

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

M.A., Appellant)	
)	
and)	Docket No. 23-0409
)	Issued: August 25, 2023
U.S. POSTAL SERVICE, CHARLOTTE)	
PROCESSING & DISTRIBUTION CENTER,)	
Charlotte, NC, Employer)	
)	

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 January 29, 2023 appellant filed a timely appeal from an August 3, 2022 nonmerit decision of the Office of Workers' Compensation Programs (OWCP).¹ As more than 180 days has elapsed from the last merit decision, dated August 12, 2021, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction to review the merits of this case.

¹ Pursuant to the Board's *Rules of Procedure*, an appeal is considered filed when received by the Clerk of the Appellate Boards. 20 C.F.R. § 501.3(f). However, when the date of receipt would result in a loss of appeal rights, the appeal will be considered to have been filed as of the date of the U.S. Postal Service postmark or other carriers date markings. *Id.* at § 501.3(f)(1). The 180th day following OWCP's August 3, 2022 decision was January 30, 2023. Because using January 31, 2023, the date the appeal was received by the Clerk of the Appellate Boards, would result in the loss of appeal rights, the date of the postmark is considered the date of filing. The date of the U.S. Postal Service postmark is January 29, 2023, rendering the appeal timely filed. *Id.*

² 5 U.S.C. § 8101 *et seq.*

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 September 21, 2020 appellant, then a 51-year-old mail handler, filed an occupational disease claim (Form CA-2) alleging that he sustained bilateral carpal tunnel syndrome due to factors of his federal employment. He indicated that he processed damaged mail and packages. Appellant further explained that he had started losing grip strength in both arms while picking up tubs of mail and experienced pain in his hands and wrists. He indicated that he first became aware of the condition and of its relationship to his federal employment on September 1, 2020.

In a development letter dated October 6, 2020, OWCP notified appellant of the deficiencies in his claim. It advised him of the type of factual and medical evidence needed and provided him with a development questionnaire for his completion. OWCP afforded appellant 30 days to respond. No response was received.

By decision dated December 10, 2020, OWCP denied appellant's occupational disease claim, finding that the evidence of record was insufficient to establish the implicated factors of federal employment. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

OWCP received medical evidence indicating diagnoses of bilateral carpal tunnel syndrome and left cubital tunnel syndrome.

On May 12, 2021 appellant requested reconsideration of the December 10, 2020 decision. In support of his request, he submitted the completed development questionnaire and related the repetitive work duties that allegedly caused his bilateral upper extremity conditions. Appellant noted that he taped and pieced together mail and packages and wrote addresses on sealing envelopes. He also related that he sorted hundreds of letters each day and picked up trays and tubs of mail.

By decision dated August 12, 2021, OWCP modified its December 10, 2020 decision to reflect that the employment factors occurred as alleged and that appellant had established diagnosed medical conditions. However, the claim remained denied because the medical evidence of record was insufficient to establish that his bilateral carpal tunnel syndrome and left cubital tunnel syndrome were causally related to the accepted employment factors.

On July 25, 2022 appellant requested reconsideration. No additional evidence or argument was submitted.

By decision dated August 3, 2022, OWCP denied appellant's request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

LEGAL PRECEDENT

Section 8128 of FECA vests OWCP with a discretionary authority to determine whether it will review an award for or against compensation, either under its own authority or on application by a claimant.³ Section 10.608(b) of OWCP's regulations provide that a timely request for reconsideration may be granted if OWCP determines that the claimant has presented evidence and/or argument that meet at least one of the standards described in section 10.606(b)(3).⁴ This section provides that the request for reconsideration must be submitted in writing and set forth arguments and contain evidence that: (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.⁵

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.⁶ If it chooses to grant reconsideration, it reopens and reviews the case on its merits.⁷ If the request for reconsideration is timely, but fails to meet at least one of these three requirements, OWCP will deny the request for reconsideration without reopening the case for a review on the merits.⁸

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 his request for reconsideration, appellant did not show that OWCP erroneously applied or interpreted a specific point of law or advance a new and relevant legal argument not previously considered by OWCP. Consequently, he is not entitled to further review of the merits

³ *Id.* at § 8128(a); *see T.K.*, Docket No. 19-1700 (issued April 30, 2020); *L.D.*, Docket No. 18-1468 (issued February 11, 2019); *W.C.*, 59 ECAB 372 (2008).

⁴ 20 C.F.R. § 10.608(a).

⁵ *Id.* at § 10.606(b)(3); *see L.D.*, *supra* note 3; *see also L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

⁶ *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 OWCP's decision for which review is sought. 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.

⁷ *Id.* at § 10.608(a); *see F.V.*, Docket No. 18-0230 (issued May 8, 2020); *M.S.*, 59 ECAB 231 (2007).

⁸ *Id.* at § 10.608(b); *see B.S.*, Docket No. 20-0761 (issued January 29, 2021); *J.B.*, Docket No. 20-0145 (issued September 8, 2020); *Y.K.*, Docket No. 18-1167 (issued April 2, 2020).

of his claim based on the first and second above-noted requirements under 20 C.F.R. § 10.606(b)(3).⁹

The Board further finds that appellant has not provided relevant and pertinent new evidence not previously considered by OWCP. 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).¹⁰

The Board, accordingly, finds that appellant has not met any of the requirements of 20 C.F.R. § 10.606(b)(3). Pursuant to *id.* at. § 10.608, OWCP properly denied merit review.¹¹

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 August 3, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 25, 2023
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

⁹ *Id.* at § 10.606(b)(3); *see T.F.*, Docket No. 22-0573 (issued March 31, 2023); *A.N.*, Docket No. 22-0617 (issued August 26, 2022); *L.D.*, *supra* note 3; *see also L.G.*, and *C.N.*, *supra* note 5.

¹⁰ *See T.F.* and *A.N.*, *id.*; *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

¹¹ *T.F.* and *A.N.*, *id.*; *D.G.*, Docket No. 19-1348 (issued December 2, 2019).