

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

H.R., Appellant)	
)	
and)	Docket No. 17-0470
)	Issued: June 13, 2017
U.S. POSTAL SERVICE, POST OFFICE, Santa Ana, CA, Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On December 28, 2016 appellant filed a timely appeal from an August 15, 2016 nonmerit decision of the Office of Workers' Compensation Program (OWCP). As more than 180 days elapsed from OWCP's last merit decision, dated January 28, 2016, to the filing of this appeal, pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of the case.¹

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 November 4, 2015 appellant, then a 51-year-old mail processing clerk, filed an occupational disease claim (Form CA-2) alleging that she developed bilateral carpal tunnel

¹ The Board notes that appellant submitted additional evidence after OWCP rendered its August 15, 2016 decision. The Board's jurisdiction is limited to reviewing the evidence that was before OWCP at the time of its final decision. Therefore, this additional evidence cannot be considered by the Board. 20 C.F.R. § 501.2(c)(1).

syndrome and bilateral de Quervain's tenosynovitis due to employment factors. While she first became aware of her bilateral wrist/hand condition on July 1, 2014, it was not until July 6, 2015 that appellant first realized her condition was caused or aggravated by her federal employment.

In a separate statement dated October 23, 2015, appellant indicated that she had been working as a mail processing clerk for the past 21 years. She noted that her duties required her to perform repetitive gripping and grasping of mail and packages, approximately eight hours per day, five days a week. Appellant indicated that the process involved continuously grasping and holding bundles of mail, placing the bundles onto trays, then placing the trays of mail into an all-purpose container (APC). She explained that the mail trays when full each weighed between 50 and 70 pounds. Appellant also indicated that her job required her to finger through stacks of mail, which involved repetitive flexion and extension of both wrists. The various described duties caused sore, achy pain in her wrists, with numbing and a tingling sensation bilaterally.

Appellant submitted a July 6, 2015 duty status report (Form CA-17) from Dr. Mesfin Seyoum, a family practitioner," who diagnosed bilateral wrist sprain/strain. Dr. Seyoum advised that appellant could return to work on a part-time basis (six hours/day) as of July 6, 2015.

In a letter dated November 19, 2015, OWCP requested that appellant submit additional factual and medical evidence in support of her claim. It requested that she complete and submit an attached questionnaire. On November 19, 2015 OWCP also requested that the employing establishment submit additional information.

Subsequent to the requests for additional information, OWCP received an August 3, 2015 bilateral upper extremity electromyogram and nerve conduction study (EMG/NCV) which revealed moderate-to-severe bilateral median neuropathy and bilateral chronic cervical polyradiculopathy affecting the C5-C8 nerve roots. Additionally, it received September 9, 2015 bilateral wrist x-rays. On the right there was evidence of tenosynovitis involving the flexor and extensor tendons, and on the left side, there was evidence suggestive of carpal tunnel syndrome, tenosynovitis of the extensor tendon, ganglion cysts, and triangular fibrocartilage complex (TFCC) sprain.

OWCP also received a September 10, 2015 report from Dr. Hosea Brown, III, a Board-certified internist, who discussed appellant's factual and medical history and reported findings on physical examination. Dr. Brown noted that appellant had reported that, while working for the past 21 years as a mail processing clerk, she had to perform repetitive gripping and grasping of mail and packages on a daily basis. Appellant advised that she was required to continuously grasp/hold bundles of mail and finger through stacks of mail, place the mail onto trays, and place the trays of mail weighing up to 70 pounds into an APC. Dr. Brown noted that appellant reported that she engaged in these repetitive duties for 6 hours per day, 5 days per week, for the past 21 years. He indicated that examination of appellant's wrist revealed limited range of motion and positive Tinel's signs, and he diagnosed bilateral carpal tunnel syndrome and bilateral de Quervain's tenosynovitis. Dr. Brown opined that these conditions were caused by the repetitive duties, including gripping and grasping mail and packages, that appellant performed throughout the 21 years she worked as a mail processing clerk. In a Form CA-17 dated December 17, 2015, Dr. Brown diagnosed carpal tunnel syndrome and indicated that appellant could return to work.

Appellant completed and submitted the questionnaire to OWCP. In response to a question regarding the specific nature of her employment history and work duties as a mail processing clerk, appellant noted, “See primary treating causal narrative dated [September 10, 2015].”

The record contains a document (Form CA-110) memorializing a January 28, 2016 telephone call between an employing establishment official and an OWCP claims examiner. The employing establishment official advised that appellant worked for most of calendar year 2013, that she was off work all of 2014, and that she worked six hours per day in 2015.

In a decision dated January 28, 2016, OWCP denied appellant’s claim for a work-related bilateral upper extremity condition. It noted that appellant reported that she had performed repetitive work duties for 8 hours per day, 5 days per week, for the past 21 years, but that the record showed that she had not performed repetitive work duties to the extent she claimed given the fact that there were extended periods when she did not work at all and other extended periods when she only worked partial days.² OWCP noted that appellant’s claim was denied because the evidence did not support that the “injury or event(s) occurred” as she described. It further indicated that she had failed to submit medical evidence establishing a diagnosed condition causally related to an accepted work injury or event.

