

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

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<b>D.R., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 24-0476</b>
	)	<b>Issued: June 17, 2024</b>
<b>U.S. POSTAL SERVICE, PHOENIX GENERAL</b>	)	
<b>MAIL FACILITY, Phoenix, AZ, Employer</b>	)	
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*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  
VALERIE D. EVANS-HARRELL, Alternate Judge  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On April 1, 2024 appellant filed a timely appeal from a February 5, 2024 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days elapsed from the last merit decision, dated August 23, 2023, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction to review the merits of this case.<sup>2</sup>

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that appellant submitted additional evidence to the Board on appeal. However, the Board's *Rules of Procedure* provide: "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 her claim, pursuant to 5 U.S.C. § 8128(a).

## FACTUAL HISTORY

On December 20, 2022 appellant, then a 55-year-old mail handler, filed an occupational disease claim (Form CA-2) alleging that she sustained muscle spasm as a result of factors of her federal employment, including repetitive motion. She indicated that she first became aware of her condition on December 6, 2022, and of its relationship to her federal employment on December 16, 2022. With her claim, appellant submitted a narrative statement dated December 20, 2023. She recounted that on December 6, 2022 she noticed pain in the right side of her upper back, which was worsening. Appellant further recounted that she was seen by a physician on December 16, 2022, who told her that she was experiencing a muscle spasm and asked her if she performed her work in the same position every day. She replied that it was "the same repetitive motion."

OWCP received a December 16, 2022 note, wherein a nurse practitioner indicated that appellant was seen that day for back pain, and was placed on light duty.

In a development letter dated December 28, 2022, OWCP informed appellant that the factual and medical evidence submitted was insufficient to establish her claim. It advised her of the type of factual and medical evidence needed and provided a questionnaire for her completion. OWCP afforded appellant 30 days to respond. No response was received.

By decision dated January 30, 2023, OWCP denied appellant's occupational disease claim, finding that the evidence of record was insufficient to establish a medical diagnosis in connection with the claimed employment factors.

On February 21, 2023 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review. With her request, she submitted a February 1, 2023 report from Dr. James Hawkins, an orthopedic surgeon. Dr Hawkins noted that appellant told him her mid-back pain happened at work. He related that he had reviewed appellant's January 17, 2023 magnetic resonance imaging scan of the thoracic spine, which revealed central right disc herniation at thoracic 6-7, also mild cord contact compression at thoracic 7-8, from a second shallow disc protrusion.

By decision dated August 23, 2023, OWCP's hearing representative affirmed the January 30, 2023 decision as modified to find that appellant had not identified any specific work factors that she believed caused or contributed to her claimed medical condition, and that as such, appellant had not met her burden of proof to establish the alleged work factors. The hearing representative noted that her description of the alleged factor of her federal employment, repetitive motion, was vague; and that to date, appellant had not provided the detailed statement of work factors alleged to have caused or contributed to her claimed condition that was requested by OWCP in its development letter of December 28, 2022.

On February 1, 2024 appellant requested reconsideration. In support thereof, she submitted an October 11, 2023 report, wherein Dr. Hawkins related that her injury occurred on the job in December 2022 due to repetitive lifting at the employing establishment.

By decision dated February 5, 2024, 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 to review of an OWCP decision as a matter of right.<sup>3</sup> OWCP has discretionary authority in this regard and has imposed certain limitations in exercising its authority.<sup>4</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>5</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>6</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>7</sup> If it chooses to grant reconsideration, it reopens and reviews the case on its merits.<sup>8</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>9</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's February 1, 2024 request for reconsideration neither alleged, nor demonstrated that OWCP erroneously applied or interpreted a specific point of law. Moreover, it did not advance a relevant legal argument not previously considered by OWCP. Consequently, appellant is not

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<sup>3</sup> This section provides in pertinent part: "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on [his or her] own motion or on application." 5 U.S.C. § 8128(a).

<sup>4</sup> 20 C.F.R. § 10.607.

<sup>5</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>6</sup> *Id.* at § 10.606(b)(3).

<sup>7</sup> *Id.* at § 10.608(a), (b).

<sup>8</sup> *Id.* at § 10.608(a); *see also M.S.*, 59 ECAB 231 (2007).

<sup>9</sup> *Id.* at § 10.608(b); *M.S.*, Docket No. 19-0291 (issued June 21, 2019); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

entitled to further review of the merits of her claim based on either the first or second above-noted requirements under 20 C.F.R. § 10.606(b)(3).

In support of her reconsideration request, appellant submitted an October 11, 2023 report wherein, Dr. Hawkins noted that appellant advised him that her injury occurred on the job in December 2022 due to repetitive lifting at her job with the employing establishment. However, his description of the employment alleged to have caused or contributed to her claimed condition is vague and is therefore irrelevant to the underlying issue. As such, appellant is not entitled to further 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, accordingly, 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 February 5, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 17, 2024  
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

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

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