

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

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<b>R.D., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 21-0472</b>
	)	<b>Issued: December 2, 2021</b>
<b>U.S. POSTAL SERVICE, AIRPORT MAIL CENTER, Nashville, TN, Employer</b>	)	
_____	)	

*Appearances:*  
Alan J. Shapiro, Esq., for the appellant<sup>1</sup>  
Office of Solicitor, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Chief Judge  
JANICE B. ASKIN, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On February 8, 2021 appellant, through counsel, filed a timely appeal from a September 21, 2020 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from OWCP's last merit decision, dated August 22, 2019, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act<sup>2</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 his claim, pursuant to 5 U.S.C. § 8128(a).

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<sup>1</sup> In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on an appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

On January 2, 2003 appellant, then a 42-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that on December 28, 2002 he sustained torn ligaments of the left foot when dispatching mail from a small parcel and bundle sorter (SPBS) while in the performance of duty. He stopped work on December 30, 2002 and returned to work on January 2, 2003. OWCP accepted the claim for a left ankle sprain, and subsequently expanded acceptance of the claim to include left ankle closed dislocation, left foot and ankle tenosynovitis, left ankle and tarsus enthesopathy, left tibialis tendinitis, left ankle and foot primary osteoarthritis, and left contracture of the tendon sheath. On May 28, 2003 appellant underwent surgery for left accessory navicular excision, insertion of posterior tibial tendon debridement, posterior tibial tendon advancement, and posterior tibial tendon tenosynovitis debridement. He returned to a modified job on August 21, 2003. OWCP paid appropriate compensation for intermittent periods of disability through November 29, 2003. On February 9, 2005 it granted appellant a schedule award for 12 percent impairment of the left leg, which ran for 34.56 weeks during the period from December 9, 2004 to August 7, 2005. OWCP again paid appellant intermittent wage-loss compensation on the supplemental rolls from October 28, 2006 to July 10, 2015.

On May 24, 2019 appellant filed a claim for a recurrence of medical treatment (Form CA-2a), commencing December 14, 2018. He noted that he had walked more during the Christmas season and that his foot and ankle had remained swollen and painful.

In a development letter dated June 3, 2019, OWCP informed appellant that the evidence of record was insufficient to establish his claim for a recurrence of medical treatment. It advised him as to the type of medical evidence required to establish his claim and afforded him 30 days to provide the requested evidence. No evidence was received.

By decision dated August 22, 2019, OWCP denied appellant's claim for a recurrence for medical treatment as the evidence of record did not establish his claim.

On August 20, 2020 appellant requested reconsideration. In an attached letter dated August 16, 2020, he related that he was requesting that OWCP reopen his case based upon new medical evidence, which he indicated was enclosed. Appellant explained that he had returned to work full time with restrictions in 2015; however, his physician had indicated that he could return for further treatment as needed. He further noted that he had sought care for his swollen left foot, but his physician no longer accepted workers' compensation patients. Appellant thereafter sought treatment in December 2019 with Dr. Robert Fitch, Board-certified in emergency and sports medicine, and Dr. Bethany Gallagher, a Board-certified orthopedic surgeon. He indicated that he had been off work since May 2020 and was undergoing physical therapy. However, no medical evidence was enclosed with his request.

By decision dated September 21, 2020, OWCP denied appellant's request for reconsideration, finding that he neither raised substantive legal questions, nor included new and relevant evidence. It explained that appellant failed to submit any evidence in support of his request.

## 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 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).

On August 20, 2020 appellant requested reconsideration. He did not offer any legal arguments. Therefore, appellant did not show that OWCP erroneously applied or interpreted a specific point of law, nor did he advance a relevant legal argument not previously considered by OWCP. Consequently, he is not entitled to a review of the merits of his claim based on the first and second above-noted requirements under 20 C.F.R. § 10.606(b)(3).

In his request for reconsideration, appellant outlined his medical history and his current claim. The underlying issue in this case is medical in nature, *i.e.*, whether appellant has established a recurrence of his accepted medical conditions, requiring further medical treatment. This is a

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<sup>3</sup> *Id.* at § 8128(a); *see A.M.*, Docket No. 20-1417 (issued July 30, 2021); *J.D.*, Docket No. 19-1757 (issued April 15, 2020); *L.D.*, Docket No. 18-1468 (issued February 11, 2019); *see also V.P.*, Docket No. 17-1287 (issued October 10, 2017); *D.L.*, Docket No. 09-1549 (issued February 23, 2010); *W.C.*, 59 ECAB 372 (2008).

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

<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. For merit decisions issued on or after August 29, 2011, a request for reconsideration must be received by OWCP within one year of the merit decision for which review is sought. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (February 2016). 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 2.1602.4(b).

<sup>6</sup> *Id.* at § 10.608(a); *see also A.M., supra* note 3; *M.S.*, 59 ECAB 231 (2007).

<sup>7</sup> *Id.* at § 10.608(b).

medical issue which must be determined by rationalized medical evidence.<sup>8</sup> Appellant's own opinion does not constitute medical evidence as lay persons are not competent to render a medical opinion.<sup>9</sup> While appellant stated in his request that he was submitting new medical evidence in support of his reconsideration request, no evidence was, in fact, submitted. As he has not provided relevant and pertinent new evidence, he is not entitled to a merit review based on the third requirement under 20 C.F.R. § 10.606(b)(3).<sup>10</sup>

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 his 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 21, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 2, 2021  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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

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<sup>8</sup> *E.D.*, Docket No. 18-0138 (issued May 14, 2018); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

<sup>9</sup> *D.H.*, Docket No. 20-0420 (issued April 21, 2021); *B.R.*, Docket No. 17-1661 (issued January 4, 2018); *James A. Long*, 40 ECAB 538 (1989).

<sup>10</sup> *Supra* note 7 at § 10.608(b); *S.Q.*, Docket No. 20-1208 (issued May 4, 2021); *M.P.*, Docket No. 20-0814 (issued January 26, 2021); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).