

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

E.C., Appellant)

and)

U.S. POSTAL SERVICE, ALBUQUERQUE)
PROCESSING & DISTRIBUTION CENTER,)
Albuquerque, NM, Employer)

**Docket No. 12-1524
Issued: January 29, 2013**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 9, 2012 appellant filed a timely appeal from a January 26, 2012 nonmerit decision of the Office of Workers' Compensation Programs (OWCP) denying reconsideration. Because more than 180 days elapsed from the most recent merit decision of August 22, 2011 to the filing of this appeal, the Board lacks jurisdiction to review the merits of the case.¹ Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the nonmerit decision.

ISSUE

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

¹ An appeal of final adverse OWCP decisions issued on or after November 19, 2008 must be filed within 180 days of the decision. *See* 20 C.F.R. § 501.3(e).

² 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On June 4, 2011 appellant, then a 52-year-old mail processing clerk, filed an occupational disease claim alleging that she sustained an injury or medical condition on March 1, 2011 as a result of her employment. She attributed her condition to performing work over a nine-year period. In a May 18, 2011 chart note, Dr. James M. Probasco, a Board-certified family practitioner, diagnosed wrist pain.

In a June 8, 2011 letter, OWCP advised appellant of the deficiencies in her claim and requested additional factual and medical evidence. It asked for a statement from her describing the employment factors believed to have caused her condition and a physician's opinion as to how the employment activities claimed caused, contributed to or aggravated her medical condition. A June 8, 2011 letter was also sent to the employing establishment to describe the type of tasks appellant performed, her work area and any precautions taken to minimize effects of the activities.

In response, appellant submitted several requests for medical authorization and copies of August 1, 2011 diagnostic tests.

In a May 27, 2011 report, Dr. Shawn M. Baker, a Board-certified orthopedic surgeon, noted that appellant had history of wrist pain for three months with radiographic evidence of a sclerotic lunate on the wrist. He opined that she might be developing Kienbock's disease. In an August 1, 2011 report, Dr. Tahseen A. Cheema, a Board-certified hand specialist, noted that appellant has been symptomatic in her wrist over the past three to four months, which she related to her job which required lifting and handling moderately heavy objects. An impression of ulnar impaction syndrome was provided.

By decision dated August 22, 2011, OWCP denied appellant's claim on the grounds that fact of injury was not established. It found that she did not adequately identify factors of employment she believed caused or contributed to her condition and the medical evidence of record did not establish that the diagnosed ulnar impaction syndrome was causally related to her work duties.

In an appeal request form dated December 17, 2011, appellant requested reconsideration. She submitted duplicative copies of medical reports previously of record and an August 13, 2011 magnetic resonance imaging (MRI) scan of the left wrist. In an August 25, 2011 report, Dr. Cheema noted a history of heavy lifting and strenuous use of the left hand. He provided an impression of ulnar impaction syndrome.

The employing establishment advised that appellant returned to work full duty with no restrictions on August 1, 2011.

By decision dated January 26, 2012, OWCP denied appellant's request for reconsideration on the grounds no substantive legal questions were raised and found no new or relevant medical evidence was submitted to support fact of injury.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128 of FECA,³ OWCP's regulations provide that a claimant must: (1) show 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.⁴ To be entitled to a merit review of an OWCP 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.⁵ 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

Appellant disagreed with OWCP's August 22, 2011 decision, which denied her claim on the grounds that she did not establish fact of injury. The issue is whether her December 17, 2011 request for reconsideration met any of the conditions of 20 C.F.R. § 10.606(b)(2), requiring OWCP to reopen the case for further review of the merits.

Appellant did not show that OWCP erroneously applied or interpreted a specific point of law. She did not identify a specific point of law or establish that it was erroneously applied or interpreted. Appellant did not advance a new and relevant legal argument. The primary basis for OWCP's denial of the claim was her failure to submit a factual statement describing the work factors alleged to have caused or aggravated her claimed condition. OWCP also found that appellant did not submit sufficient medical evidence addressing how her condition was due to work factors.

A claimant may be entitled to a merit review by submitting pertinent new and relevant evidence, but she did not submit any pertinent new and relevant medical evidence in this case. In support of her request for reconsideration, appellant submitted duplicative copies of medical reports previously considered by OWCP in its August 22, 2011 decision. Evidence which repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.⁶ Appellant submitted an August 13, 2011 MRI scan of the left wrist and an August 25, 2011 report from Dr. Cheema. This evidence, while new, is not relevant to the issue of whether fact of injury has been established. The MRI scan report does not address either the factual or medical component of appellant's claim. Dr. Cheema merely listed a history of heavy lifting and strenuous use of the left hand, without implicating the work factors believed to have caused or contributed to her condition. Furthermore, he did not provide

³ Under section 8128 of FECA, the Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application. 5 U.S.C. § 8128(a).

⁴ 20 C.F.R. § 10.606(b)(1)-(2).

⁵ *Id.* at § 10.607(a).

⁶ See *J.P.*, 58 ECAB 289 (2007); *Richard Yadron*, 57 ECAB 207 (2005).

an opinion as to the causal relationship of her ulnar impaction syndrome. Dr. Cheema's report is not relevant to the fact of injury issue in appellant's claim.⁷

The Board finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(2). Appellant did not show that OWCP erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by OWCP or constitute relevant and pertinent new evidence not previously considered. Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

On appeal, appellant notes employment factors believed to have contributed to her condition. However, the Board may only review evidence that was in the record at the time OWCP issued its final decision.⁸

CONCLUSION

The Board finds that OWCP properly denied appellant's request to reopen her case for further review of the merits under section 8128.

⁷ *Ronald A. Eldridge*, 53 ECAB 218 (2001); *Alan G. Williams*, 52 ECAB 180 (2000) (evidence which does not address the particular issue involved does not constitute a basis for reopening a case for a merit review).

⁸ *See* 20 C.F.R. § 501.2(c)(1); *M.B.*, Docket No. 09-176 (issued September 23, 2009); *J.T.*, 59 ECAB 293 (2008); *G.G.*, 58 ECAB 389 (2007); *Donald R. Gervasi*, 57 ECAB 281 (2005); *Rosemary A. Kayes*, 54 ECAB 373 (2003).

ORDER

IT IS HEREBY ORDERED THAT the January 26, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 29, 2013
Washington, DC

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

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

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