

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

M.S., Appellant)	
)	
and)	Docket No. 24-0689
)	Issued: July 26, 2024
U.S. POSTAL SERVICE, VANCLEAVE POST OFFICE, Vancleave, MS, 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
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On June 16, 2024 appellant filed a timely appeal from an April 2, 2024 merit decision and an April 17, 2024 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

ISSUES

The issues are: (1) whether appellant has met her burden of proof to establish a recurrence of the need for medical treatment, commencing January 3, 2024, causally related to her accepted employment injury; and (2) whether OWCP properly denied appellant's request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a).

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the April 17, 2024 decision, appellant submitted additional evidence to OWCP. 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.*

FACTUAL HISTORY

On February 4, 2015 appellant, then a 42-year-old rural mail carrier, filed an occupational disease claim (Form CA-2) alleging that she developed carpal tunnel syndrome and basil joint arthritis due to factors of her federal employment including repetitive grasping, sorting flats, and casing mail. She indicated that she first became aware of her condition on August 19, 2014, and realized its relation to her federal employment on October 13, 2014. Appellant did not immediately stop work. OWCP accepted the claim for bilateral carpal tunnel syndrome.³

X-rays of the left hand, dated November 9, 2015, revealed joint space narrowing, subchondral sclerosis and osteophyte formation of the first carpometacarpal (CMC) joint consistent with osteoarthritis. X-ray of the left wrist, right hand, and right wrist revealed moderate osteoarthritis of the first CMC joint.

Appellant submitted medical records dated November 9 and December 1, 2015, and May 16, 2016, wherein Dr. Eric J. Wyble, a Board-certified general surgeon, treated appellant for bilateral carpal tunnel syndrome. He recounted that she worked for the employing establishment for eight years and experienced numbness in both hands and muscle pain when gripping. Dr. Wyble diagnosed bilateral carpal tunnel syndrome and basal joint arthritis and prescribed splints. He recommended left carpal tunnel release.

On January 4, 2024 appellant filed a notice of recurrence (Form CA-2a) alleging a recurrence of the need for medical treatment on January 3, 2024, causally related to the accepted employment injury. She noted that she continued to experience symptoms related to her accepted bilateral carpal tunnel syndrome since 2015 and developed basal joint arthritis. Appellant indicated that she did not stop work.

In a February 26, 2024 development letter, OWCP informed appellant of the deficiencies of her recurrence claim. It advised her of the type of additional factual and medical evidence needed and provided a questionnaire for her completion. OWCP afforded appellant 30 days to respond.

In a March 2, 2024 statement, appellant denied any previous or similar conditions and indicated that her hand conditions started after she became a mail carrier. She indicated that her conditions were specifically due to or exacerbated by her work duties. Appellant described additional injuries including hip pain, carpal tunnel syndrome, basal joint arthritis, and shoulder, upper back, and right arm pain. She reported that her conditions were due to performing constant repetitive motions all day. Appellant underwent an intra-articular injection, but it did not provide significant long-term relief.

³ Appellant filed a Form CA-2 on January 10, 2018 and alleged that she developed an elbow condition due to performing repetitive duties while delivering mail. OWCP assigned the claim OWCP File No. xxxxxx681 and accepted it for lateral epicondylitis of the left elbow. On December 3, 2023 appellant filed a Form CA-2 alleging that she developed left shoulder, neck, and upper back conditions due to performing repetitive motions while at work. OWCP assigned the claim OWCP File No. xxxxxx570 and it on February 20, 2024. On February 26, 2024 OWCP administratively combined OWCP File Nos. xxxxxx681, xxxxxx570 and xxxxxx988, with the latter designated as the master file.

In a March 17, 2024 response to OWCP's development letter, appellant indicated that her carpal tunnel syndrome never resolved and she needed surgery. She reported that she continued to perform repetitive motions daily at work. Appellant indicated that she was diagnosed with bilateral carpal tunnel syndrome and basal joint arthritis, but she was unable to find a physician who would prepare the required paperwork for her claim. She reported that her symptoms were continuous and exacerbated by repetitive work duties that she performed daily. Appellant noted other conditions of hip pain, shoulder pain, and pain and tingling in the thumbs. She indicated that she did not participate in extracurricular activities.

By decision dated April 2, 2024, OWCP denied appellant's recurrence claim, finding that she had not established that she required additional medical treatment due to a worsening of the accepted work-related conditions, without intervening cause.

On April 15, 2024 appellant requested reconsideration.

By decision dated April 17, 2024, OWCP denied appellant's request for reconsideration of the merits of her claim.

LEGAL PRECEDENT -- ISSUE 1

The United States shall furnish to an employee who is injured while in the performance of duty the services, appliances, and supplies prescribed or recommended by a qualified physician that the Secretary of Labor considers likely to cure, give relief, reduce the degree or the period of any disability, or aid in lessening the amount of any monthly compensation.⁴

A recurrence of a medical condition means a documented need for further medical treatment after release from treatment for the accepted condition or injury when there is no accompanying work stoppage.⁵ An employee has the burden of proof to establish that he or she sustained a recurrence of a medical condition that is causally related to his or her accepted employment injury without intervening cause.⁶ If a claim for recurrence of medical condition is made more than 90 days after release from medical care, a claimant is responsible for submitting a medical report supporting a causal relationship between the employee's current condition and the original injury in order to meet his or her burden.⁷

⁴ *Supra* note 1 at § 8103(a).

