



## **FACTUAL HISTORY**

On February 1, 1999 appellant, then a 48-year-old medical records technician, sustained an injury in the performance of duty when she slipped on what appeared to be a wet spot on the stairway and landed on her right side. The Office accepted her claim for multiple sprains involving the neck, thoracic region, lumbosacral region, shoulder and arm.<sup>2</sup>

On March 1, 2000 appellant filed a claim alleging that she sustained a recurrence of a medical condition causally related to her February 1, 1999 employment injury: “Having constant neck pain, shoulder pain and right sided pain with numbness, headaches.” She stated that she believed her current condition was related to the original injury because “I didn’t have this pain before this accident occurred.”

In a decision dated September 13, 2001, the Office denied appellant’s claim of recurrence because the medical evidence did not establish that she had a medical condition that was causally related to her February 1, 1999 employment injury. It reviewed the medical evidence and noted that appellant’s neck pain appeared to resolve by August 1999 and that she began to feel bad again when she awoke on or about January 15, 2000. The Office noted that conditions due to a bad position while sleeping were not compensable. Appeal rights attached to the Office’s September 13, 2001 decision explained that appellant had one year from the date of the decision to request reconsideration.

Appellant requested reconsideration on September 5, 2002 and submitted a narrative statement that she was still experiencing problems with right shoulder as a result of the February 1, 1999 employment injury, which her physician believed might be a torn rotator cuff. On September 30, 2002 the Office denied appellant’s request as insufficient to warrant a reopening of her case. On March 12, 2003 the Board affirmed the Office’s decision.<sup>3</sup>

On September 6, 2003 appellant again requested reconsideration and noted that she underwent right shoulder surgery on February 25, 2003. In a decision dated October 17, 2003, the Office found that appellant’s request was untimely because it came more than one year after the September 13, 2001 decision denying her recurrence claim. It further found that appellant’s request did not show clear evidence of error in the September 13, 2001 decision. On June 8, 2004 the Board affirmed.<sup>4</sup>

On September 21, 2007 appellant again requested reconsideration. She stated that she was still suffering from an unresolved shoulder injury and bilateral carpal tunnel syndrome as a result of her federal employment. Appellant stated that she had right rotator cuff surgery in December 2002, right hand surgery in July 2007 and was awaiting left hand surgery. She stated

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<sup>2</sup> OWCP File No. 06-0721619. The record shows that appellant has another claim, OWCP File No. 06-2092252. On September 9, 2002 she filed an occupational disease claim for bilateral carpal tunnel syndrome. The Office denied her claim on October 6, 2003 and on April 27, 2004 the Board affirmed. Docket No. 04-524 (issued April 27, 2004). That claim is not before the Board on this appeal.

<sup>3</sup> Docket No. 03-207 (issued March 12, 2003).

<sup>4</sup> Docket No. 04-500 (issued June 8, 2004).

that an Office hearing representative advised her that her carpal tunnel syndrome should be considered a separate injury. Appellant stated that she filed an occupational disease claim in 2001 and 2004 for cubital tunnel syndrome “but have not had the claim resolved.”

Appellant submitted copies of documents relating to her occupational disease claim for carpal tunnel syndrome, OWCP File No. 06-2092252. She submitted a copy of her claim forms, her recurrence claim, her January 23, 2003 letter about a nerve conduction study, an orthopedic surgery checklist, her September 23, 2002 letter to the Board on a prior appeal, a November 7, 2002 nerve conduction study, a July 21, 2000 e-mail about an Annual Industrial Hygiene Survey finding that front desk ergonomics were still in need of improvement, a June 6, 2000 Office letter informing her that her claim was disallowed, a June 6, 2000 Office letter informing her that her case record was being transferred to San Francisco, an April 5, 2000 Office letter informing her that her claim was accepted for various strains, a part of the Office’s September 13, 2001 decision denying her claim of recurrence, a February 1, 1999 treatment note assessing a rotator cuff strain secondary to fall, a July 24, 2007 operation report for right open carpal tunnel release with median nerve decompression, her September 6, 2003 letter to the Office in reference to OWCP File No. 06-2092252 and a June 25, 2003 Office letter advising appellant’s congressman that OWCP File No. 06-0721619 was not accepted for carpal tunnel syndrome and that appellant should file an occupational disease claim if she believed her carpal tunnel syndrome was due to her prior federal employment.

