



## **FACTUAL HISTORY**

On January 4, 2010 appellant, then a 58-year-old rural mail carrier, filed an occupational disease claim alleging that he had sustained a left hand condition as a result of constantly grasping mail during his 30 years of employment. He noted that he had also performed six years of light-duty computer and office work. Appellant's supervisor noted on the reverse of the claim form that appellant had retired on October 31, 2009. Appellant submitted a supplemental statement dated December 9, 2009 in which he explained that he sustained right shoulder injury in 2000, after falling on ice, and had right shoulder surgery in July 2009. After the right shoulder surgery, he experienced numbness in his left hand because he had to use his left hand more often. Appellant also stated that he had right carpal tunnel surgery and was told that he would need to have left carpal tunnel surgery as well as left elbow surgery.

On January 5, 2010 appellant submitted a progress note from Dr. C. William Britt, Jr., a Board-certified neurologist, who stated that appellant had a history of persistent numbness in his left hand. Dr. Britt read a November 23, 2009 electromyogram study of the left upper arm, and, after physical examination, confirmed appellant's diagnosis as carpal tunnel syndrome.

OWCP advised appellant of the deficiencies in his claim in a letter dated January 21, 2010. Appellant was requested to describe in detail the employment-related activities he believed contributed to his condition. He was also requested to provide a comprehensive medical report which provided a diagnosis of his condition and medical rationale regarding the cause of the condition. In response to this letter, appellant submitted another statement dated January 27, 2010 wherein he again summarized his claim.

OWCP denied the claim by decision dated March 31, 2010. The decision found that appellant had not established that the claimed medical conditions were causally related to the established work conditions.

Appellant requested reconsideration on May 27, 2010. He noted on the reconsideration request that he had obtained further documentation from his physician regarding his left hand condition, which was attached. No other evidence was attached or received with the reconsideration request.

By decision dated June 7, 2010, OWCP denied appellant's request for merit review.

## **LEGAL PRECEDENT**

Under section 8128(a) of FECA,<sup>3</sup> OWCP has the discretion to reopen a case for review on the merits. OWCP must exercise this discretion in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing regulations.<sup>4</sup> This regulation provides that an

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<sup>3</sup> 5 U.S.C. § 8128(a).

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

application for reconsideration, including all supporting documents, must set forth arguments and contain evidence that either:

“(i) Shows that OWCP erroneously applied or interpreted a point of law; or

“(ii) Advances a relevant legal argument not previously considered by OWCP; or

“(iii) Constitutes relevant and pertinent new evidence not previously considered by OWCP.”

Section 10.608(b) provides that when an application for review of the merits of a claim does not meet at least one of these three requirements OWCP will deny the application for review without reviewing the merits of the claim.<sup>5</sup>

### **ANALYSIS**

In this case, appellant submitted a request for reconsideration on May 27, 2010. Although he stated that he was attaching additional medical evidence for OWCP review, none was received. Appellant did not allege that OWCP erroneously applied or interpreted a point of law, nor did he advance a new legal argument. Further, OWCP received no additional medical evidence. The Board therefore finds that appellant failed to meet the requirements of 20 C.F.R. § 10.606(b), and accordingly his request to reopen his case for further reconsideration on its merits was properly denied in accordance with 20 C.F.R. § 10.608(b).<sup>6</sup>

### **CONCLUSION**

The Board finds that OWCP properly denied appellant’s request for a further review on its merits pursuant to 5 U.S.C. § 8128(a).

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<sup>5</sup> 20 C.F.R. § 10.608(b).

<sup>6</sup> The Board notes that, following the issuance of the June 7, 2010 OWCP decision, on July 19, 2010 appellant submitted new evidence together with a second request for reconsideration to OWCP. This second request for reconsideration is pending before OWCP. The Board is precluded from reviewing this evidence which was not before OWCP at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c)(1).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated June 7, 2010 is affirmed.

Issued: August 2, 2011  
Washington, DC

Richard J. Daschbach, Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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