

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

<hr/>)	
B.O., Appellant)	
)	
and)	Docket No. 20-0156
)	Issued: May 13, 2020
DEPARTMENT OF LABOR, OFFICE OF)	
WORKERS' COMPENSATION PROGRAMS,)	
Chicago, IL, Employer)	
<hr/>)	

Appearances:
Appellant, pro se
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 October 25, 2019 appellant filed a timely appeal from an August 14, 2019 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days elapsed from the last merit decision dated August 2, 2018, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction to review the merits of appellant's claim.²

¹ 5 U.S.C. § 8101 *et seq.*

² The record transmitted to the Board includes evidence received after OWCP issued its August 14, 2019 decision. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

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

This case has been previously before the Board. The facts and circumstances of the case as set forth in the Board's prior decision are incorporated herein by reference.³ The relevant facts are as follows.

On June 20, 2016 appellant, then a 56-year-old workers' compensation claims examiner, filed an occupational disease claim (Form CA-2) alleging that she suffered injuries to her hands and arms due to factors of her federal employment. She noted that she first became aware of her condition and first realized that it was caused or aggravated by her federal employment on June 2, 2016. Appellant explained that as she was typing a decision, her left hand began to cramp and her little finger, middle finger and thumb locked up. She was unable to unlock them, so one of her coworkers accompanied her to the nurse. Appellant did not stop work.

In a development letter dated June 22, 2016, OWCP informed appellant that she submitted no evidence to establish that she actually experienced the employment factors alleged to have caused her injury. It advised her of the type of factual and medical evidence necessary to establish her claim and attached a questionnaire for her completion. OWCP also requested narrative medical report from appellant's physician, providing a firm diagnosis of a condition and a rationalized opinion on how her employment duties caused or aggravated her condition. It afforded appellant 30 days to provide the necessary information.

In response to OWCP's questionnaire, appellant submitted a July 19, 2016 statement in which she explained she had been a claims examiner at the employing establishment for 18 years and that over the years she had experienced problems with her hands due to the repetitive motions and activities of typing more than eight hours per day, writing, pushing and lifting case files. She recounted that in the past year she had experienced an unusual and excessive volume of work that had caused her to use her hands for an excessive amount of time. As a result, appellant experienced sharp pains, cramping and locking in both of her hands and forearms, though she ignored her symptoms and continued to work until her most recent incident.

In a July 20, 2016 letter, Dr. Michael Ward, Board-certified in family medicine, noted sharp shooting pain and paresthesia of the hands and fingers radiating to her forearms, as well as locking of the thumbs, and the third and fifth digits for the past month. Appellant described her duties as manual typing and writing and informed Dr. Ward that she felt her workload had increased and contributed to her symptoms. Upon evaluation, Dr. Ward diagnosed bilateral de Quervain's tenosynovitis in the right third and fifth trigger fingers and opined that the condition "can occur with the work duties as described" to him. He referred her to occupational therapy to treat her condition.

³ Docket No. 17-0443 (issued May 24, 2017).

By decision dated July 27, 2016, OWCP denied appellant's occupational disease claim, finding that the evidence of record failed to establish that her diagnosed condition was causally related to the accepted factors of her federal employment.

On September 6, 2016 appellant requested reconsideration of OWCP's July 27, 2016 decision.

By decision dated September 14, 2016, OWCP denied appellant's request for reconsideration.

OWCP continued to receive evidence. In a July 20, 2016 letter, Dr. Ward again diagnosed bilateral de Quervain's tenosynovitis in the right third and fifth trigger fingers and opined that it was "likely caused by the extreme and repetitive responsibilities such as excessive typing and other manual responsibilities required of her with her work duties."

In an October 4, 2016 witness statement, B.B., appellant's coworker, explained that on June 2, 2016 he heard appellant say that she could not move her left arm and fingers and that she was typing when all of a sudden her fingers locked up. He escorted her to the nurse on the third floor and indicated that when she returned, she was unable to use her left hand for the rest of the day.

In an October 29, 2016 electromyography and nerve conduction velocity study of appellant's upper extremities, Dr. Ziad Alaani, a Board-certified neurologist, diagnosed appellant with bilateral moderate carpal tunnel syndrome and bilateral ulnar neuropathy.

In a November 18, 2016 medical report, Dr. Edward Joy, a Board-certified orthopedic surgeon, noted that appellant presented with left wrist and hand pain, as well as left carpal tunnel syndrome. He provided appellant with a splint for her left wrist and instructed her to follow up in four weeks.

On November 28, 2016 appellant appealed to the Board. By decision dated May 24, 2017,⁴ the Board affirmed OWCP's September 14, 2016 decision, finding that the medical evidence of record was insufficient to establish bilateral hand, finger and arm conditions caused or aggravated by appellant's accepted work factors. The Board further found that OWCP properly denied her request for reconsideration of the merits of her claim.

