dr. Ifeyinwa N. Igwe, a Board-certified internal medicine specialist, noted that appellant had recently undergone a partial fifth ray resection of her left foot due to osteomyelitis. Included in her list of appellant's current medications was Protonix 40 mg.

In letters dated May 16 and June 6, 2022, Optum, OWCP's pharmacy benefit manager (PBM) advised appellant that pharmacy benefits for injured employees under FECA were managed under a drug formulary that went into effect December 9, 2021.<sup>6</sup> It related that the medication, Protonix, was outside the formulary allowance, as a generic prescription was available. Optum noted that it would notify appellant's prescriber that Protonix was nonformulary and to review her current medication to determine an appropriate medicine in the formulary. It further advised that if an appropriate alternative was not available, her prescriber would need to complete a prior authorization request form (PARF) via the prescriber portal.

In letters dated May 16 and July 7, 2022, OWCP informed Dr. Tatiana Petrikova, a Board-certified family medicine specialist, that it had contracted with Optum to serve as the PBM for patients covered by FECA. It informed appellant that the formulary contained a list of medications, including quantity and generic allowances, that injured employees were eligible to receive under FECA. OWCP advised that the medication, Protonix, was outside the formulary allowance as a generic was available. It further noted that the medication would be allowed until December 8, 2022 and, if an appropriate alternative was not available, the prescriber would need to complete a PARF *via* the prescriber portal.

On July 26, 2022 Dr. Gita Baruah, a Board-certified physical medicine and rehabilitation specialist, forwarded a May 31, 2022 progress note to Optum, which indicated that appellant related complaints of pain, bladder incontinence, and mobility issues. She documented physical examination findings and diagnoses. Dr. Baruah recommended durable medical equipment and indicated that appellant would benefit from having a personal care worker.

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<sup>5</sup> OWCP assigned the present claim OWCP File No. xxxxxx898. Appellant has a prior claim for a November 2, 1987 traumatic injury, which OWCP accepted for neck and back strains, myofascial pain syndrome, and fibrositis under OWCP File No. xxxxxx685. She also has subsequent claims, including a January 30, 2002 occupational disease claim, which OWCP accepted for bilateral carpal tunnel syndrome under OWCP File No. xxxxxx128, and an October 28, 2003 traumatic injury claim, which OWCP accepted for left shoulder strain and cervical strain under OWCP File No. xxxxxx133. OWCP administratively combined File Nos. xxxxxx685, xxxxxx128, xxxxxx133, and xxxxxx898, with the latter serving as the master file.

<sup>6</sup> See FECA Bulletin No. 21-07 (issued March 9, 2021); FECA Bulletin No. 22-02 (issued November 23, 2021).

OWCP, in final reminder letters dated October 14, 2022 to appellant and Dr. Petrikova, reiterated the upcoming changes to the drug formulary under FECA as noted in its prior letters.

In a letter dated December 22, 2022, OWCP informed appellant that it had recently implemented its PBM, which listed the medications covered by FECA and included additional prescribing and dispensing guidelines for pharmacies and prescribers. It advised that all prescriptions were required to comply with FECA's formulary by December 9, 2022. OWCP noted that appellant and her prescriber had received notification from the PBM that Protonix was outside the formulary allowances as it was available in generic form as pantoprazole sodium. It advised that if there was a clinical need to continue with the nonformulary medication, her prescriber must complete a PARF *via* the Optum prescriber portal. OWCP noted that Protonix was last filled on September 2, 2022, that it would be covered until March 8, 2023, and that the December 22, 2022 letter was a final notice to allow time for her prescriber to safely transition to an alternative on formulary medication or submit a PARF to Optum for consideration. No response was received.

By decision dated February 2, 2023, OWCP denied authorization for Protonix, effective March 9, 2023, finding that it had not received a PARF from her medical provider or other medical evidence to support continued authorization for that medication.

On March 7, 2023 appellant requested reconsideration of OWCP's February 2, 2023 decision. In support thereof, she submitted a February 15, 2023 narrative statement, wherein she explained that she was prescribed Protonix for gastrointestinal and digestive issues following multiple neck surgeries. Appellant further noted that Protonix helped with severe choking and breathing issues, which she attributed to her neck surgeries. She asserted that the generic form of the medication was not as effective, as she had to take two to three times the amount.

In an attending physician's report (Form CA-20) dated February 28, 2023, Dr. Baruah recommended that appellant utilize a wheeled walker with a seat due to failed back and neck syndrome and referenced her May 31, 2022 medical report.

In a medical report dated March 9, 2023, Dr. Igwe prescribed hydrocodone and gabapentin. She listed numerous other current medications, including Protonix 40 mg packet for oral suspension once daily.

In a medical report dated April 18, 2023, Dr. Baruah noted that appellant related complaints of impaired mobility and chronic pain, which she attributed to several work-related injuries. She performed a physical examination and diagnosed left foot partial amputation, diabetic peripheral neuropathy, chronic neck and back pain, bilateral lower extremity edema, and bilateral knee pain secondary to osteoarthritis.

By decision dated July 7, 2023, 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 does not entitle a claimant the review of an OWCP decision as a matter of right.<sup>7</sup> OWCP has discretionary authority in this regard and has imposed certain

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<sup>7</sup> 5 U.S.C. § 8128(a).

limitations in exercising its authority.<sup>8</sup> One such limitation is that the request for reconsideration must be received by OWCP within one year of the date of the decision for which review is sought.<sup>9</sup>

A timely request for reconsideration, including all supporting documents, must set forth arguments, and contain evidence that either: (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.<sup>10</sup> When a timely request for reconsideration does not meet at least one of the above-noted requirements, OWCP will deny the request for reconsideration without reopening the case for a review on the merits.<sup>11</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).

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).<sup>12</sup>

In support of her request for reconsideration, appellant submitted a February 13, 2023 statement, a February 28, 2023 Form CA-20 by Dr. Baruah, a March 9, 2023 medical report by Dr. Igwe, and an April 18, 2023 medical report by Dr. Baruah. While this evidence is new, it is immaterial to the underlying issue, *i.e.*, whether OWCP properly denied authorization for a prescription for Protonix, as it did not contain a medical opinion from her prescriber which addressed the claimed continued need for Protonix.<sup>13</sup> The submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.<sup>14</sup> As appellant did not provide relevant and pertinent new evidence, she is not entitled to a merit review based on the third above-noted requirement under 20 C.F.R. § 10.606(b)(3).<sup>15</sup>

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<sup>8</sup> 20 C.F.R. § 10.607.

<sup>9</sup> *Id.* at § 10.607(a). For merit decisions issued on or after August 29, 2011, a request for reconsideration must be received by OWCP within one year of OWCP's decision for which review is sought. 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>10</sup> *Id.* at § 10.606(b)(3); *see L.F.*, Docket No. 20-1371 (issued March 12, 2021); *B.R.*, Docket No. 19-0372 (issued February 20, 2020).

<sup>11</sup> *Id.* at § 10.608.

<sup>12</sup> *C.B.*, Docket No. 18-1108 (issued January 22, 2019).

<sup>13</sup> *Supra* note 6; *see J.M.*, Docket No. 20-0396 (issued April 9, 2021).

<sup>14</sup> *L.K.*, Docket No. 20-0443 (issued August 8, 2023); *M.B.*, Docket No. 17-1980 (issued May 14, 2019); *E.G.*, Docket No. 18-0270 (issued August 24, 2018); *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

<sup>15</sup> 20 C.F.R. § 10.606(b)(3)(iii); *T.W.*, Docket No. 18-0821 (issued January 13, 2020).

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).

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 7, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 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