



## **FACTUAL HISTORY**

Appellant, then a 53-year-old assistant unit operator, filed an occupational disease claim (Form CA-2) on September 10, 2008 alleging that he sustained carpal tunnel syndrome causally related to factors of his federal employment. He first became aware of the condition and attributed it to his federal employment on September 23, 1999.

By decision dated December 23, 2008, the Office denied appellant's claim, finding that he did not submit sufficient factual and medical evidence to establish that he sustained an injury in the performance of duty.

On January 12, 2009 appellant requested an oral hearing before an Office hearing representative. A hearing was held by telephone on June 12, 2009.

By decision dated August 13, 2009, an Office hearing representative found that appellant did not submit sufficient evidence to establish causal relationship between his claimed carpal tunnel condition and factors of his federal employment.

On January 27, 2010 appellant requested reconsideration and submitted literature on neuropathy and diabetic neuropathy, a job description for an assistant unit operator and a nine-page narrative statement.

By decision dated February 4, 2010, the Office denied appellant's request for reconsideration of the merits finding that he did not submit new relevant or pertinent evidence, did not show that the Office erroneously applied or interpreted a point of law, or advanced a point of law or fact not previously considered by the Office.

## **LEGAL PRECEDENT**

Section 8128(a) of the Act does not entitle a claimant to a review of an Office decision as a matter of right; it vests the Office with discretionary authority to determine whether it will review an award for or against compensation.<sup>3</sup> The Office, through regulations, has imposed limitations on the exercise of its discretionary authority under section 8128(a).<sup>4</sup>

To require the Office to reopen a case for merit review under section 8128(a) of the Act, the Office's regulations provide that the evidence or argument submitted by 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>5</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

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<sup>3</sup> *Supra* note 1. Under section 8128 of the Act, 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).

<sup>4</sup> *Annette Louise*, 54 ECAB 783, 789-90 (2003).

<sup>5</sup> 20 C.F.R. § 10.606(b)(2). *See A.L.*, Docket No. 08-1730 (issued March 16, 2009).

application for review within one year of the date of that decision.<sup>6</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 on the merits.<sup>7</sup>

The Board has held that the submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.<sup>8</sup>

### ANALYSIS

The Board finds that appellant has not shown that the Office erroneously applied or interpreted a specific point of law; he has not advanced a relevant legal argument not previously considered by the Office; and he has not submitted relevant and pertinent new evidence not previously considered by the Office.

In support of his January 27, 2010 reconsideration request, appellant submitted a nine-page narrative statement. The Board notes that submission of this statement did not require reopening his case for merit review. The Office denied appellant's claim based on the lack of supportive medical evidence and, thus, the underlying issue is medical in nature. The Board finds that his narrative statement is irrelevant to the issue of whether he sustained an injury in the performance of duty causally related to factors of his federal employment. Therefore, it is not sufficient to require the Office to reopen appellant's claim for consideration of the merits.

Appellant submitted a description of his job and literature on neuropathy and diabetic neuropathy. As noted, the issue on which his claim was denied was premised on the causal relationship between his claimed carpal tunnel syndrome to factors of his federal employment. The job description and medical literature do not constitute relevant or pertinent new evidence as they are irrelevant to the issue of causal relationship and are not based on a physician's medical opinion from a complete and accurate medical history of appellant.

Because appellant did not meet any of the criteria to warrant a reopening of the case for further merit review, the Board finds that the Office properly declined to reopen the case.

### CONCLUSION

The Board finds that appellant failed to submit relevant and pertinent new evidence, a relevant legal argument not previously considered by the Office, or evidence or argument which shows that the Office erroneously applied or interpreted a specific point of law. Therefore, the Office properly refused to reopen his claim for further consideration of the merits of his claim under 5 U.S.C. § 8128.

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<sup>6</sup> 20 C.F.R § 10.607(a).

<sup>7</sup> *Id.* at § 10.608(b).

<sup>8</sup> *Id.* See also *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 4, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 13, 2011  
Washington, DC

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

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

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