

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

<hr/>)	
L.D., Appellant)	
)	Docket No. 25-0721
and)	Issued: May 27, 2026
)	
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Jackson, MS, Employer)	
<hr/>)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On July 22, 2025 appellant filed a timely appeal from an April 24, 2025 merit decision and a July 22, 2025 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

ISSUES

The issues are: (1) whether appellant has met his burden of proof to establish a recurrence of disability for the period March 11 through April 1, 2022 and commencing

¹ 5 U.S.C. § 8101 *et seq.*

² Following the issuance of the July 22, 2025 decision, OWCP received additional evidence. 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.*

April 15, 2022, causally related to his accepted employment injury; and (2) 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.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 October 26, 2016 appellant, then a 28-year-old mail processing clerk, filed an occupational disease claim (Form CA-2) alleging that he sustained right elbow lateral epicondylitis due to factors of his federal employment, which included repetitive lifting of oversized packages, more than eight hours per day, six days per week. He stopped work on August 3, 2016. OWCP accepted the claim for right elbow lateral epicondylitis. On August 31, 2017 appellant underwent OWCP-authorized tennis elbow release on the right. OWCP paid him wage-loss compensation on the supplemental rolls, effective May 10, 2016.

On February 21, 2019 the employing establishment reported that appellant returned to full-time modified-duty work with restrictions on February 11, 2019.

On June 16, 2020 appellant underwent OWCP-authorized ulnar nerve decompression, extension arthroscopic debridement of the elbow and arthroscopic lateral epicondylitis release.

On March 24, 2022 appellant filed a notice of recurrence (Form CA-2a) alleging that on March 11, 2022, he sustained a recurrence of disability causally related to his accepted employment injury. He also noted that he had permanent restrictions when he returned to work following his accepted employment injury. Appellant indicated that, since leaving the employing establishment, he worked in a truck driver-in-training position in the private sector from July 2021 through September 2021 and as a truck driver in the private sector from February 2022 through March 2022. He claimed compensation for lost wages for the period March 11 through April 1, 2022.

Appellant submitted medical evidence in support of his recurrence claim.

On May 10, 2022 appellant filed an additional Form CA-2a alleging a recurrence of disability commencing April 14, 2022. He stopped work on April 15, 2022.

By decision dated June 24, 2022, OWCP denied appellant's claim for a recurrence of disability commencing April 15, 2022, causally related to his accepted employment injury. It found that the medical evidence of record was insufficient to establish that he was disabled from work commencing April 15, 2022 causally related to a material worsening of his accepted work-related condition.

³ Docket No. 24-0840 (issued March 6, 2025); Docket No. 17-1808 (issued December 28, 2017).

On July 7, 2022 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. A hearing was held on November 15, 2022.

By decision dated January 31, 2023, OWCP's hearing representative vacated the June 24, 2022 recurrence decision and remanded the case for further development of appellant's claims for a work-related recurrence of disability for the periods March 11 through April 1, 2022 and commencing April 15, 2022. The hearing representative directed OWCP to refer appellant to a second opinion physician to determine whether he sustained a recurrence of disability during the claimed periods causally related to a worsening of his accepted employment-related condition.

By *de novo* decision dated May 31, 2023, OWCP denied appellant's claim for a recurrence of disability for the periods March 11 through April 1, 2022 and commencing April 15, 2022, causally related to his accepted employment injury. It accorded the weight of the medical evidence to Dr. Samuel Meredith, Jr., a Board-certified orthopedic surgeon serving as a second opinion physician, who opined in an April 10, 2023 medical report that appellant did not sustain a recurrence of disability due to a material worsening of his accepted right elbow condition.

On June 7, 2023 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. A hearing was held on October 12, 2023.

By decision dated January 26, 2024, OWCP's hearing representative affirmed the denial of the recurrence claims, finding that appellant had failed to provide sufficient medical evidence to establish that his claimed disability was due to a material worsening of his accepted condition without any intervening cause. The hearing representative accorded the weight of the medical evidence to Dr. Meredith's April 10, 2023 second opinion report.