Following the January 2016 denial of the claim, OWCP received a March 17, 2016 Form CA-17 in which Dr. Brown diagnosed carpal tunnel syndrome and indicated that appellant could return to work that day.

On June 13, 2016 appellant requested reconsideration of OWCP’s January 28, 2016 decision. In support of her request, she submitted a May 19, 2016 report in which Dr. Brown disagreed with OWCP’s denial of her claim for a work-related occupational disease. Dr. Brown discussed appellant’s bilateral carpal tunnel syndrome and bilateral de Quervain’s tenosynovitis conditions and noted, “[T]he patient has performed repetitive gripping and grasping with her hands for approximately 15 years of her entire 22-year employment history, which unfortunately has caused cumulative trauma resulting in these injuries.” He indicated that the fact that there were periods when appellant did not work was irrelevant to the fact that she sustained cumulative trauma to her wrists during the extended periods she engaged in repetitive gripping and grasping at work. Dr. Brown requested that OWCP accept appellant’s claim for bilateral carpal tunnel syndrome and bilateral de Quervain’s tenosynovitis.

By decision dated August 5, 2016, OWCP denied appellant’s request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a). It found that the evidence appellant submitted in support of her reconsideration request was irrelevant or immaterial to the main issue of the case. OWCP indicated that appellant had not submitted a statement regarding her work duties to address the inconsistencies referenced in the January 28, 2016 decision.

² OWCP indicated that the record reflected that appellant was off work for eight months in 2010 and worked two hours per day the rest of the year, was off work for months in 2011 and worked four to six hours per day the rest of the year, was off work for approximately nine months in 2012 and worked four hours per day the rest of the year, worked four hours per day in the first part of 2013 and was off work the rest of the year, was off work for all of 2014, and worked modified duty six hours per day in 2015. It noted that, in the prior 10 years, appellant had approximately 53 months of no work and another 13 months when she worked less than 6 hours per day.

LEGAL PRECEDENT

Section 8128(a) of FECA does not entitle a claimant to a review of an OWCP decision as a matter of right.³ OWCP has discretionary authority in this regard and has imposed certain limitations in exercising its authority.⁴ 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.⁵ 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.⁶ 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.⁷

ANALYSIS

OWCP issued a January 28, 2016 merit decision denying appellant's bilateral hand/wrist occupational disease claim. Appellant timely requested reconsideration on June 13, 2016, and submitted additional medical evidence. OWCP denied her request on August 15, 2016 without reviewing the merits of the claim. As noted, the Board does not have jurisdiction over OWCP's January 28, 2016 merit decision. The issue presented on appeal is whether appellant met any of the requirements of 20 C.F.R. § 10.606(b)(3), requiring OWCP to reopen the case for reconsideration of the merits of the claim.

In support of her reconsideration request, appellant submitted a May 19, 2016 report in which Dr. Brown, an attending physician, discussed her conditions of bilateral carpal tunnel syndrome and bilateral de Quervain's tenosynovitis. Dr. Brown explained that appellant had performed repetitive gripping and grasping with her hands for approximately 15 years of her entire 22-year employment history "which unfortunately has caused cumulative trauma resulting in these injuries." He indicated the fact that appellant had not worked for certain periods was irrelevant to the fact that she sustained cumulative trauma to her wrists during the extended periods she engaged in repetitive gripping and grasping at work. Dr. Brown requested that OWCP accept appellant's claim for bilateral carpal tunnel syndrome and bilateral de Quervain's tenosynovitis.

³ 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).

⁴ 20 C.F.R. § 10.607.

⁵ *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 OWCP 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 2.1602.4b.

⁶ 20 C.F.R. § 10.606(b)(3).

⁷ *Id.* at § 10.608(a), (b).

The Board finds that appellant submitted medical evidence addressing the deficiencies of the claim as identified in OWCP's January 28, 2016 merit decision. Dr. Brown's May 19, 2016 report addresses OWCP's concerns about the recitations of appellant's work duties in the record. The Board finds that the report constitutes pertinent new and relevant evidence not previously considered by OWCP.⁸ Therefore, the submission of this evidence requires reopening of appellant's claim for merit review.⁹

The case shall be remanded to OWCP and, after any further development deemed necessary, OWCP shall conduct a merit review of appellant's claim, pursuant to 5 U.S.C. § 8128(a), and issue an appropriate merit decision.

CONCLUSION

The Board finds that OWCP improperly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a). The case is remanded to OWCP for further development, including a merit review of appellant's claim.

ORDER

IT IS HEREBY ORDERED THAT the August 15, 2016 decision of the Office of Workers' Compensation Programs is set aside, and the case remanded for further proceedings consistent with this decision.

Issued: June 13, 2017
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

⁸ See *supra* note 6.

⁹ See *D.M.*, Docket No. 10-1844 (issued May 10, 2011); *Kenneth R. Mroczkowski*, 40 ECAB 855 (1989).