

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

_____)	
L.B., Appellant)	
)	
and)	Docket No. 21-1007
)	Issued: April 4, 2022
DEPARTMENT OF THE TREASURY,)	
INTERNAL REVENUE SERVICE, Seattle, WA,)	
Employer)	
_____)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On June 22, 2021 appellant filed a timely appeal from an April 16, 2021 merit decision and a June 7, 2021 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the June 7, 2021 decision, OWCP received additional evidence and appellant submitted additional evidence on appeal. 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.*

ISSUES

The issues are: (1) whether appellant has met her burden of proof to establish that an injury occurred in the performance of duty, as alleged; and (2) whether OWCP properly denied her request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On February 9, 2021 appellant, then a 55-year-old salary and wage administrator, filed an occupational disease claim (Form CA-2) alleging that she developed bilateral tendinitis in her hands due to factors of her federal employment, including repetitive typing. She noted that she first became aware of her condition and first realized its relation to her federal employment on September 22, 2020. Appellant stopped work on February 1, 2021.

In a February 23, 2021 development letter, OWCP informed appellant of the deficiencies of her claim. It requested that she submit additional factual and medical evidence and provided a factual questionnaire for her completion. OWCP afforded appellant 30 days to submit the necessary evidence.

Dr. Brian Bechtold, a Board-certified internist, indicated in a February 5, 2021 work restriction note that appellant should not perform any manual data entry work duties requiring finger dexterity, including the use of keyboard and mouse, until tendinitis in her hands improved. He recommended an ergonomic keyboard to reduce the recurrence risk.

In a February 18, 2021 work restriction note, Dr. Bechtold excused appellant from work for the period January 29 through February 5, 2021. He noted that he was still evaluating her for an ongoing medical condition and indicated that she might have to miss more time from work. Dr. Bechtold again recommended an ergonomic keyboard.

In work restrictions notes dated March 12 and April 13, 2021, Dr. Bechtold excused appellant from work until May 2, 2021 and indicated that her left hand condition prevented her from performing her usual work duties.

By decision dated April 16, 2021, OWCP denied appellant's occupational disease claim. It found that she had not met her burden of proof to establish that an injury occurred due to the alleged factors of her federal employment. OWCP noted that appellant had not completed and returned its factual questionnaire. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

In an April 21, 2021 memorandum of telephone call (Form CA-110), it was noted that appellant had notified OWCP that she received the April 16, 2021 decision but never received the February 23, 2021 development letter or development questionnaire. On April 21, 2021 OWCP resent her a copy of the February 23, 2021 development letter. It again requested that appellant respond to its development questionnaire.

In a February 5, 2021 medical report, Dr. Bechtold noted that appellant presented with bilateral hand pain. He indicated that she previously fractured her left hand approximately six

months prior and that it had been progressively worsening. Dr. Bechtold conducted a physical examination and diagnosed tendinitis of thumb and trigger middle finger of the right hand.

In a February 18, 2021 medical report, Dr. Bechtold diagnosed weakness of the left hand and left wrist pain.

On March 12, 2021 Dr. Bechtold diagnosed right hand trigger finger of the ring and middle fingers, and weakness of the left hand.

In a March 19, 2021 medical report, Dr. Eric Lee, a Board-certified neurologist, noted that appellant previously sustained a fall injury in September 2020 in which she fractured her left radial head. He further observed that her right hand also did not bend as her fingers locked up.

On an April 13, 2021 medical report, Dr. Bechtold diagnosed left arm neuropathy, mixed connective tissue disease, and trigger middle finger of the right hand.

A May 3, 2021 magnetic resonance imaging (MRI) scan of the left forearm demonstrated nonspecific mild edema of the left flexor digitorum superficialis and pronator quadratus muscles without significant muscle atrophy or abnormal muscle enhancement.

In a May 6, 2021 medical report, Dr. Bechtold noted that he initially thought that appellant had carpal tunnel syndrome and trigger finger in her hands, but reported that she was experiencing increasing symptoms of weakness in her left hand. He indicated that her electromyography (EMG) revealed anterior interosseous neuropathy. Dr. Bechtold diagnosed left anterior interosseous neuropathy, trigger ring finger of the left hand, and trigger middle finger of the right hand.

In a May 7, 2021 medical note, Dr. Bechtold excused appellant from work until May 24, 2021.

In a May 13, 2021 narrative report, Dr. Bechtold noted that appellant was first seen on January 29, 2021 and presented with left hand pain and weakness, as well as right hand pain. He reiterated that he initially suspected that she had carpal tunnel syndrome in her left hand. Dr. Bechtold opined, given appellant's job as a data entry specialist, that her conditions were exacerbated by her work. He reported that her symptoms worsened despite intervention. Appellant complained that she was experiencing more overt weakness, specifically in her thumb. Dr. Bechtold noted that she previously fell on September 22, 2020 and fractured the radius bone in her left arm. He opined that "more likely than not" that appellant's symptoms are exacerbated by her workplace, though he suspected that her original injury in September is what first caused the symptoms in her left hand.

In a May 14, 2021 medical report, Dr. Bechtold diagnosed trigger ring finger of the left hand and left anterior interosseous neuropathy. He noted that appellant underwent trigger finger injection on that day.

On May 18, 2021 appellant requested reconsideration and submitted additional evidence in support of her request.