Appellant subsequently requested reconsideration. OWCP denied modification.

Appellant again request reconsideration.

By decision dated August 13, 2024, OWCP again denied modification.

On August 13, 2024 appellant appealed OWCP's August 13, 2024 decision to the Board. The Board, by decision dated March 6, 2025,⁴ affirmed the August 13, 2024 OWCP decision, finding that appellant had not met his burden of proof to establish a recurrence of disability for the period March 11 through April 1, 2022, and commencing April 15, 2022, causally related to his accepted employment injury.

On March 7, 2025 appellant requested reconsideration before OWCP. In support thereof, he submitted a March 7, 2025 report, wherein Dr. Ralph D'Auria, Board-certified in physical medicine and rehabilitation, noted that appellant had a history of recurrence with his accepted right elbow lateral epicondylitis over the last several years resulting in surgeries on two separate

⁴ Docket No. 24-0840 (issued March 6, 2025).

occasions. He further noted that his latest recurrence began in March 2022 resulting in his disability from work commencing April 2022 until the present. Dr. D'Auria attributed appellant's recurrence of disability to his routine daily activities, including twisting doorknobs, opening jars, driving, playing video games, performing lawn care, and putting more pressure on the right extremity to take pressure off his injured left shoulder. He noted that it was not uncommon for this condition to become chronic and recurrent even after surgery. Dr. D'Auria noted that some factors that cause a higher chance of recurrence were steroid injections, inadequate rehabilitation, age, and underlying conditions. He indicated that during the beginning of the recurrence appellant was unemployed, therefore, no work factors or intervening causes factored into his symptoms and the chain of causation was not broken. Dr. D'Auria further indicated that appellant's employment injury was later aggravated by his job as a truck driver. He noted that appellant was fired from his truck driver position in May 2022 because he was unable to physically perform the duties of the position due to recurring symptoms. Dr. D'Auria concluded that he had remained symptomatic from March 2022 to the present.

By decision dated March 24, 2025, OWCP denied modification.

On March 25, 2025 appellant requested reconsideration. In support thereof, he submitted a March 24, 2025 report, wherein Dr. D'Auria noted that appellant became symptomatic while unemployed which meant that his condition became chronic over time due to various factors. Dr. D'Auria related that it was common for a patient to experience recurrent symptoms even while not engaging in physically demanding activities. He maintained that appellant had experienced a continuation of his work-related lateral epicondylitis. Dr. D'Auria opined that appellant's tendons had begun to degenerate, which made him more prone to flareups. He related that appellant's magnetic resonance imaging (MRI) scan indicated mild soft tissue swelling, which was a symptom related to lateral epicondylitis. Dr. D'Auria advised that appellant's daily routine and activities and truck driving job only aggravated the already sustained injury. He noted that appellant also had a history of recurring symptoms even after treatment. Dr. D'Auria concluded with medical certainty that he would more than likely experience symptoms from time to time unless he did not use his right arm for any activity which was nearly impossible.

By decision dated April 8, 2025, OWCP denied modification of its March 24, 2025 decision, finding that Dr. D'Auria failed to provide sufficient medical rationale to establish a material worsening of appellant's accepted condition without an intervening cause.

On April 11, 2025 appellant requested reconsideration. In support thereof, he submitted a report also dated April 11, 2025, wherein Dr. D'Auria noted that he had explained numerous times that appellant's condition had become chronic over the years despite various treatments and therapy and that the cause of recurrence was not caused by any intervening causes since appellant was unemployed when he became symptomatic. Dr. D'Auria noted that, during examinations by him and others, it was determined that a recurrence had occurred due to loss of range in motion (ROM) and mild hypesthesia in the right small finger. He again noted that MRI scan results revealed mild soft tissue swelling. Dr. D'Auria maintained that these factors proved that a recurrence occurred without an intervening cause. He attributed the cause of the recurrence to everyday life activities, which, according to OWCP, was not considered to be an

intervening cause. Dr. D'Auria opined that appellant's recurrence was not caused by any new injury or incident.