⁵ 20 C.F.R. § 10.5(y).

⁶ *W.B.*, Docket No. 22-0985 (issued March 27, 2023); *S.P.*, Docket No. 19-0573 (issued May 6, 2021); *M.P.*, Docket No. 19-0161 (issued August 16, 2019); *E.R.*, Docket No. 18-0202 (issued June 5, 2018); *MaryA. Ceglia*, 55 ECAB 626 (2004).

⁷ Federal (FECA) Procedural Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.4b (June 2013); *see also M.F.*, Docket No. 21-1221 (issued March 28, 2022); *J.M.*, Docket No. 09-2041 (issued May 6, 2010).

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met her burden of proof to establish a recurrence of the need for medical treatment, commencing January 3, 2024, causally related to her accepted employment injury.

Appellant failed to submit any medical evidence in support of her recurrence claim. In reports dated November 9 and December 1, 2015, and May 16, 2016, Dr. Wyble diagnosed bilateral carpal tunnel syndrome and basal joint arthritis. However, this evidence is of no probative value in establishing the claimed recurrence of the need for medical treatment, commencing January 3, 2024 since it predates the time of the claimed recurrent condition and does not otherwise offer an opinion on causal relationship between the accepted employment condition, appellant's claimed period of a recurrence of the need for medical treatment, *i.e.*, the period beginning in January 2024. The Board has held that a medical report is of no probative value on a given medical matter if it does not contain an opinion on that matter.⁸ Thus, these reports are insufficient to establish appellant's recurrence claim.

As appellant has not submitted medical evidence sufficient to establish a recurrence of the need for medical treatment, commencing January 3, 2024, causally related to her accepted employment injury, the Board finds that she has not met her burden of proof.

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

Under section 8128(a) of FECA,⁹ OWCP has the discretion to reopen a case for review on the merits. It must exercise this discretion in accordance with the guidelines set forth in section 10.606(b)(3) of the implementing federal regulations, which provides that a claimant may obtain review of the merits of his or her written application for reconsideration, including all supporting documents, sets forth arguments and contain evidence which:

“(i) Shows that OWCP erroneously applied or interpreted a specific point of law; or

“(ii) Advances a relevant legal argument not previously considered by OWCP; or

“(iii) Constitutes relevant and pertinent new evidence not previously considered by OWCP.”¹⁰

⁸ *M.F.*, *supra* note 7; *S.P.*, Docket No. 19-0573 (issued May 6, 2021); *T.H.*, Docket No. 18-0704 (issued September 6, 2018); *Charles H. Tomaszewski*, 39 ECAB 461 (1988).

⁹ 5 U.S.C. § 8128(a).

¹⁰ 20 C.F.R. § 10.606(b)(3).

Section 10.608(b) provides that any application for review of the merits of the claim, which does not meet at least one of the requirements listed in section 10.606(b) will be denied by OWCP without review of the merits of the claim.¹¹

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).

In her request for reconsideration, appellant 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. 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).¹²

The Board further finds that appellant did not submit relevant and pertinent new evidence in support of her reconsideration request under 20 C.F.R. § 10.606(b)(3). The underlying issue in this case is whether she established a recurrence of the need for medical treatment, commencing January 3, 2024, causally related to her accepted employment injury. This is a medical issue that must be addressed by relevant medical evidence, including the rationalized opinion of a physician; however, no medical evidence was submitted.¹³ Thus, appellant is not entitled to a review of the merits based on the third requirement under 20 C.F.R. § 10.606(b)(3).

The Board, accordingly, finds that OWCP properly determined that appellant was not entitled to further review of the merits of her claim pursuant to any of the three requirements under 20 C.F.R. § 10.606(b)(3). Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.¹⁴

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a recurrence of the need for medical treatment, commencing January 3, 2024, causally related to her accepted employment injury. The Board further finds that OWCP properly denied her request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a).

¹¹ *Id.* at § 10.608(b).

¹² *M.O.*, Docket No. 19-1677 (issued February 25, 2020); *E.W.*, Docket No. 19-1393 (issued January 29, 2020); *C.B.*, Docket No. 18-1108 (issued January 22, 2019).

¹³ 20 C.F.R. § 10.606(b)(3); *see C.C.*, Docket No. 19-1622 (issued May 28, 2020); *C.N.*, Docket No. 08-1569 (issued December 9, 2008); *D.B.*, Docket No. 19-1963 (issued July 1, 2020); *M.C.*, Docket No. 18-0841 (issued September 13, 2019); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

¹⁴ *S.F.*, Docket No. 18-0516 (issued February 21, 2020); *James W. Scott*, 55 ECAB 606, 608 n.4 (2004).

ORDER

IT IS HEREBY ORDERED THAT the April 2 and 17, 2024 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: July 26, 2024
Washington, DC

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

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

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board