Upon return of the case record, appellant submitted a June 9, 2017 medical report, wherein Dr. Joy noted that she presented with worsening bilateral hand and wrist pain. Dr. Joy diagnosed carpal tunnel syndrome of the left upper limb and a lesion of the ulnar nerve in the left upper limb, and opined that repetitive typing and desk work aggravated her conditions. He discussed performing an open left carpal tunnel release and left ulnar nerve transposition to treat her condition.

On July 22, 2017 appellant requested reconsideration and submitted a July 3, 2017 letter from Dr. Ward in which he provided a history of his treatment for appellant related to the sharp

⁴ *Id.*

pain she was experiencing in both of her hands and forearms. Dr. Ward repeated his diagnosis of bilateral de Quervain's tenosynovitis in the right third and fifth trigger fingers and reasoned that her conditions were caused and aggravated by the extreme and repetitive responsibilities of typing and other manual responsibilities required of her at work.

By decision dated November 2, 2017, OWCP denied modification finding that the submitted medical evidence did not provide a probative, rationalized opinion regarding whether appellant's accepted work factors caused her claimed injury.

In a February 2, 2018 return to work form, Dr. Joy diagnosed a superior glenoid labrum lesion of the left shoulder, a complete rotator cuff tear or rupture of the left shoulder, cervical disc disorder with radiculopathy, an incomplete rotator cuff tear or rupture of the left shoulder, primary osteoarthritis of the left shoulder and carpal tunnel syndrome of the left and right upper limbs. He provided work restrictions for appellant in relation to her conditions. In an unsigned March 5, 2018 return to work order form, appellant was provided additional restrictions related to her diagnosed conditions.

On April 30, 2018 appellant requested reconsideration of OWCP's November 2, 2017 decision. In an attached March 28, 2018 report, Dr. Ward reviewed appellant's symptoms and his evaluation of her conditions. He opined that repetitive typing, lifting grasping caused appellant's bilateral carpal tunnel syndrome, de Quervain's tenosynovitis and bilateral index and long trigger fingers were the proximate cause of her conditions. Dr. Ward further explained that there may be other causes for her conditions, "but one of the causes is clearly the activities described by [appellant] and described by me."

By decision dated August 2, 2018, OWCP denied modification of the November 2, 2017 decision. It found that Dr. Ward "failed to support his opinion with a detailed medical explanation for how/why [appellant's] bilateral hand and finger injuries were directly caused by the typing, and lifting duties" appellant performs at work.

On July 26, 2019 appellant requested reconsideration of OWCP's August 2, 2018 decision. She asserted that Dr. Ward's March 28, 2018 opinion was sufficient to establish causal relationship.

By decision dated August 14, 2019, OWCP denied appellant's request for reconsideration of the merits of her claim.

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.⁵

⁵ 5 U.S.C. § 8128(a); *see 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).

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.⁶

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.⁷ If it chooses to grant reconsideration, it reopens and reviews the case on its merits.⁸ 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.⁹

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).

Appellant filed a timely request for reconsideration on July 26, 2019, but she did not establish that OWCP erroneously applied or interpreted a specific point of law, or advance a relevant legal argument not previously considered by OWCP. She contended that Dr. Ward's March 28, 2018 opinion was sufficient to establish causal relationship, this argument was previously raised and considered by OWCP in its prior decisions. Evidence or argument that repeats or duplicates evidence previously of record has no evidentiary value and does not constitute a basis for reopening a case.¹⁰ As such, appellant is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under 20 C.F.R. § 10.606(b)(3).

Appellant also failed to submit relevant and pertinent new evidence in support of her July 26, 2019 request for reconsideration. The underlying issue on reconsideration was whether appellant had met her burden of proof to establish that her medical conditions were causally related to the accepted factors of her federal employment. This is a medical question that requires rationalized medical opinion evidence to resolve the issue.¹¹ However, appellant did not submit any additional evidence with her request for reconsideration. Because she did not provide any

⁶ 20 C.F.R. § 10.606(b)(3); *see 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).

⁷ *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 2.1602.4b.

⁸ *Id.* at § 10.608(a); *see also M.S.*, 59 ECAB 231 (2007).

⁹ *Id.* at § 10.608(b); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

¹⁰ *See M.G.*, Docket No. 18-0654 (issued October 17, 2018); *D.K.*, 59 ECAB 141 (2007).

¹¹ *E.T.*, Docket No. 14-1087 (issued September 5, 2014).

relevant and pertinent new evidence, she is not entitled to a review of the merits based on the third requirement under 20 C.F.R. § 10.606(b)(3).¹²

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 her claim pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the August 14, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 13, 2020
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

¹² 20 C.F.R. § 10.606(b)(3)(iii).