In a May 25, 2021 medical report, Dr. Bechtold conducted a physical examination and diagnosed left anterior interosseous neuropathy and mixed connective tissue disease. Appellant also submitted prescription slips of even date.

In undated notes, appellant indicated that she contacted OWCP several times for months and that she mailed all of her documents on April 22, 2021. She indicated that she left several messages to OWCP and that she was behind in her bills. Appellant also submitted a series of medical bills.

By decision dated June 7, 2021, OWCP denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA³ has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA,⁴ that an injury was sustained in the performance of duty, as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.⁵ These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁶

To establish that an injury was sustained in the performance of duty in an occupational disease claim, an employee must submit the following: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.⁷

³ *Supra* note 2.

⁴ *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁷ *See A.S.*, Docket No. 19-1766 (issued March 26, 2020); *R.G.*, Docket No. 19-0233 (issued July 16, 2019). *See also Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met her burden of proof to establish that an injury occurred in the performance of duty, as alleged.

On her claim form, appellant asserted that she developed bilateral tendinitis in her hands due to factors of her federal employment, including repetitive typing. However, she did not provide further information regarding the claimed factors of employment. In a February 23, 2021 development letter, OWCP requested that appellant clarify her claim and complete a factual questionnaire. However, appellant did not respond to OWCP's development questionnaire or otherwise provide a detailed narrative statement describing the employment factors, which she believed contributed to her claimed conditions. As noted, the Board has held that to establish a claim for compensation in an occupational disease claim, an employee must submit a statement, which identifies the factors of employment believed to have caused his or her claimed condition.⁸ By failing to respond to OWCP's development questionnaire, she did not sufficiently explain circumstances surrounding her alleged medical condition.⁹

Consequently, as appellant has not presented sufficient factual evidence identifying specific employment factors or conditions alleged to have caused or contributed to her claimed medical conditions, the Board finds that she has not met her burden of proof.¹⁰

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

LEGAL PRECEDENT -- ISSUE 2

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.¹¹

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

⁸ *Id.* See also *S.B.*, Docket No. 20-0016 (issued July 12, 2021); *E.V.*, Docket No. 19-0447 (issued June 25, 2019); *H.O.*, Docket No. 17-1176 (issued November 27, 2018).

⁹ *R.B.*, Docket No. 19-1026 (issued January 14, 2020); *L.T.*, Docket No. 19-1902 (issued April 8, 2020); *John R. Black*, 49 ECAB 624 (1998); *Judy Bryant*, 40 ECAB 207 (1988); *Martha G. List*, 26 ECAB 200 (1974).

¹⁰ *Supra* note 8.

¹¹ 5 U.S.C. § 8128(a); see *L.D.*, Docket No. 18-1468 (issued February 11, 2019); *V.P.*, Docket No. 17-1287 (issued October 10, 2017); *W.C.*, 59 ECAB 372 (2008).

OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.¹²

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.¹³ If it chooses to grant reconsideration, it reopens and reviews the case on its merits.¹⁴ 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.¹⁵

ANALYSIS -- ISSUE 2

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).

On reconsideration, appellant did not show that OWCP erroneously applied or interpreted a specific point of law, nor did she advance a relevant legal argument not previously considered by OWCP. Consequently, she 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).¹⁶

Furthermore, appellant did not provide any relevant and pertinent new evidence not previously considered. In support of her reconsideration request, she submitted a series of medical reports dated February 5 through May 25, 2021 from Drs. Bechtold and Lee, as well as a May 25, 2021 prescription script from Dr. Bechtold and a series of medical bills. This evidence, while new, is not relevant to the underlying issue in this case. The Board has held that the submission of evidence or argument, which does not address the underlying issue involved does not constitute a basis for reopening a case.¹⁷ As appellant did not provide relevant and pertinent new evidence not

¹² 20 C.F.R. § 10.606(b)(3); *see M.S.*, Docket No. 18-1041 (issued October 25, 2018); *L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

¹³ *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.

¹⁴ *Id.* at § 10.608(a); *see D.C.*, Docket No. 19-0873 (issued January 27, 2020); *M.S.*, 59 ECAB 231 (2007).

¹⁵ *Id.* at § 10.608(b); *see T.V.*, Docket No. 19-1504 (issued January 23, 2020); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

¹⁶ *Supra* note 15. *See also B.M.*, Docket No. 19-1273 (issued January 7, 2020); *S.C.*, Docket No. 19-0479 (issued August 8, 2019); *T.B.*, Docket No. 18-1214 (issued January 29, 2019); *C.B.*, Docket No. 08-1583 (issued December 9, 2008).

¹⁷ *P.G.*, Docket No. 20-1419 (issued September 16, 2021); *H.H.*, Docket No. 18-1660 (issued March 14, 2019); *F.B.*, Docket No. 18-1039 (issued December 6, 2018); *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Edward Matthew Diekemper*, 31 ECAB 224-25 (1979).

previously considered by OWCP, she is also not entitled to a review of the merits of her claim based on the third above-noted requirement under section 10.606(b)(3).¹⁸

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.¹⁹

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that an injury occurred in the performance of duty, as alleged. The Board further 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 April 16 and June 7, 2021 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: April 4, 2022
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

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

¹⁸ *Supra* note 15.

¹⁹ *See J.B.*, Docket No. 20-0145 (issued September 8, 2020); *D.G.*, Docket No. 19-1348 (issued December 2, 2019).