

)	
L.W., Appellant)	
)	
and)	Docket No. 11-972
)	Issued: October 20, 2011
U.S. POSTAL SERVICE, POST OFFICE,)	
Jackson, MI, Employer)	
)	

Case Submitted on the Record

Before:
 RICHARD J. DASCHBACH, Chief Judge
 COLLEEN DUFFY KIKO, Judge
 MICHAEL E. GROOM, Alternate Judge

On March 9, 2011 appellant filed a timely appeal from a November 19, 2010 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Because more than 180 days elapsed from the most recent merit decision of October 8, 2009 to the filing of this appeal, the Board lacks jurisdiction to review the merits of his claim pursuant to the Federal Employees' Compensation Programs (FECA)¹ and 20 C.F.R. §§ 501.2(c) and 501.3.

The issue is whether the whether OWCP properly refused to reopen appellant's case for reconsideration of her claim under 5 U.S.C. § 8128(a).

¹ For OWCP decisions issued prior to November 19, 2008, a claimant had one year to file an appeal. An appeal of OWCP decisions issued on or after November 19, 2008 must be filed within 180 days of the decision. 20 C.F.R. § 501.3(e) (2008).

FACTUAL HISTORY

Appellant, a 52-year-old mail clerk, filed an occupational disease claim for benefits on November 15, 2008, alleging that she developed carpal tunnel syndrome in her right wrist due to employment factors. OWCP accepted the claim for right carpal tunnel syndrome.

In a January 22, 2009 report, Dr. Rahul Vohra, Board-certified in physical medicine and rehabilitation, stated that he had treated appellant for chronic neck pain since 2005. Appellant had a mild right median neuropathy in the right wrist. She underwent a magnetic resonance imaging (MRI) scan of her right shoulder on November 10, 2008 which noted a high-grade partial distal rotator cuff tear versus severe focal tendinopathy. Dr. Vohra asserted that it was possible appellant's work as a clerk may have aggravated her right carpal tunnel syndrome or her right rotator cuff tear due to the repetitive lifting required by her employment.

On March 2, 2009 appellant filed a claim for compensation for wage loss from November 6, 2008 to March 20, 2009.

In a report dated April 2, 2009, Dr. Vohra stated that appellant had recently undergone surgery to repair a torn right rotator cuff. He advised that she was required to do repetitive movement with her right wrist as well as repetitive lifting which could have put her at a higher risk to develop carpal tunnel syndrome and a torn rotator cuff.

By decision dated April 14, 2009, OWCP denied appellant's claim for wage loss from November 6, 2008 to March 20, 2009. It found the medical evidence she submitted was not sufficient to establish disability due to her right shoulder and neck conditions, which OWCP had not accepted under this claim.

On May 11, 2009 appellant requested reconsideration.

By decision dated October 8, 2009, OWCP denied modification of the April 14, 2009 decision.

Appellant underwent nerve conduction and electromyogram testing on November 25, 2009. The tests were administered by Dr. Vohra.

In a report dated February 23, 2010, Dr. John Neill, a Board-certified neurosurgeon, stated that appellant related complaints of severe carpal tunnel syndrome, with significant pain in both hands and cramps in her fingers. The pain occurred when appellant was sorting mail. Dr. Neill advised that she had back pain and hip pain and noted that she underwent surgery on her neck and left hip. He opined that appellant probably had carpal tunnel syndrome, although he was not able to state with certainty the degree to which this was contributing to her symptoms. Dr. Neill scheduled her for further testing and recommended that she undergo ameliorative surgery in both hands.

In a March 3, 2010 report, Dr. Neill advised appellant that he would proceed with a carpal tunnel decompression in the event she agreed to undergo the procedure. He noted that her lab results had been normal.

On March 24, 2010 Dr. Neill performed a right carpal tunnel release procedure on appellant.

In a treatment note dated April 22, 2010, Dr. Neill checked a box excusing appellant from work from April 22 to May 13, 2010. He did not attribute the excused period to any work-related disability.

On June 2, 2010 Dr. Neill performed a left carpal tunnel release procedure on appellant.

In an August 17, 2010 report, Dr. Neill stated that appellant did not have significant problems with her right hand, although he noted some discomfort on the right posterior forearm. Appellant had surgery on both wrists and could probably return to work without restrictions. Dr. Neill advised that he wanted to see her one more time, in three months, before releasing her to return to work. He recommended a course of physical therapy for both hands, which appeared to have improved the condition of her right hand.

