



the retail specialists since March 1, 2003 and that these mailing tasks caused her wrist and elbow problems. Appellant stopped work on March 13, 2003.

She submitted an October 16, 2002 medical report of Dr. James S. Mulhollan, a Board-certified orthopedic surgeon, who decreased appellant's lifting restriction from 10 to 15 pounds. He stated that the other restrictions remained the same. Dr. Mulhollan noted that appellant currently worked as a receptionist and that she tolerated the work beautifully. He hoped that she would be able to continue working in that position.

Appellant also submitted a March 25, 2003 duty status report from Dr. Alonzo R. Burba, Jr., a Board-certified neurologist. He diagnosed carpal tunnel syndrome and condylar groove syndrome due to the alleged March 12, 2003 injury. Appellant's other disabling condition was tendinitis. She could resume working with certain physical restrictions.

By letter dated April 2, 2003, the Office advised appellant that the evidence submitted was insufficient to establish her claim. The Office advised her of the factual and medical evidence she needed to submit to establish her claim. In a letter of the same date, the Office requested that the employing establishment respond to appellant's allegations and provide information regarding her job and the precautions it took to minimize the effects of her work activities.

Appellant submitted a March 14, 2003 email message in which she informed Shirley Potter, an employing establishment retail manager, that she experienced a burning sensation in her right wrist, but was going to complete an assigned mailing task. In an April 15, 2003 letter, appellant described her work duties and the symptoms related to her wrists and elbows, which she contended were caused by her working conditions. She stated that she did not participate in sports due to knee injuries and that she had not experienced a stressful situation with regard to her personal or family life. Appellant also contended that she sustained an emotional condition caused by stressful incidents with Ms. Potter.

In an April 30, 2003 duty status report Dr. Burba reiterated that appellant had carpal tunnel syndrome and condylar groove syndrome and that she could resume working with physical limitations.

By decision dated June 11, 2003, the Office found the medical evidence insufficient to establish that appellant sustained an injury while in the performance of duty.

The Office received a June 23, 2003 medical report of Dr. Aubrey C. Smith, a Board-certified psychiatrist, who diagnosed a single episode of major depressive disorder, which may have been a part of a longer acting dysthymic disorder on Axis I, mixed personality disorder with anxiety and obsessive compulsive features on Axis II, stress injury to the knees which was treated with arthroscopic surgery, hymaturia in the past and developing carpal tunnel symptoms on Axis III and a moderate breakdown of obsessive compulsive defense mechanism on Axis IV.

A July 30, 2003 duty status report of Dr. Burba repeated that appellant had carpal tunnel syndrome and condylar groove syndrome due to the alleged March 12, 2003 injury, that her other disabling condition was tendinitis and that she could work with certain physical limitations.

By letter dated September 24, 2003, appellant requested reconsideration of the Office's June 11, 2003 decision. She submitted duty status reports dated November 21 and 25 and December 18, 2003, from a physician whose signature is illegible. The report indicated that she experienced pain in the arm due to the alleged March 12, 2003 injury and that she could perform her regular work duties with restrictions. A January 23, 2004 work restriction evaluation form revealed that appellant could work eight hours a day within certain physical restrictions and that her cervical strain was not responding to medication.

In a March 4, 2004 decision, the Office denied modification of the June 11, 2003 decision, finding that the evidence submitted was insufficient to establish that she sustained an injury causally related to factors of her employment.

Appellant requested reconsideration by letter dated June 8, 2004. She submitted a May 6, 2004 report from Dr. Lori Lamitina, an attending chiropractor, who diagnosed carpal tunnel syndrome of the right wrist, tendinitis of bilateral elbows, sprain/strain of the right shoulder/upper arm that was unresolved and exacerbated, cervical subluxation due to the alleged March 12, 2003 injury, cervical radiculitis, muscle spasm, difficulty sleeping and fatigue. Dr. Lamitina instructed appellant to remain off work until her symptoms had resolved.

The Office received a January 29, 2004 report from Coburn Soyre Howell, Jr., a Board-certified neurologist, who noted that appellant had chronic pain from the elbow to the wrist that began on March 12, 2003.

By decision dated July 2, 2004, the Office denied modification of the March 4, 2004 decision, on the grounds that she failed to establish that she sustained an injury while in the performance of duty.

In an August 13, 2004 letter, appellant again requested reconsideration. She submitted a March 25, 2003 report from Dr. Burba who found that she had right carpal tunnel syndrome, left epicondylitis, tendinitis and right condylar groove syndrome that were caused by factors of her employment.

On September 16, 2004 the Office denied modification of the July 2, 2004 decision on the grounds that she failed to establish that she sustained an injury while in the performance of duty. In letters dated May 3, June 14 and July 12, 2005, appellant requested reconsideration.<sup>1</sup> No evidence or legal argument accompanied her requests.

By decision dated August 22, 2005, the Office denied appellant's requests for reconsideration on the grounds that it neither raised substantive legal questions nor included new

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<sup>1</sup> In the June 14, 2004 letter, appellant's attorney stated that a schedule award was being claimed. The Board notes that the record does not contain a final decision regarding appellant's schedule award claim.

and relevant evidence and, thus, it was insufficient to warrant a merit review of its prior decision.<sup>2</sup>

### **LEGAL PRECEDENT**

To require the Office to reopen a case for merit review under section 8128 of the Federal Employees' Compensation Act,<sup>3</sup> the Office's regulations provide that a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) constitute relevant and pertinent new evidence not previously considered by the Office.<sup>4</sup> To be entitled to a merit review of an Office 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> When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review of the merits.

### **ANALYSIS**

In letters dated May 3, June 14 and July 12, 2005, appellant requested reconsideration of the Office's September 16, 2004 decision, denying modification of its decisions which found that she did not sustain an injury while in the performance of duty. Thus, the relevant underlying issue in this case is whether appellant sustained a medical condition causally related to factors her federal employment.

Appellant did not submit any relevant and pertinent new evidence not previously considered by the Office in support of her request for reconsideration. Further, she did not show that the Office erroneously applied or interpreted a specific point of law or advance a relevant legal argument not previously considered by the Office. As appellant did not meet any of the necessary regulatory requirements, the Board finds that she was not entitled to a merit review.<sup>6</sup>

### **CONCLUSION**

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

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<sup>2</sup> On appeal, appellant submitted new evidence. The Board, however, cannot consider evidence that was not before the Office at the time of the final decision. See *Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35, 36 n.2 (1952); 20 C.F.R. § 501.2(c)(1). Appellant may resubmit this evidence and legal contentions to the Office accompanied by a request for reconsideration pursuant to 5 U.S.C. § 8128(a). 20 C.F.R. § 501.2(c).

<sup>3</sup> 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, "[t]he 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).

<sup>4</sup> 20 C.F.R. § 10.606(b)(1)-(2).

<sup>5</sup> *Id.* at § 10.607(a).

<sup>6</sup> See *James E. Norris*, 52 ECAB 93 (2000).

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 22, 2005 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 18, 2006  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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