

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

K.E., Appellant	)	
	)	
and	)	<b>Docket No. 24-0483</b>
	)	<b>Issued: June 28, 2024</b>
U.S. POSTAL SERVICE, POST OFFICE,	)	
Frankfurt, IL, Employer	)	
	)	

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Chief Judge  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On April 5, 2024 appellant filed a timely appeal from a January 8, 2024 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from the last merit decision, dated July 13, 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 over the merits of this case.

**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).

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

## **FACTUAL HISTORY**

This case has previously been before the Board on a different issue.<sup>2</sup> 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 July 6, 2015 appellant, then a 54-year-old rural letter carrier, filed an occupational disease claim (Form CA-2) alleging that she developed left carpal tunnel syndrome and trigger finger due to factors of her federal employment.<sup>3</sup> OWCP accepted appellant's claim for left carpal tunnel syndrome. It paid her wage-loss compensation on the supplemental rolls beginning July 15, 2016.

On February 15, 2021 appellant filed a claim for compensation (Form CA-7) for a schedule award.

By decision dated June 14, 2021, OWCP granted appellant a schedule award for 15 percent permanent impairment of the right upper extremity and 13 percent permanent impairment of the left upper extremity. The period of the award ran for 87.36 weeks from June 19, 2020 through May 22, 2021.

On June 30, 2021 appellant requested review of the written record by a representative of OWCP's Branch of Hearings and Review.

Following a preliminary review, by decision dated September 1, 2021, OWCP's hearing representative vacated the June 14, 2021 decision and remanded the case for additional development of the medical evidence.

After extensive development of the claim, by *de novo* decision dated July 13, 2023, OWCP denied appellant's claim for an increased schedule award.

On October 16, 2023 appellant requested reconsideration of the July 13, 2023 decision. No additional evidence or argument was received.

By decision dated January 8, 2024, OWCP denied appellant's request for reconsideration of the merits of her schedule award claim, pursuant to 5 U.S.C. § 8128(a).

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<sup>2</sup> Docket No. 18-0687 (issued October 25, 2018).

<sup>3</sup> Appellant had previously filed a Form CA-2 on October 14, 2014 alleging that she developed right carpal tunnel syndrome due to factors of her federal employment. OWCP assigned OWCP File No. xxxxxx899. It accepted this claim for right thumb trigger finger, right radial styloid tenosynovitis, right carpal tunnel syndrome, and right thumb osteoarthritis. OWCP administratively combined appellant's claims with the current claim, OWCP File No. xxxxxx382, serving as the master file.

## LEGAL PRECEDENT

Section 8128(a) of FECA does not entitle a claimant to review of an OWCP decision as a matter of right.<sup>4</sup> OWCP has discretionary authority in this regard and has imposed certain limitations in exercising its authority.<sup>5</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>6</sup> A timely application for reconsideration, including all supporting documents, must set forth arguments and contain evidence that either: (i) shows that OWCP erroneously applied or interpreted a specific point of law; (ii) advances a relevant legal argument not previously considered by OWCP; or (iii) constitutes relevant and pertinent new evidence not previously considered by OWCP.<sup>7</sup> When a timely application 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>8</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).

Preliminarily, the Board finds that OWCP did not receive evidence of additional permanent impairment with appellant's request for reconsideration received on October 16, 2023. The Board will, therefore, consider this a reconsideration request as opposed to a claim for an increased schedule award.<sup>9</sup>

Appellant did not show that OWCP erroneously applied or interpreted a specific point of law and did not advance a relevant legal argument not previously considered by OWCP. Consequently, she was 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).<sup>10</sup>

Further, appellant did not submit any additional evidence with her October 16, 2023 request for reconsideration. Because she did not provide any relevant and pertinent new evidence

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<sup>4</sup> 5 U.S.C. § 8128(a).

<sup>5</sup> 20 C.F.R. § 10.607.

<sup>6</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>7</sup> *Id.* at § 10.606(b)(3).

<sup>8</sup> *Id.* at § 10.608(a), (b).

<sup>9</sup> *W.V.*, Docket No. 24-0179 (issued April 2, 2024).

<sup>10</sup> *R.M.*, Docket No. 23-0748 (issued October 30, 2023); *L.W.*, Docket No. 21-0942 (issued May 11, 2022); *C.B.*, Docket No. 18-1108 (issued January 22, 2019).

not previously considered by OWCP, she is not entitled to a review of the merits based on the third requirement under 20 C.F.R. § 10.606(b)(3).<sup>11</sup>

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.<sup>12</sup>

**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 January 8, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 28, 2024  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

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

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

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<sup>11</sup> *Id.* at § 10.606(b)(3)(iii); *see also P.C.*, Docket No. 23-1152 (issued January 19, 2024); *S.H.*, Docket No. 19-1897 (issued April 21, 2020); *M.K.*, Docket No. 18-1623 (issued April 10, 2019); *Edward Matthew Diekemper*, 31 ECAB 224-25 (1979).

<sup>12</sup> *See 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).