



her claim for right carpal tunnel syndrome. Appellant underwent a carpal tunnel release on January 30, 2008 and received compensation for temporary total disability.

In a decision dated October 15, 2009, OWCP terminated compensation benefits for the accepted injury. It found that the opinion of Dr. David C. Johnson, a Board-certified orthopedic surgeon who served as an impartial medical specialist, established no evidence of the accepted medical condition.

Appellant requested reconsideration. She took issue with the probative value of the impartial medical specialist's opinion. Appellant submitted the January 7, 2010 report of a registered licensed occupational therapist, who reviewed her medical records and who stated that there were reasonable explanations for the disparities in her ability to provide full effort when followed for retesting and reevaluations.<sup>2</sup> She argued this evidence showed that her low grip strength was not due to a lack of cooperation. Appellant resubmitted her May 22, 2009 response to the notice of proposed termination and she indicated that she was enclosing a letter from her treating physician, Dr. Ricardo Pyfrom, a Board-certified orthopedic surgeon, who was on one side of the conflict and the results of a nerve conduction study by Dr. Segun Dawodu. She later wrote to advise that she was enclosing a report from Dr. Edward G. Allcock, an osteopath.

On January 5, 2011 OWCP denied appellant's request for reconsideration. It found that the request did not meet one of the three criteria for obtaining a merit review of her case. OWCP explained that the report of an occupational therapist was of limited value on medical issues because a therapist is not considered a physician as defined under FECA. It also noted that it had no copy of Dr. Allcock's report.

On appeal, appellant argued that she submitted relevant and pertinent new medical evidence to support her request for reconsideration and that it was incumbent on OWCP to contact her and not ignore the contents of her letter indicating that she was attaching medical evidence from Dr. Pyfrom and Dr. Allcock. With respect to the latter report, she intended to show that a postal receipt for a 1.4 ounce first-class letter made abundantly clear that she has transmitted additional evidence. Appellant also argued that OWCP should accept the therapist's clinical observations as factual evidence of her physical therapy treatments. She argued that the clear weight of the medical evidence established that she had right carpal tunnel syndrome.

In a Memorandum of Justification the Director argued on appeal that OWCP did not abuse its discretion in denying appellant's request and that the Board has no jurisdiction to review new evidence such as the postal receipt. The Director explained that, if she believes the new evidence would support a reversal of the January 5, 2011 decision, her proper recourse would be to present that evidence to OWCP and request reconsideration of that decision.<sup>3</sup>

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<sup>2</sup> The impartial medical specialist, Dr. Johnson, had noted inconsistent findings on grip strength testing by a second-opinion physician.

<sup>3</sup> OWCP's January 5, 2011 decision denying reconsideration does not provide appellant the right to request reconsideration of that denial. Appellant's only appeal right was to the Board.

## LEGAL PRECEDENT

OWCP may review an award for or against payment of compensation at any time on its own motion or upon application.<sup>4</sup> The employee shall exercise this right through a request to the district office.<sup>5</sup>

An employee (or representative) seeking reconsideration should send the request for reconsideration to the address as instructed by OWCP in the final decision. The request for reconsideration, including all supporting documents, must be in writing and must set forth arguments and contain evidence that either: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.<sup>6</sup>

A request for reconsideration must be sent within one year of the date of OWCP decision for which review is sought.<sup>7</sup> A timely request for reconsideration may be granted if OWCP determines that the employee has presented evidence or argument that meets at least one of these standards. If reconsideration is granted, the case is reopened and the case is reviewed on its merits. Where the request is timely but fails to meet at least one of these standards, OWCP will deny the request for reconsideration without reopening the case for a review on the merits.<sup>8</sup>

## ANALYSIS

The Board has no jurisdiction to review the termination of appellant's compensation benefits. The only issue on appeal is whether OWCP properly denied her October 6, 2010 request for reconsideration. The request was timely, as appellant sent it within one year of OWCP's October 15, 2009 merit decision. The question, therefore, is whether her request met one of the three standards for obtaining a merit review of her case.

