

On appeal, appellant contends that she continues to have residuals of her employment-related right wrist condition for which she is entitled to medical benefits. She further contends that she sustained an emotional condition as a consequence of her accepted employment injury.

FACTUAL HISTORY

On March 26, 1998 appellant, then a 34-year-old accounting technician, filed an occupational disease claim assigned File No. xxxxxx102. In January 1998 she first became aware of pain and numbness in her right wrist which aggravated a preexisting injury. Appellant further alleged that on March 2, 1998 she first realized that her condition was caused by her repetitive work duties and increased workload.² By letter dated August 28, 1998, OWCP accepted her claim for mild aggravation of preexisting arthritis in the right wrist.³

In an August 1, 2011 letter, appellant contended that she continued to suffer from residuals of her accepted right wrist condition. She also contended that she sustained an emotional condition as a consequence of her accepted injury. Appellant submitted factual and medical evidence in support of her contentions.

By letter dated August 16, 2011, OWCP advised appellant that the evidence submitted was insufficient to establish entitlement to compensation under FECA. It requested that she submit additional evidence.

In an October 12, 2011 decision, OWCP denied appellant's claim for a consequential injury. The evidence was found insufficient to establish that she sustained an emotional or any other medical condition caused or aggravated by her accepted employment injury or work-related factors.

By letter dated November 10, 2011, appellant requested an oral hearing before an OWCP hearing representative and submitted additional medical evidence.⁴

In a May 10, 2012 decision, OWCP's hearing representative affirmed the October 12, 2011 decision. The medical evidence was found insufficient to establish that appellant's ongoing physical and emotional conditions and disability were causally related to her accepted temporary aggravation of right wrist arthritis.

² This case was previously before the Board with respect to appellant's emotional condition claim which was filed in November 1998 and assigned File No. xxxxxx742. In decisions dated August 6, 2002 and March 5, 2004, the Board affirmed that she did not sustain an emotional condition while in the performance of duty. Docket Nos. 02-89 (issued August 6, 2002) and 02-153 (issued March 5, 2004). In a third appeal, the Board issued an order dismissing appellant's appeal on December 27, 2010. The Board found it lacked jurisdiction as OWCP had not issued a final adverse decision; the document was informational in nature. Docket No. 11-122 (issued December 27, 2010).

³ On April 16, 1999 appellant was approved for disability retirement by the Social Security Administration. In July 1999 she was terminated from the employing establishment due to her inability to perform her work duties.

⁴ In a November 17, 2011 letter, appellant advised OWCP that she preferred a telephone hearing.

By letter dated November 15, 2012, appellant requested reconsideration and referenced evidence submitted in support of her claim.⁵ She resubmitted prior materials of record together with new correspondence with the employing establishment. In a February 18, 1999 memorandum, appellant requested payment of 37 hours of annual leave used during her incapacity to work. In an undated letter, she addressed the employing establishment's effort to collect an outstanding debt. In a letter dated July 17, 2001, appellant addressed Equal Employment Opportunity (EEO) complaints she filed against the employing establishment and her request for waiver of the outstanding debt. By letter dated October 17, 2011, she requested a Form CA-16 for medical care related to her November 1998 emotional condition claim. In letters dated April 8, 2001 and April 8, 2002, the employing establishment denied appellant's request to remove a lien placed on her federal income tax refund as she was advanced annual and sick leave at the time of her separation from employment. In a July 20, 2001 letter, it waived collection of the debt balance.

Appellant resubmitted medical reports previously of record dated January 20, 2000 and September 17, 2004 from Thomas E. McCloud, Ph.D., an attending clinical psychologist.

In a December 6, 2012 decision, OWCP denied appellant's request for reconsideration finding that the evidence submitted was either irrelevant or repetitious and insufficient to warrant a merit review of its May 10, 2012 decision.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128 of FECA,⁶ OWCP's regulation provide that a claimant must: (1) establish that OWCP erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by OWCP; or (3) constitute relevant and pertinent new evidence not previously considered by OWCP.⁷ To be entitled to a merit review of OWCP's decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.⁸ When a claimant fails to meet one of the above standards, OWCP will deny the application for reconsideration without reopening the case for review of the merits.

ANALYSIS

On November 15, 2012 appellant disagreed with OWCP's May 10, 2012 decision, denying her claim for a physical or an emotional condition as a consequence of the accepted

⁵ Appellant stated that she submitted a July 15, 1999 letter in which the employing establishment addressed authorization of her medical benefits and a July 20, 1999 letter in which it addressed her hand condition, increased workload and harassment by her former supervisor. This evidence, however, is not contained in the case record before the Board.

⁶ 5 U.S.C. §§ 8101-8193. Under section 8128 of FECA, the Secretary of Labor may review an award for or against payment of compensation at anytime on her own motion or on application. 5 U.S.C. § 8128(a).

⁷ 20 C.F.R. § 10.606(b)(1)-(3).

⁸ *Id.* at § 10.607(a).

employment-related mild aggravation of preexisting right wrist arthritis. She requested reconsideration. The Board finds that appellant did not show that OWCP erroneously applied or interpreted a specific point of law. Moreover, appellant did not advance a relevant legal argument not previously considered.

The underlying issue on reconsideration is medical in nature. The Board finds that appellant has not submitted relevant and pertinent new evidence on the issue of whether her claimed physical and emotional conditions were causally related to the accepted employment injury. The letters and memorandum from her and the employing establishment addressed, leave issues, the collection and waiver of an outstanding debt due to her separation from the employing establishment, EEO complaints filed against the employing establishment and authorization of medical treatment. This correspondence is not relevant to the underlying issue of causal relation because none of the documents are from a physician or support that appellant has a physical or an emotional condition causally related to the accepted injury. The Board finds, therefore, that this evidence is insufficient to warrant further merit review of the claim.

The Board notes that appellant resubmitted correspondence and medical evidence in support of her claim that was already of record and addressed and evaluated by OWCP. The Board finds that submission of this evidence did not require reopening her case for merit review because she had submitted the same documents and reports, which were previously reviewed by OWCP in decisions dated October 12, 2011 and May 10, 2012. As the documents and reports repeat evidence already in the case record, they are duplicative and do not constitute relevant and pertinent new evidence. The Board finds, therefore, that appellant has not established a basis for reopening her case.⁹

The Board finds that OWCP properly determined that appellant was not entitled to further review of the merits of her claim pursuant to the requirements under section 10.606(b)(3). OWCP properly denied her November 15, 2012 request for reconsideration.¹⁰

On appeal, appellant contended that she has residuals of her employment-related right wrist condition for which she is entitled to medical benefits. She further contended that she sustained an emotional condition as a consequence of the accepted employment injury. For reasons stated, the Board finds that the evidence submitted by appellant in support of her request for reconsideration is insufficient to warrant further merit review.

CONCLUSION

The Board finds that OWCP properly denied appellant's request for further merit review of her claim pursuant to 5 U.S.C. § 8128(a).

⁹ *D.K.*, Docket No. 12-299 (issued August 7, 2012); *see also D.K.*, 59 ECAB 141 (2007).

¹⁰ *Robert E. Cullison*, 55 ECAB 570 (2004); *M.E.*, 58 ECAB 694 (2007) (when an application for reconsideration does not meet at least one of the three requirements, OWCP will deny the application for reconsideration without reopening the case for a review on the merits).

ORDER

IT IS HEREBY ORDERED THAT the December 6, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 13, 2013
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