

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

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C.J., Appellant

and

U.S. POSTAL SERVICE, POST OFFICE,  
Hazelwood, MO, Employer

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**Docket No. 24-0317  
Issued: May 9, 2024**

*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 February 6, 2024 appellant filed a timely appeal from an August 15, 2023 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from the last merit decision, dated September 22, 2022, 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.

**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).

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

## **FACTUAL HISTORY**

This case has previously been before the Board.<sup>2</sup> The facts and circumstances as set forth in the Board's prior order are incorporated herein by reference. The relevant facts are as follows.

On May 19, 2017 appellant, then a 55-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that on August 20, 2016 he sustained a lower back injury lifting a heavy box while in the performance of duty. On the reverse side of the claim form, appellant's supervisor checked a box marked "No" in response to the question of whether she believed that appellant was injured in the performance of duty, indicating that there was no evidence that he was injured on that date while in the performance of duty. Appellant stopped work on August 21, 2016, and returned on November 30, 2016.

OWCP received reports from various medical providers dated September 1, 2016 through May 22, 2017.

By decision dated June 30, 2017, OWCP denied appellant's traumatic injury claim, finding that he had not established that his diagnosed condition was causally related to the accepted employment incident.

On April 19, 2018 appellant requested reconsideration. In support thereof, he submitted a November 15, 2017 medical report by Dr. Paul J. Tolentino, a Board-certified neurosurgeon, which recounted appellant's medical treatment history. Appellant was first seen by Dr. Tolentino on August 29, 2016. He related right-sided low back pain radiating into the right lower extremity starting August 21, 2016. A magnetic resonance imaging (MRI) scan of the lumbar spine showed multilevel degenerative disc disease. On September 1, 2016 appellant underwent a right L5-S1 microdiscectomy and foraminotomy. He was subsequently seen for follow ups with Dr. Tolentino. Appellant related to Dr. Tolentino on May 22, 2017 that symptoms returned in February 2017 and that he had filed a workers' compensation claim on May 19, 2017 for a work-related injury in August 2016. Further, he underwent a redo right L5-S1 microdiscectomy and foraminotomy on July 28, 2017. Dr. Tolentino also administered multiple injections. He indicated that appellant did not report a specific event or occurrence relating to the onset of his discomfort at the initial evaluation on August 21, 2016. Dr. Tolentino further stated that unfortunately it would "not be possible" to support by medical explanation that a "work incident" caused appellant's disc herniation in August 2016.

By decision dated May 18, 2018, OWCP denied modification of its June 30, 2017 decision.

On May 14, 2019 appellant requested reconsideration. In support thereof, he submitted a May 1, 2019 report, wherein Dr. Dewey Dixon, a chiropractor, reported that he had treated appellant from August 22 to 26, 2016 for diagnoses of segmental somatic dysfunction of the lumbar, hip, pelvis, and pubic, lumbago with right-side sciatica, lumbar intervertebral disc disorder with myelopathy, and muscle spasms. Dr. Dixon further reported that, while appellant initially denied a work-related injury, he subsequently reported lifting an extremely heavy box on

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<sup>2</sup> *Order Remanding Case*, Docket No. 22-0233 (issued August 11, 2022).

August 20, 2016. He concluded that the incident described was consistent with the type of injury that would cause appellant's disc injury.

By decision dated August 6, 2019, OWCP denied modification of its May 18, 2018 decision.

On July 29, 2020 appellant requested reconsideration. He submitted an undated report, wherein Dr. Dixon indicated that appellant had undergone x-ray evaluation on August 22, 2016 revealing vertebral rotation to the right, which correlated with his right leg pain, was an L5-S1 disc herniation. Dr. Dixon opined that appellant's repetitive motion of bending at the waist and rotating to the right would be the mechanism of injury for disc failure.

By decision dated October 27, 2020, OWCP denied modification of its August 6, 2019 decision.

On October 27, 2021 appellant requested reconsideration. He submitted a narrative statement wherein he further described his employment history. Appellant also alleged that, while he did not initially tell Dr. Tolentino what happened at work, he did explain to him when he was hospitalized for his second surgery.

By decision dated November 8, 2021, OWCP denied appellant's request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a). It summarily found that his reconsideration request did not raise a substantive legal question, nor include new and relevant evidence and was, therefore, insufficient to warrant a review of the prior decision.

Appellant appealed to the Board. By order dated August 11, 2022, the Board set aside the November 8, 2021 decision, finding that OWCP had summarily denied appellant's request for reconsideration without setting forth findings of fact and reasons for the denial. It remanded the case for further proceedings, to be followed by the issuance of an appropriate decision.<sup>3</sup>

By decision dated September 22, 2022, OWCP denied modification of its October 27, 2020 decision.

On May 17, 2023 appellant requested reconsideration. In support of his reconsideration request, he submitted a letter from Dr. Tolentino's office dated April 28, 2023, signed by the Business Office Manager. The letter indicated that appellant requested a medical report stating that his treatment was related to a work injury based on Dr. Tolentino's medical opinion. The letter stated that "nothing" was related by appellant in the initial evaluation about his symptoms being related to a work injury, and that on a new patient intake form from August 29, 2016 appellant had marked "No" to a question of whether an injury caused his pain or problem. The letter concluded that Dr. Tolentino would, therefore, not be able to complete appellant's request. Appellant also submitted his own narrative statement reiterating his description of the employment incident.

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<sup>3</sup> *Id.*

By decision dated August 15, 2023, 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 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 his claim, pursuant to 5 U.S.C. § 8128(a).

Appellant submitted a narrative statement reiterating his description of the employment incident. The Board finds that he did not show that OWCP erroneously applied or interpreted a specific point of law, or 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).

On reconsideration, OWCP received a letter from Dr. Tolentino's office, signed by the Business Office Manager, dated April 28, 2023. The letter indicated that it was in response to appellant's request for a medical report indicating that his treatment was related to a work injury, however, Dr. Tolentino would not fulfill the request. The letter further noted that appellant did not relate in the initial evaluation that his condition was related to a work injury, and that on a new patient intake form from August 29, 2016 he had marked "No" to a question of whether an

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<sup>4</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/her] own motion or on application. 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 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).

injury caused his pain or problem. The underlying issue in this case is causal relationship and causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.<sup>9</sup> The April 28, 2023 letter was prepared by the Business Office Manager, who is a lay person. The Board has held that lay persons are not competent to render medical opinions.<sup>10</sup> Consequently, the opinion of the Business Office Manager has no probative value,<sup>11</sup> is irrelevant, and thus does not constitute a basis for reopening the case on the merits.<sup>12</sup> Therefore, appellant is not entitled to further review of the merits of his 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 his claim, pursuant to 5 U.S.C. § 8128(a).

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<sup>9</sup> *D.S.*, Docket No. 21-1388 (issued May 12, 2022); *I.J.*, Docket No. 19-1343 (issued February 26, 2020); *T.H.*, 59 ECAB 388 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

<sup>10</sup> *See R.P.*, Docket No. 22-0686 (issued September 30, 2022); *E.H.*, Docket No. 19-0365 (issued March 17, 2021); *B.C.*, Docket No. 16-1404 (issued April 14, 2017); *James A. Long*, 40 ECAB 538 (1989).

<sup>11</sup> *See K.D. (L.D.)*, Docket No. 22-0485 (issued December 6, 2022); *James A. Long, id.*

<sup>12</sup> *See N.D.*, Docket No. 24-0021 (issued April 12, 2024); *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 15, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 9, 2024  
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