

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

A.G., Appellant)	
)	
and)	Docket No. 25-0035
)	Issued: December 9, 2024
U.S. POSTAL SERVICE, DOWNTOWN FORT)	
WORTH POST OFFICE, Fort Worth, TX,)	
Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On September 20, 2024 appellant filed a timely appeal from a September 9, 2024 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from OWCP's last merit decision dated May 25, 2022, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of this case.²

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that appellant submitted additional evidence on appeal. 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.*

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

This case has previously been before the Board.³ The facts and circumstances of the case as set forth in the Board's prior decision and prior order are incorporated herein by reference. The relevant facts are as follows.

On April 10, 2012 appellant, then a 38-year-old city carrier, filed a notice of traumatic injury (Form CA-1) alleging that on April 9, 2012 he sustained injury to his forehead and developed headaches when a garage door between the dock area and mail room came down on his forehead. OWCP accepted the claim for concussion without loss of consciousness; contusion of the face, scalp and neck; post-traumatic headache; and headache. Appellant stopped work on April 9, 2012.

On May 25, 2012 Dr. Yamini P. Chennu, a Board-certified neurologist, noted that appellant's work up with a magnetic resonance imaging (MRI) and electroencephalogram (EEG) was unremarkable. She released appellant to resume work without restrictions. Appellant returned to work on May 29, 2012.

During an August 30, 2012 follow-up examination with Dr. Chennu, appellant reported having two to three headaches per week that were generalized, moderate in intensity. He was previously prescribed hydrocodone, but could not take it while working, and requested a new prescription that he could use at work. Dr. Chennu prescribed a nonsteroidal anti-inflammatory drug, and recommended that appellant return for follow-up if his headaches continued.

Appellant's city carrier appointment expired on October 10, 2012, and the employing establishment did not renew his employment.

Appellant saw Dr. Chennu for a follow-up examination on November 21, 2012. Dr. Chennu noted that he was stressed and emotional because of his unemployment, and experienced throbbing headaches three to four times a week. She explained that post-traumatic headaches were nearly identical to the bifront temporal stress/tension-like headaches appellant reported; however, there were no MRI scan changes as a result of his closed-head injury.

On January 21, 2013 appellant returned for a routine follow up with Dr. Chennu, who noted that he reported an average of three headaches per week that were moderate-to-severe, and he was not sleeping well. Dr. Chennu diagnosed insomnia and migraines.

In a May 10, 2013 follow-up report, Dr. Chennu noted that appellant related he was involved in a motor vehicle accident (MVA) on February 21, 2013, when his vehicle was rear-

³ *Order Remanding Case*, Docket No. 24-0138 (issued June 25, 2024); Docket No. 14-1590 (issued September 9, 2015).

ended while at a red light, his head hit the steering wheel, but he did not lose consciousness. Appellant was treated in the emergency room, underwent a computerized tomography (CT) scan of his head, and was discharged with prescriptions for hydrocodone and muscle relaxant. Dr. Chennu noted that appellant was having constant severe headaches. She diagnosed concussion with no loss of consciousness, headache, and insomnia. Dr. Chennu noted that appellant had reported headaches since his April 2012 work-related injury, that she did not know if he had suffered another concussion as a result of his February 21, 2013 MVA, and that his CT scan was negative for acute changes.

On May 10, 2013 appellant filed a claim for compensation (Form CA-7) for disability commencing October 5, 2012.

Dr. Chennu submitted two attending physician's reports (Form CA-20) dated May 30 and July 11, 2013. In both reports, she diagnosed concussion with no loss of consciousness and post-traumatic headaches. Dr. Chennu attributed the headaches to appellant's April 9, 2012 employment injury and explained that strenuous physical activity soon after a concussion can lead to worsening headaches. She noted that she had released appellant to resume his regular work on May 25, 2012, and discharged him from treatment. In the July 11, 2013 report, Dr. Chennu noted that he complained of headaches again after a second accident and that she could not determine whether the headaches were caused by the April 9, 2012 employment injury or his second accident.

On July 25, 2013 OWCP received an undated, unsigned statement in which appellant related that Dr. Chennu released him to resume full-duty work without restrictions on May 25, 2012, under the mistaken impression that his headaches were going to stop. However, appellant noted that his headaches did not stop, and it was impossible for him to remain employed. He also related that none of the medications Dr. Chennu prescribed helped with his headaches, hydrocodone was the only medication that helped. Appellant noted that he sustained injuries to his lower back and left leg in the February 21, 2013 MVA and was being treated by other physicians. He related that it was impossible for him to even look for employment, let alone maintain employment if provided the opportunity.

