

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

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C.C., Appellant )

and )

U.S. POSTAL SERVICE, DELTONA POST )  
OFFICE, Deltona, FL, Employer )

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**Docket No. 21-0820**  
**Issued: December 22, 2021**

*Appearances:*

Wayne Johnson, Esq., for the appellant<sup>1</sup>  
Office of Solicitor, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

JANICE B. ASKIN, Judge  
PATRICIA H. FITZGERALD, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On May 6, 2021 appellant, through counsel, filed a timely appeal from a November 9, 2020 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from the last merit decision on this issue, dated October 11, 2019, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction to review the merits of this case.

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<sup>1</sup> 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.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## ISSUE

The issue is 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

On December 15, 2015 appellant, then a 52-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on that date he sustained head and neck injuries when his postal vehicle was rear ended while in the performance of duty. OWCP accepted his claim for sprain of ligaments of the cervical spine. It paid appellant wage-loss compensation on the supplemental rolls for intermittent disability, including attendance at medical and physical therapy appointments, from February 22 through September 19, 2016. On June 22, 2016 appellant was released to return to work with no restrictions.

On November 13, 2017 appellant underwent an anterior cervical partial corpectomy, C5-C7, discectomy, bilateral foraminotomies, fusion, and titanium plate instrumentation performed by Dr. Nizam Razack, a neurosurgeon.

On January 19, 2018 appellant filed a claim for compensation (Form CA-7) for intermittent disability from work commencing January 6, 2018.

In a note dated January 19, 2018, a certified physician assistant recommended that appellant return to work with restrictions as of February 1, 2018.

On February 5, 2018 appellant accepted a modified letter carrier assignment with the employing establishment effective February 1, 2018.

In a report dated March 23, 2018, Dr. Mohammed Qureshi, a neurologist, followed up with appellant regarding neck pain after a November 13, 2017 cervical fusion procedure. He diagnosed cervicalgia, cervical spondylosis, and myalgia.

By decision dated April 11, 2018, OWCP denied appellant's claim for compensation for disability from work for the period commencing January 6, 2018.

In a letter dated April 18, 2018, Dr. Razack noted that appellant was involved in an automobile incident on December 15, 2015. He stated that on November 13, 2017 appellant underwent an anterior cervical partial corpectomy at C5-C6 and C6-C7, discectomy, bilateral foraminotomies, and fusion with titanium plate instrumentation. Dr. Razack opined that the treatment rendered to appellant was related to the incident of December 15, 2015, noting that OWCP had accepted a diagnosis of sprain of ligaments of the cervical spine. He stated that this was a placeholder diagnosis before appellant underwent magnetic resonance imaging (MRI) scans and that his diagnoses after imaging were brachial neuritis and/or radiculitis due to displacement of the cervical intervertebral disc; displacement of the cervical intervertebral disc without myelopathy; and cervical spondylosis. Dr. Razack noted that appellant was on a non-work status from December 15, 2015 through the present.

On May 2, 2018 Dr. Qureshi diagnosed myalgia, muscle spasm, and cervicalgia. He administered trigger point injections at the right and left trapezius and bilaterally about the cervical paraspinal area.

In a duty status report (Form CA-17) dated May 4, 2018, an urgent care provider indicated that appellant was not advised to resume work due to a diagnosis of lumbar strain.

In a report dated May 30, 2018, Dr. Christopher McCarthy, Board-certified in emergency medicine, examined appellant for complaints of lumbar pain related to an incident at work on May 3, 2018. He diagnosed lumbar radiculopathy and lumbalgia. In a follow-up report dated June 14, 2018, Dr. McCarty diagnosed lumbar radiculopathy, herniated discs at L2-L3, L3-L4, L4-L5, and L5-S1, and facetogenic low back pain/facet joint arthritis.

On March 22, 2019 appellant, through counsel, requested reconsideration. He resubmitted Dr. Razack's April 18, 2018 letter and November 13, 2017 operative report.

By decision dated October 11, 2019, OWCP denied modification of its April 11, 2018 decision.

On October 11, 2020 appellant, through counsel, requested reconsideration of the October 11, 2019 decision.

OWCP subsequently received a September 4, 2020 report, wherein Dr. Robert Reppy, an osteopathic physician specializing in family medicine, examined appellant for complaints of neck pain. Dr. Reppy noted that appellant was in a motor vehicle incident on December 15, 2015 in which appellant had climbed into his postal vehicle and was rear-ended by another car traveling at over 50 miles per hour. Appellant's upper torso shot forward and his head impacted the steering wheel. He returned to work in 2018, but after three months at work, he experienced sudden low back pain when carrying a 30-pound package and twisting after lifting it. For the next two years, Dr. Reppy was only able to work part time. He noted diagnostic studies including a January 6, 2018 cervical x-ray that demonstrated post-surgical hardware at C5-C6 and C6-C7. On physical examination Dr. Reppy noted cervical rotation at 50 degrees bilaterally, side bending at 20 degrees bilaterally, normal flexion and 20 degrees of extension. He diagnosed status post cervical fusion at C5-C6 and C6-C7 and anterolisthesis at C4 on C5.

By decision dated November 9, 2020, OWCP denied appellant's request for reconsideration of the merits of his 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 own motion or on application.<sup>3</sup>

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<sup>3</sup> 5 U.S.C. § 8128(a); *see 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).

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or 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.<sup>4</sup>

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.<sup>5</sup> If it chooses to grant reconsideration, it reopens and reviews the case on its merits.<sup>6</sup> 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.<sup>7</sup>

### ANALYSIS

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).

Appellant's October 11, 2020 timely request for reconsideration neither alleged nor demonstrated that OWCP erroneously applied or interpreted a specific point of law. Additionally, the Board finds that it did not advance a relevant legal argument not previously considered by OWCP. Consequently, appellant is not entitled to further review of the merits of his claim based on either the first or second above-noted requirements under 20 C.F.R. § 10.606(b)(3).

In support of his reconsideration request, appellant submitted a September 4, 2020 report from Dr. Reppy which generally addressed appellant's November 13, 2017 cervical procedures, but did not address specific dates of disability related to the accepted December 15, 2015 employment injury.<sup>8</sup> The underlying issue in this case is whether appellant has established disability from work commencing January 6, 2018 causally related to the accepted December 15, 2015 employment injury. 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.<sup>9</sup> As

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<sup>4</sup> 20 C.F.R. § 10.606(b)(3); *see L.D., id.*; *see also L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

<sup>5</sup> *Id.* at § 10.607(a). The one-year period begins on the next day after the date of the original contested decision. 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 (February 2016). 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>6</sup> *Id.* at § 10.608(a); *F.V.*, Docket No. 18-0230 (issued May 8, 2020); *see also M.S.*, 59 ECAB 231 (2007).

<sup>7</sup> *Id.* at § 10.608(b); *B.S.*, Docket No. 20-0927 (issued January 29, 2021); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

<sup>8</sup> *See A.W.*, Docket No. 18-0589 (issued May 14, 2019).

<sup>9</sup> *A.J.*, Docket No. 20-0926 (issued January 26, 2021); *Jimmy O. Gilmore*, 37 ECAB 257 (1985); *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

appellant failed to provide relevant and pertinent new evidence, he is not entitled to a merit review based on the third requirement under 20 C.F.R. § 10.606(b)(3).

The Board, accordingly, finds that appellant did not meet 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 his claim pursuant to 5 U.S.C. § 8128(a).

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 9, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 22, 2021  
Washington, DC

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board