By decision dated April 24, 2025, OWCP denied modification of its April 8, 2025 decision, finding that the medical evidence of record was insufficient to establish a recurrence of disability during the claimed periods causally related to a material worsening of appellant's accepted employment injury without an intervening cause.

On April 25, 2025 appellant requested reconsideration. He contended that OWCP's reason for denying his recurrence claim was repetitive and not logical. Appellant claimed that his recurrence claim was denied due to a mix up of his dates of private-sector employment and the truck driving job was not an intervening cause of his claimed recurrence of disability because he was unemployed during the claimed period. He noted that this had been explained many times by himself and Dr. D'Auria. Appellant further noted that he had previously uploaded documents such as paystubs from a private-sector employer that proved that he was unemployed during the claimed period.

In support thereof, appellant submitted documents concerning his private-sector employment status.

OWCP, by decision dated July 22, 2025, denied appellant's April 25, 2025 request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

LEGAL PRECEDENT -- ISSUE 1

A recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which resulted from a previous compensable injury or illness and without an intervening injury or new exposure in the work environment.⁵ This term also means an inability to work because a light-duty assignment made specifically to accommodate an employee's physical limitations, and which is necessary because of a work-related injury or illness, is withdrawn or altered so that the assignment exceeds the employee's physical limitations. A recurrence does not occur when such withdrawal occurs for reasons of misconduct, nonperformance of job duties, or a reduction-in-force.⁶

OWCP's procedures provide that a recurrence of disability includes a work stoppage caused by a spontaneous material change in the medical condition demonstrated by objective findings. That change must result from a previous injury or occupational illness rather than an intervening injury or new exposure to factors causing the original illness. It does not include a condition that results from a new injury, even if it involves the same part of the body previously injured.⁷

⁵ 20 C.F.R. § 10.5(x); *J.D.*, Docket No. 18-1533 (issued February 27, 2019).

⁶ *Id.*

⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.2b (June 2013); *L.B.*, Docket No. 18-0533 (issued August 27, 2018).

An employee who claims a recurrence of disability due to an accepted employment-related injury has the burden of proof to establish by the weight of the substantial, reliable, and probative evidence that the disability for which he or she claims compensation is causally related to the accepted injury. This burden of proof requires that a claimant furnish medical evidence from a physician who, based on a complete and accurate factual and medical history, concludes that, for each period of disability claimed, the disabling condition is causally related to the employment injury, and supports that conclusion with medical reasoning.⁸ Where no such rationale is present, the medical evidence is of diminished probative value.⁹

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met his burden of proof to establish a recurrence of disability for the period March 11 through April 1, 2022 and commencing April 15, 2022, causally related to his accepted employment injury.

Initially, the Board notes that it is unnecessary to consider the evidence appellant submitted prior to the issuance of OWCP's August 13, 2024 decision, which was considered by the Board in its March 6, 2025 decision. Findings made in prior Board decisions are *res judicata* absent further merit review by OWCP under section 8128 of FECA.¹⁰

Appellant subsequently requested reconsideration before OWCP and submitted evidence from Dr. D'Auria. In reports dated March 7 and 24, 2025, Dr. D'Auria opined that appellant sustained a recurrence of disability due to an aggravation of his accepted condition of right elbow lateral epicondylitis without an intervening cause. He attributed the aggravation to the normal everyday use of his right arm and not a new injury. Dr. D'Auria maintained that the aggravation occurred in March 2022 when appellant was unemployed and he remained symptomatic until the present time. In his April 11, 2025 report, he noted that appellant had loss of ROM and mild hypesthesia in the right little finger; and appellant's MRI scan indicated mild soft tissue swelling. However, Dr. D'Auria did not explain with sufficient rationale why appellant's condition had worsened such that he was disabled from work during the claimed periods. As Dr. D'Auria's opinions were conclusory, they are insufficient to establish appellant's recurrence claim.¹¹

As the medical evidence of record is insufficient to establish a recurrence of disability during the claimed periods causally related to a material worsening of appellant's accepted employment injury the Board finds that appellant has not met his burden of proof

⁸ *J.D.*, Docket No. 18-0616 (issued January 11, 2019); *see C.C.*, Docket No. 18-0719 (issued November 9, 2018).

