

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

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**F.J., Appellant**

**and**

**U.S. POSTAL SERVICE, MAIN POST OFFICE,  
Atlanta, GA, Employer**

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**Docket No. 15-1050  
Issued: August 4, 2015**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

CHRISTOPHER J. GODFREY, Chief Judge  
COLLEEN DUFFY KIKO, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On April 13, 2015 appellant filed a timely from a January 7, 2015 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days elapsed between the last merit decision of OWCP, dated September 24, 2014, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction to review the merits of this case.<sup>2</sup>

**ISSUE**

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

On appeal, appellant contends that OWCP overlooked the opinion of an attending physician regarding his wrist tendinitis.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> *See* 20 C.F.R. § 501.3(e).

## **FACTUAL HISTORY**

On August 8, 2014 appellant, then a 42-year-old mail processing clerk, filed a traumatic injury claim alleging that on July 25, 2014 he developed a lump on his right wrist due to repetitive movement of the wrist. In a letter also dated August 8, 2014, he stated that he noticed a small knot on his right wrist and experienced tenderness and sought medical evaluation by a physician who diagnosed a cyst. Appellant informed the physician about the repetitive movements he performed at work, which included constant sweeping and grabbing of letters. The physician advised that the repetitive motion may have caused appellant's condition.

Appellant submitted several medical reports which addressed his right wrist conditions, work capacity, and medical treatment.

By letter dated August 18, 2014, OWCP advised appellant that the evidence submitted was insufficient to establish his claim. It requested factual and medical evidence to support his claim. OWCP also requested that the employing establishment provide any medical evidence, if appellant had been treated at its medical facility.

On August 26, 2014 appellant described job duties that he believed contributed to his right wrist condition. He swept mail stacks by address and repeatedly lifted handfuls of mail at a time from sorting machine bins and placed the mail in letter trays. Appellant performed these duties four hours a day on at least two occasions.

Appellant submitted several medical reports which included a September 3, 2014 report signed by Andrea Haynes, a nurse practitioner, in care of Dr. Stephen A. Dawkins, an attending physician Board-certified in occupational medicine. Ms. Haynes noted appellant's right wrist complaints, provided examination findings, and reviewed prior wrist x-ray test results. She diagnosed pain, sprain/strain, and tenosynovitis of the wrist, and an elbow, forearm, and wrist injury. Ms. Haynes addressed appellant's treatment plan and stated that he was qualified for full work.

In a September 9, 2014 statement, the employing establishment related that on August 8, 2014 it learned that appellant had a right wrist cyst. It described his repetitive work duties which included lifting first class and standard letter trays, and loading mail from the trays to a delivery bar code sorter ledge, seven hours a day. Appellant also swept full bins, pulled full trays out of racks, and inducted full trays into the tray management system. The employing establishment thus stated that his job required the use of hand and wrist movements.

In a September 24, 2014 decision, OWCP denied appellant's occupational disease claim. It found that the medical evidence was insufficient to establish that the claimed medical condition was causally related to the accepted work event(s).

By letter dated December 18, 2014, appellant requested reconsideration. He submitted a partial copy of Ms. Haynes' September 3, 2014 report which contained a November 4, 2014 addendum by Dr. Dawkins stating that appellant had developed wrist tendinitis from overuse of his hands and wrist while repeatedly lifting mail. The overuse reflected appellant's repeated performance of required tasks. Dr. Dawkins advised that appellant's repeated hand and wrist

movement caused localized inflammation of his tendons as a manifestation of his overuse. He opined that his wrist tendinitis was a direct result of the above-described work activities.

In a January 7, 2015 decision, OWCP denied merit review of appellant's claim as the evidence submitted was repetitious and duplicative.

### **LEGAL PRECEDENT**

To require OWCP to reopen a case for merit review under section 8128 of FECA,<sup>3</sup> 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 it; or (3) constitute relevant and pertinent new evidence not previously considered by OWCP.<sup>4</sup> 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.<sup>5</sup> Section 10.608(b) of the implementing regulations state that any application for review that does not meet at least one of the requirements listed in 20 C.F.R. § 10.606(b)(2) will be denied by OWCP without review of the merits of the claim.<sup>6</sup>

### **ANALYSIS**

The Board has reviewed the case record and finds that OWCP erred in its refusal to reopen appellant's case for further consideration of the merits pursuant to 5 U.S.C. § 8128(a).

In support of his reconsideration request, appellant submitted a November 20, 2014 addendum note from Dr. Dawkins who opined that appellant had wrist tendinitis that directly resulted from repetitively lifting mail at work. Dr. Dawkins explained that appellant's repeated hand and wrist movement caused localized inflammation of his tendons as a manifestation of his overuse while performing the described work activity.

The Board finds that Dr. Dawkins' addendum note constitutes pertinent new and relevant evidence not previously considered by OWCP as he provided an opinion addressing the issue of whether appellant sustained an injury causally related to factors of his federal employment. Therefore, OWCP was obligated to conduct a merit review of the claim when appellant submitted this evidence in support of his reconsideration request.<sup>7</sup> Reopening a claim for merit review does not require a claimant to submit all evidence which may be necessary to discharge his burden of proof.<sup>8</sup> If OWCP should determine that the new evidence submitted lacks

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<sup>3</sup> 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 any time on his own motion or on application. 5 U.S.C. § 8128(a).

<sup>4</sup> 20 C.F.R. § 10.606(b)(3).

<sup>5</sup> *Id.* at § 10.607(a).

<sup>6</sup> *Id.* at § 10.608(b); *see also* *Norman W. Hanson*, 45 ECAB 430 (1994).

<sup>7</sup> *A.V.*, Docket No. 13-2174 (issued February 26, 2014); *D.M.*, Docket No. 10-1844 (issued May 10, 2011).

<sup>8</sup> *See* *Kenneth R. Mroczkowski*, 40 ECAB 855 (1989); *Helen E. Tschantz*, 39 ECAB 1382 (1988).

probative value, it may deny modification of the prior decision, but only after the case has been reviewed on the merits.<sup>9</sup> After such further development as is deemed necessary, OWCP shall issue a *de novo* merit decision.

**CONCLUSION**

The Board finds that OWCP erred by refusing to reopen appellant's claim for further review of the merits.

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 7, 2015 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further action consistent with this decision.

Issued: August 4, 2015  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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<sup>9</sup> See *Dennis J. Lasanen*, 41 ECAB 933 (1990).