In a February 3, 2014 decision, OWCP denied appellant's claim for wage-loss compensation for the period October 5, 2012 through May 10, 2013. It found that the medical evidence did not support that appellant was disabled during the claimed period due to his April 9, 2012 accepted work injury.

On July 8, 2014 appellant appealed to the Board. By decision dated September 9, 2015, the Board affirmed the February 3, 2014 OWCP decision.⁴

On February 21, 2022 appellant filed a notice of recurrence (Form CA-2a) alleging that on May 29, 2012, he sustained a recurrence of the need for medical treatment and disability causally related to his April 9, 2012 employment injury. He also claimed wage loss commencing October 4, 2012.

⁴ Docket No. 14-1590 (issued September 9, 2015).

Appellant provided copies of reports from medical providers for treatment received during the years 2014 through 2021, indicating that he had been involved in MVAs during the years 2013 and 2015, had headaches, left leg conditions, degenerative lumbar arthritis, and an emotional condition.

In a development letter dated April 21, 2022, OWCP informed appellant of the deficiencies of his recurrence claim. It advised him of the type of factual and medical evidence necessary to establish his claim and provided a questionnaire for his completion. OWCP afforded appellant 30 days to submit the necessary evidence. No response was received.

By decision dated May 25, 2022, OWCP denied appellant's claim, finding that the medical evidence did not establish that he had a recurrence of a condition caused by his April 9, 2012 work injury. It explained that the factual and medical evidence revealed that he had several non-employment-related MVAs after the April 9, 2012 employment injury.

On May 17, 2023 appellant requested reconsideration. He argued that he was not at fault for the three motor vehicle accidents he had been involved in during 2022 and 2023 and that he was fired from the employing establishment in October 2012 while he was still injured and under the care of a doctor. Appellant noted that he was submitting compact discs (CDs) which contained evidence pertaining to his new injuries. On even date, OWCP received two CDs which it labeled as "physical evidence/non-scannable."

OWCP received a March 17, 2023 after-visit summary from a nurse practitioner which noted diagnoses of major depressive disorder and insomnia.

On May 24, 2023 OWCP returned the two CDs to appellant and explained that they were not in an acceptable format.

By decision dated June 15, 2023, OWCP denied appellant's request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a). It acknowledged that it received the two CDs; however, it did not evaluate this evidence and noted that no new medical evidence was received.

On November 30, 2023 OWCP received additional evidence. In an August 30, 2012 note, Dr. Chennu indicated that appellant could return to work on August 31, 2012. OWCP received a copy of Dr. Chennu's July 11, 2013 Form CA-20. An after-visit summary dated October 18, 2023 indicated that appellant was seen for chronic intractable headaches by Princy Varghese, a nurse practitioner.

On November 30, 2023 appellant filed a timely appeal from the June 15, 2023 nonmerit decision. On June 25, 2024 the Board found the case was not in posture for decision and remanded the case as OWCP summarily denied appellant's reconsideration request without complying with the review requirements by setting forth findings of fact and a clear statement of reasons for the basis of its decision.⁵

⁵ *Order Remanding Case*, Docket No. 24-0138 (issued June 25, 2024).

On remand, in a development letter dated August 8, 2024, OWCP explained that it was unable to access the two CDs, and that appellant must print and submit the evidence or upload it to the Employees' Compensation and Management Portal (ECOMP). It afforded him 20 days to submit the evidence.

July 21, 2022 medical records from a clinic indicated that appellant underwent testing for anxiety and depression that day. Appellant's diagnosis was listed as moderate depressive symptoms. OWCP also received a questionnaire from the neurology department of the same clinic dated July 21, 2022, and an undated post-concussion questionnaire.

Treatment notes dated July 21 and August 11, 2022 from Dr. Vinit Mehrotra, Board-certified in neurology, physical medicine and rehabilitation, and vascular neurology, indicated that appellant was seen following an MVA on June 25, 2022. A July 21, 2022 electroencephalogram (EEG) report from Dr. Mehrotra indicated normal findings. In progress notes dated January 20, July 27, and September 14, 2023, Dr. Mehrotra indicated that appellant was seen for headaches following a January 20, 2023 MVA.