In a decision dated October 12, 2007, the Office denied appellant’s request for reconsideration. It found that her September 21, 2007 request was untimely and failed to present clear evidence of error in the Office’s September 13, 2001 decision denying her recurrence claim.

### **LEGAL PRECEDENT**

Section 8128(a) of the Federal Employees’ Compensation Act does not grant a claimant the right to a merit review of her case.<sup>5</sup> Rather, this section vests the Office with discretion to review prior decisions:

“The Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application. The Secretary, in accordance with the facts found on review may --

- (1) end, decrease, or increase the compensation awarded; or
- (2) award compensation previously refused or discontinued.”<sup>6</sup>

The Office, through regulations, has imposed limitations on the exercise of its discretion under 5 U.S.C. § 8128(a). Section 10.607 provides that an application for reconsideration must

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<sup>5</sup> *Gregory Griffin*, 41 ECAB 186 (1989), *petition for recon. denied*, 41 ECAB 458 (1990); *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

<sup>6</sup> 5 U.S.C. § 8128(a).

be sent within one year of the date of the Office decision for which review is sought. This section further provides that the Office will consider an untimely application for reconsideration only if the application demonstrates clear evidence of error on the part of the Office in its most recent merit decision. The application must establish, on its face, that such decision was erroneous.<sup>7</sup>

### ANALYSIS

On September 13, 2001 the Office denied appellant's recurrence claim because the medical evidence did not establish that she had a medical condition that was causally related to her February 1, 1999 employment injury, which it accepted for multiple sprains. That remains the most recent decision on the merits of appellant's case. The statement of appeal rights attached to the Office's September 13, 2001 decision notified appellant that she had one year from the date of that decision to ask the Office to reconsider her case. That one-year period expired on September 13, 2002. Appellant's September 21, 2007 request for reconsideration is therefore over five years late.

The Office will review the merits of appellant's case only if her untimely request for reconsideration shows, on its face, that the September 13, 2001 decision was erroneous. This is meant to be a difficult standard.<sup>8</sup> The Board finds that appellant's September 21, 2007 request does not meet that standard.

Appellant offered no argument persuasively revealing any fatal error in the Office denial of her recurrence claim and she submitted no evidence that, on its face, would demonstrate such an error. In her previous requests for reconsideration, appellant argued that she was still experiencing problems with her right shoulder as a result of the February 1, 1999 employment injury and that she underwent right shoulder surgery on February 25, 2003. The Office denied those previous requests as insufficient to reopen her case and the Board affirmed. Appellant now makes the same argument for the third time. Consistent with the February 1, 1999 treatment note she submitted with her most recent request, the Office accepted her claim for shoulder sprain. But appellant has submitted no narrative medical report convincingly explaining how she suffered a right rotator cuff or supraspinatus tear on February 1, 1999 and how she later suffered a recurrence of that medical condition on or about January 15, 2000, when she began to feel bad again after her neck pain appeared to resolve by August 1999.

Appellant also argued that she was still suffering from bilateral carpal tunnel syndrome, but that has nothing to do with this case, OWCP File No. 06-0721619, which the Office accepted for a variety of sprains after she slipped in a stairway and landed on her right side. Much of what she submitted with her request for reconsideration appears to relate to her occupational disease claim for carpal tunnel syndrome, OWCP File No. 06-2092252, which the Office denied and which is not before the Board on this appeal. None of the evidence appellant submitted shows, on its face, that the Office erroneously denied her March 1, 2000 claim that she sustained a recurrence of a medical condition causally related to her February 1, 1999 fall at work.

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<sup>7</sup> 20 C.F.R. § 10.607 (1999).

<sup>8</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.3.b (May 1991).

Because appellant's untimely request for reconsideration does not show clear evidence of error in the Office's September 13, 2001 decision denying her recurrence claim, she is not entitled to a reopening of her case. The Board will affirm the Office's October 12, 2007 decision.

**CONCLUSION**

The Board finds that the Office properly denied appellant's untimely request for reconsideration.

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 12, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 11, 2008  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board