In her request for reconsideration, 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 show that OWCP erroneously applied or interpreted it.

Appellant did not advance a new and relevant legal argument. She argued the probative value of the opinion of Dr. Johnson, the impartial medical specialist, which OWCP previously reviewed and adjudicated. Appellant's suggestion that Dr. Johnson derived his conclusion in part from the observations of a second-opinion physician is not demonstrated by the analysis the impartial medical specialist provided. Dr. Johnson based his conclusion on appellant's current

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<sup>4</sup> 5 U.S.C. § 8128(a).

<sup>5</sup> 20 C.F.R. § 10.605.

<sup>6</sup> *Id.* § 10.606.

<sup>7</sup> *Id.* § 10.607(a).

<sup>8</sup> *Id.* § 10.608.

symptoms, his own examination, electrodiagnostic studies in 2007 and 2008 and Dr. Pyfrom's surgical findings. The second-opinion report was worth noting, but it was the impartial medical specialist's own inability to corroborate appellant's subjective complaints that led him to make his own conclusions.

The underlying issue was whether appellant continued to suffer physical residuals of the accepted right carpal tunnel syndrome. This is a medical issue and must be addressed by probative medical opinion evidence.<sup>9</sup> Appellant may be entitled to a merit review by submitting relevant and pertinent new evidence, but she submitted no such evidence. At least no such evidence appears in the record. Although appellant indicated that she was enclosing a letter from Dr. Pyfrom and the results of a nerve conduction study by Dr. Dawodu and later a report from Dr. Allcock, no medical evidence accompanies her request.

Appellant did submit a report from an occupational therapist, but the report of a therapist has no probative value on medical questions because a therapist is not a "physician" as defined by 5 U.S.C. § 8101(2) and is not competent to render a medical opinion.<sup>10</sup> She submitted this evidence to show that her low grip strength was not due to a lack of cooperation, which she felt, incorrectly in the Board's opinion, led Dr. Johnson to find no residuals of the accepted medical condition. From a purely factual point of view, the therapist was competent to review the treatment provided and her clinical observations. How the treatment and observations bore on the question of appellant's continued residuals of the accepted right carpal tunnel syndrome is something only a physician was competent to address. Without a physician's review and interpretation, the therapist's report must be considered irrelevant on that question.<sup>11</sup>

The Board finds that appellant did not meet at least one of the standards for obtaining a merit review of her case. Appellant did not show that OWCP erroneously applied or interpreted a specific point of law, she did not advance a relevant legal argument not previously considered by OWCP and she did not submit relevant and pertinent new evidence not previously considered. Accordingly, the Board finds that OWCP properly denied her request. The Board will affirm OWCP's January 5, 2011 decision.

At oral argument, appellant asked to submit a postal receipt as proof that she had submitted more than just a cover letter; she had enclosed Dr. Allcock's report. The Board explained that it could not receive new evidence<sup>12</sup> but that she could submit evidence and argument to OWCP with a further request for reconsideration, with the understanding that the timing of the request would warrant a more difficult standard of review.

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<sup>9</sup> *Bobbie F. Cowart*, 55 ECAB 746 (2004).

<sup>10</sup> *Barbara J. Williams*, 40 ECAB 649, 657 (1988).

<sup>11</sup> See *Terry S. Laroque*, Docket No. 00-2033 (issued April 26, 2001) (where the claimant supported his request for reconsideration by submitting audiograms and an audiologist's report, the Board found that the evidence was irrelevant to the extent of his hearing loss inasmuch as the audiograms were not reviewed by a physician).

<sup>12</sup> The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal. 20 C.F.R. § 501.2(c)(1).

**CONCLUSION**

The Board finds that OWCP properly denied appellant's October 6, 2010 request for reconsideration.

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 5, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 3, 2012  
Washington, DC

Alec J. Koromilas, Judge  
Employees' Compensation Appeals Board

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

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