OWCP received a February 15, 2023 magnetic resonance imaging (MRI) scan of appellant's lumbar and cervical spine.

Treatment notes dated April 28 and June 30, 2023 from Dr. Andrew Indresano, a Board-certified orthopedic surgeon, indicated that appellant was seen for isolated neck and low back pain following an MVA on January 20, 2023.

A June 8, 2023 initial consultation note from Dr. Amy Parish, a licensed clinical psychologist and neuropsychologist, indicated poor or suboptimal effort on performance validity testing.

OWCP received unsigned treatment notes related to a diagnosis of encephalopathy dated July 21, 2022 and September 14, 2023.

In a March 1, 2024 report, Dr. Indresano noted that appellant was seen for isolated neck and low back pain following a January 20, 2023 MVA and recommended a lumbar epidural steroid injection.

In an August 21, 2024 statement, appellant indicated that he was still suffering from the effects of his April 9, 2012 work injury and had lost his livelihood and resources.

By decision dated September 9, 2024, 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 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 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 its decision for which review is sought.⁸ If it chooses to grant reconsideration, OWCP 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.¹⁰

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 May 17, 2023 request for reconsideration neither alleged nor demonstrated that OWCP erroneously applied or interpreted a specific point of law in its May 25, 2022 decision. Moreover, the reconsideration request 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).

The Board further finds that appellant's reconsideration request did not provide relevant and pertinent new evidence not previously considered by OWCP in its May 25, 2022 decision.

⁶ 5 U.S.C. § 8128(a); *see L.J.*, Docket No. 22-0348 (issued April 28, 2023); *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).

⁷ 20 C.F.R. § 10.606(b)(3); *see P.M.*, Docket No. 20-0780 (issued November 24, 2020); *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).

⁸ *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 (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); *F.V.*, Docket No. 18-0230 (issued May 8, 2020); *see also M.S.*, 59 ECAB 231 (2007).

¹⁰ *Id.* at § 10.608(b); *S.K.*, Docket No. 22-0248 (issued June 27, 2022); *B.S.*, Docket No. 20-0927 (issued January 29, 2021); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

Following the May 25, 2022 merit decision, OWCP received two CDs which appellant indicated contained medical evidence. However, on May 24, 2023, OWCP returned the two CDs to appellant and explained that they were not in an acceptable format. On August 8, 2024 OWCP again explained that it was unable to access the two CDs, and that appellant must print and submit the evidence or upload it to ECOMP.

OWCP also received an August 30, 2012 work release note from Dr. Chennu, and a copy of a July 11, 2013 CA-20 form from Dr. Chennu. This evidence was duplicative of prior reports received from Dr. Chennu. The Board has held that the submission of evidence or argument that repeats or duplicates evidence or argument already of record does not constitute a basis for reopening a case.¹¹

Treatment notes from Dr. Mehrotra dated July 21 and August 11, 2022, indicated that appellant was seen following another MVA on June 25, 2022. Dr. Mehrotra did not provide an opinion that appellant suffered a recurrence of the April 9, 2012 employment injury. Appellant provided treatment notes from Dr. Indresano dated April 28 and June 20, 2023, which indicated that appellant was seen for isolated neck and low back pain following an MVA on January 20, 2023. A March 1, 2024 report from Dr. Indresano noted that appellant was seen for isolated neck and low back pain following a January 20, 2023 MVA and recommended a lumbar epidural steroid injection. These reports indicate that appellant was treated for injuries resulting from a nonwork-related MVA on January 20, 2023, and do not contain any opinion that appellant suffered a recurrence of his accepted April 9, 2012 employment injury. A June 8, 2023 initial consultation note from Dr. Parish indicated poor or suboptimal effort on performance validity testing and did not provide any opinion regarding recurrence of the April 8, 2012 employment injury. As the reports from Dr. Indresano, Dr. Mehrotra, and Dr. Parish did not contain any opinion with regard to a recurrence of the April 8, 2012 employment injury, they do not constitute relevant and pertinent new evidence. 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.¹²