On October 5, 2010 appellant requested reconsideration. In a note accompanying her request, she indicated that two additional OWCP claims, under case numbers xxxxxx962 and xxxxxx963, had been combined with the present claim, case number xxxxxx615.

In a report dated October 19, 2010, Dr. Neill stated that appellant's right hand was improving and that she had been transferred to a job which entailed more stacking of mail. Appellant had current complaints of pain in her fingers and on the dorsum of both hands. Dr. Neill noted that she had pain on her right side which radiated above the elbow to the mid-arm level; the pain involves the entire forearm and distal arm. He stated, however, that he was not able to attribute appellant's discomfort to carpal tunnel syndrome. Dr. Neill recommended further diagnostic testing and advised her to return to her previous work level. Appellant also submitted reports from physician's assistants, nurse practitioners and physical therapists.

By decision dated November 19, 2010, OWCP denied appellant's application for review on the grounds that it did not raise any substantive legal questions or include new and relevant evidence sufficient to require review of the prior decision. It stated that appellant had submitted no new and relevant medical evidence.

LEGAL PRECEDENT

Under 20 C.F.R. § 10.606(b), a claimant may obtain review of the merits of his or her claim by showing that OWCP erroneously applied or interpreted a specific point of law; by advancing a relevant legal argument not previously considered by OWCP; or by submitting relevant and pertinent evidence not previously considered by OWCP.² Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.³

² 20 C.F.R. § 10.606(b). *See generally* 5 U.S.C. § 8128(a).

³ *Howard A. Williams*, 45 ECAB 853 (1994).

ANALYSIS

In the present case, appellant has not shown that OWCP erroneously applied or interpreted a specific point of law; nor has he advanced a relevant legal argument not previously considered by OWCP. The evidence she submitted is not pertinent to the underlying issue in this appeal: whether she has established disability due to her accepted right carpal tunnel syndrome from November 6, 2008 to March 20, 2009. Appellant submitted several reports from Dr. Neill, who treated her for complaints of severe bilateral carpal tunnel syndrome and performed carpal tunnel release procedures on the right and left wrists in March and June 2010. None of the reports from Dr. Neill, however, discussed disability attributable to the accepted right carpal tunnel condition during the time period in question. He indicated in his August and October 2010 reports that appellant continued to experience intermittent pain and discomfort in her right wrist and in both hands. Dr. Neill recommended that she change jobs. The Board has held that the submission of evidence which does not address the particular issue involved in the case does not constitute a basis for reopening the claim.⁴

Appellant also submitted other documents to the record in support of her request for reconsideration. The reports from physician's assistants, nurse practitioners and physical therapists do not constitute medical evidence under section 8101(2). Appellant has not submitted any new medical evidence which addresses the relevant issue of whether she sustained any wage loss from disability from November 6, 2008 to March 20, 2009 causally related to the accepted condition of right carpal tunnel syndrome. The other medical reports appellant submitted were previously considered by OWCP in the decisions denying her claim. This evidence is therefore cumulative and duplicative.⁵ Appellant's reconsideration request failed to show that OWCP erroneously applied or interpreted a point of law nor did it advance a point of law or fact not previously considered by OWCP. OWCP did not abuse its discretion in refusing to reopen appellant's claim for a review on the merits.⁶

CONCLUSION

The Board finds that OWCP properly refused to reopen appellant's case for reconsideration on the merits of her claim under 5 U.S.C. § 8128(a).

⁴ See *David J. McDonald*, 50 ECAB 185 (1998).

⁵ See *Patricia G. Aiken*, 57 ECAB 441 (2006).

⁶ The Board notes that OWCP erroneously stated in its November 19, 2010 nonmerit decision that appellant did not submit any medical evidence with her reconsideration request. Any error is harmless, however, as none of the medical evidence she submitted addressed the relevant issue of whether she sustained any wage loss from disability from November 6, 2008 to March 20, 2009 causally related to the accepted condition of right carpal tunnel syndrome.

ORDER

IT IS HEREBY ORDERED THAT the November 19, 2010 Office of Workers' Compensation Programs' decision is affirmed.

Issued: October 20, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board