

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

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<b>K.L., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 24-0906</b>
	)	<b>Issued: November 26, 2024</b>
<b>DEPARTMENT OF THE TREASURY,</b>	)	
<b>INTERNAL REVENUE SERVICE,</b>	)	
<b>Louisville, KY, 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:  
JANICE B. ASKIN, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On September 9, 2024 appellant filed a timely appeal from a July 16, 2024 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from the last merit decision, dated February 14, 2024, 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).

**FACTUAL HISTORY**

On November 24, 2023 appellant, then a 50-year-old criminal investigator, filed a traumatic injury claim (Form CA-1) alleging that on October 18, 2023 he was involved in a two

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

vehicle accident during the surveillance of a law enforcement agent when his vehicle was struck by the target vehicle while in the performance of duty. The record reveals that he did not allege any injury or illness but was transported to the emergency room for precautionary measures. On the reverse side of the claim form, appellant's supervisor acknowledged that he was injured in the performance of duty and that his injury was caused by a third party. Appellant did not stop work.

In a development letter dated November 28, 2023, OWCP informed appellant of the deficiencies in his claim. It advised him of the type of factual and medical evidence necessary to establish the claim and provided a factual questionnaire for his completion. OWCP afforded appellant 60 days to respond.

In an October 18, 2023 report, Dr. Jeffrey T. Thurman, a Board-certified emergency medicine physician, reported that appellant, who was in law enforcement, was an unrestrained driver involved in a motor vehicle accident earlier that day when the front of his vehicle sustained impact. Examination findings revealed mild tenderness to palpation to the posterior upper back and shoulders with negative imaging results for an acute process. Dr. Thurman provided impressions of acute bilateral thoracic back pain and acute pain of both shoulders.

October 18, 2023 thoracic spine and left shoulder x-rays found no evidence of acute injury.

OWCP also received a copy of the October 18, 2023 police department vehicle damage or collision report.

By decision dated February 14, 2024, OWCP accepted that appellant had established the occurrence of the October 18, 2023 employment incident. It, however, denied the claim finding that the medical evidence of record was insufficient to establish a medical diagnosis in connection with the accepted October 18, 2023 employment incident. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On July 11, 2024 appellant requested reconsideration. In an attached statement, he explained that he was only requesting compensation for the outstanding balance due for his emergency room hospital visit following the accepted October 18, 2023 employment incident. Appellant noted that he was directed to the emergency room by his supervisor, but that there were no injuries sustained from the vehicle accident and thus, no medical diagnosis provided. No additional evidence was received.

By decision dated July 16, 2024, OWCP denied appellant's request for reconsideration of the merits of his claim. It noted that the employing establishment could issue an authorization for examination and/or treatment (Form CA-16).<sup>2</sup>

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<sup>2</sup> A completed Form CA-16 authorization may constitute a contract for payment of medical expenses to a medical facility or physician, when properly executed. The form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. See 20 C.F.R. § 10.300(c); *T.H.*, Docket No. 23-0811 (issued February 13, 2024); *J.G.*, Docket No. 17-1062 (issued February 13, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).

## 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.<sup>3</sup>

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or an 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).

In support of his July 11, 2024 request for reconsideration, appellant acknowledged that he sustained no injuries from the accepted October 18, 2023 employment incident. He argued that he was directed to the emergency room by his supervisor for observation and was therefore, only requesting compensation from OWCP for the outstanding balance due for services rendered during that visit. However, appellant did not explain how OWCP erroneously applied or interpreted a specific point of law in its February 14, 2024 decision. Furthermore, he did not advance a relevant legal argument not previously considered by OWCP. Consequently, appellant is not entitled to a review of the merits of his claim based on the first or second above-noted requirements under 20 C.F.R. § 10.606(b)(3).

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<sup>3</sup> 5 U.S.C. § 8128(a); *see R.C.*, Docket No. 22-0612 (issued October 24, 2022); *M.S.*, Docket No. 19-1001 (issued December 9, 2019); *L.D.*, Docket No. 18-1468 (issued February 11, 2019); *see also V.P.*, Docket No. 17-1287 (issued October 10, 2017); *W.C.*, 59 ECAB 372 (2008).

<sup>4</sup> 20 C.F.R. § 10.606(b)(3); *see R.C.*, *id.*; *L.D.*, *id.*

<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. 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 § 10.608(a); *see also M.S.*, 59 ECAB 231 (2007).

<sup>7</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).

The Board further finds that appellant has not provided relevant and pertinent new medical evidence not previously considered by OWCP. The underlying issue in this case was whether he has met his burden of proof to establish a diagnosed medical condition in connection with the accepted October 18, 2023 employment incident, which is medical in nature and no new medical evidence was submitted by appellant with the July 11, 2024 request for reconsideration.

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).

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 16, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 26, 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