OWCP also received unsigned treatment notes related to a diagnosis of encephalopathy dated July 21, 2022 and September 14, 2023. Reports that are unsigned or illegible cannot be considered probative medical evidence because they lack proper identification¹³ as the author cannot be identified as a physician.¹⁴ Therefore, they are irrelevant and do not constitute a basis for reopening the case on the merits.¹⁵

¹¹ *J.B.*, Docket No. 22-1166 (issued April 3, 2023); *S.H.*, Docket No. 22-1179 (issued January 17, 2023); *S.E.*, Docket No. 17-0222 (issued December 21, 2018); *T.H.* Docket Nos. 17-1578 and 17-1651 (issued April 26, 2018); *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

¹² *See N.D.*, Docket No. 24-0021 (issued April 12, 2024); *M.K.*, Docket No. 18-1623 (issued April 10, 2019); *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

¹³ *W.L.*, Docket No. 19-1581 (issued August 5, 2020).

¹⁴ *D.T.*, Docket No. 20-0685 (issued October 8, 2020); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

¹⁵ *See R.B.*, Docket No. 24-0350 (issued October 7, 2024); *M.K.*, *supra* note 12; *Edward Matthew Diekemper*, *supra* note 12.

OWCP received a March 17, 2023 after-visit summary from a nurse practitioner with diagnoses of major depressive disorder and insomnia. An October 18, 2023 after-visit summary from a nurse practitioner diagnosed chronic intractable headaches. However, certain healthcare providers such as nurses, physician assistants, and physical and occupational therapists are not considered “physician[s]” as defined under FECA.¹⁶ Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.¹⁷

OWCP received a July 21, 2022 EEG report, and February 15, 2023 MRI scans of the lumbar and cervical spine. However, the Board has also held that diagnostic reports, standing alone, lack probative value on the issue of causal relationship as they do not provide an opinion as to whether the accepted employment incident caused a diagnosed condition.¹⁸ Thus, they too are irrelevant, and do not constitute a basis for reopening the case on the merits.¹⁹

Appellant also submitted a questionnaire from the neurology department of a clinic dated July 21, 2022, and an undated post-concussion questionnaire. These documents did not contain relevant and pertinent new evidence regarding appellant’s claimed recurrence.²⁰

In an August 21, 2024 statement, appellant indicated that he was still suffering from the effects of his April 9, 2012 work injury and had lost his livelihood and resources. However, the underlying issue of whether he sustained a recurrence of his accepted April 8, 2012 employment injury is a medical issue which can only be addressed by submission of rationalized medical evidence not previously considered.²¹

Appellant did not provide any relevant and pertinent new evidence regarding the issue of whether he suffered a recurrence of medical treatment or disability due to the April 9, 2012 employment injury. Therefore, appellant was not entitled to a review of the merits based on the third requirement under section 10.606(b)(3).²²

¹⁶ Section 8101(2) provides that under FECA the term physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by the applicable state law. 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, physical and occupational therapists are not competent to render a medical opinion under FECA); see also *R.L.*, Docket No. 19-0440 (issued July 8, 2019) (nurse practitioners and physical therapists are not considered physicians under FECA); *E.T.*, Docket No. 17-0265 (issued May 25, 2018) (physician assistants are not considered physicians under FECA).

¹⁷ *Id.*

¹⁸ *W.L.*, Docket No. 20-1589 (issued August 26, 2021); *A.P.*, Docket No. 18-1690 (issued December 12, 2019).

¹⁹ *Supra* note 15.

²⁰ *Supra* note 12.

²¹ *Y.L.*, Docket No. 20-1025 (issued November 25, 2020); *Eugene F. Butler*, *supra* note 11; *Edward Matthew Diekemper*, *supra* note 12.

²² See *supra* note 6 at § 10.606(b)(3)(iii).

The Board, accordingly, finds that as appellant has not met any of the requirements under 20 C.F.R. § 10.606(b)(3), pursuant to 20 C.F.R. § 10.608 OWCP properly denied merit review.²³

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 September 9, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 9, 2024
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board

²³ See *J.B.*, *supra* note 11; *A.M.*, Docket No. 21-1413 (issued March 28, 2022); *D.M.*, Docket No. 18-1003 (issued July 16, 2020); *D.S.*, Docket No. 18-0353 (issued February 18, 2020); *Susan A. Filkins*, 57 ECAB 630 (2006) (when a request for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b), OWCP will deny the request for reconsideration without reopening the case for a review on the merits).