⁹ *M.T.*, Docket No. 25-0180 (issued January 25, 2025); *H.T.*, Docket No. 17-0209 (issued February 8, 2018).

¹⁰ *L.F.*, Docket No. 25-0209 (issued June 5, 2025); *C.M.*, Docket No. 19-1211 (issued August 5, 2020); *Clinton E. Anthony, Jr.*, 49 ECAB 476, 479 (1998).

¹¹ *B.B.*, Docket No. 25-0469 (issued June 4, 2025).

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

LEGAL PRECEDENT -- ISSUE 2

Section 8128(a) of FECA does not entitle a claimant to the review of an OWCP decision as a matter of right.¹² OWCP has discretionary authority in this regard and has imposed certain limitations in exercising its authority.¹³ 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.¹⁴

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.¹⁵ 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.¹⁶

ANALYSIS -- ISSUE 2

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).

In his April 25, 2025 request for reconsideration, appellant contended that his private-sector truck driver position was not an intervening cause of his claimed recurrence of disability because he was unemployed during the claimed recurrence period. He maintained that his contention was supported by the opinion of Dr. D'Auria, his attending physician. As the underlying issue in this case, *i.e.*, whether appellant established a recurrence of disability for the period March 11 through April 1, 2022 and commencing April 15, 2022, causally related to his accepted employment injury, is medical in nature, appellant's lay opinion is irrelevant. The Board has held that the submission of evidence or argument which does not address the

¹² 5 U.S.C. § 8128(a).

¹³ 20 C.F.R. § 10.607.

¹⁴ *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.

¹⁵ *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).

¹⁶ *Id.* at § 10.608.

particular issue involved does not constitute a basis for reopening a case.¹⁷ Appellant's opinion is therefore insufficient to reopen his case on the merits of his claim. Thus, appellant is not entitled to a review of the merits based on the first and second above-noted requirements under 20 C.F.R. § 10.606(b)(3).

On reconsideration, appellant submitted documents concerning his private-sector employment status. However, this evidence is irrelevant to the underlying issue in this case, which is medical in nature.¹⁸ As explained above, the submission of evidence, which does not address the particular issue involved does not constitute a basis for reopening a case.¹⁹ Because appellant did not submit relevant and pertinent new evidence with his request for reconsideration, he is not entitled to a review of the merits based on the third above-noted requirement under 20 C.F.R. § 10.606(b)(3).²⁰

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 appellant has not met his burden of proof to establish a recurrence of disability for the period March 11 through April 1, 2022, and commencing April 15, 2022, causally related to his accepted employment injury. The Board further finds that OWCP properly denied appellant's request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

¹⁷ See *V.W.*, Docket No. 24-0750 (issued September 11, 2024); *J.N.*, Docket No. 23-0974 (issued May 14, 2024); *R.G.*, Docket No. 21-1098 (issued March 28, 2022); *N.L.*, Docket No. 18-1575 (issued April 3, 2019); *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

¹⁸ See *V.W.*, *id.*; *A.W.*, Docket No. 21-0963 (issued August 26, 2021); *W.S.*, Docket No. 14-885 (issued July 17, 2014); *George C. Vernon*, 54 ECAB 319 (2003).

¹⁹ See *supra* note 17.

²⁰ See 20 C.F.R. § 10.606(b)(3)(iii); see also *V.W.*, *supra* note 17; *J.N.*, *supra* note 17; see *R.S.*, Docket No. 22-1141 (issued April 18, 2023); *D.R.*, Docket No. 18-0357 (issued July 2, 2018); *A.K.*, Docket No. 09-2032 (issued August 3, 2010); *M.E.*, 58 ECAB 694 (2007); *Susan A. Filkins*, 57 ECAB 630 (2006).

ORDER

IT IS HEREBY ORDERED THAT the April 24 and July 22, 2025 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: May 27, 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