

FACTUAL HISTORY

On February 6, 2007 appellant, then a 52-year-old disability examiner, filed an occupational disease claim alleging that she sustained thumb, wrist, hand and neck pain in the performance of duty. She indicated that she first became aware of and related her condition to her work duties, which required constant keyboarding on January 26, 2007. Appellant did not stop work. On March 7, 2007 OWCP accepted the claim for bilateral tendinitis.

In a March 29, 2007 x-ray of the hands and wrists, Dr. Michelle Oh, Board-certified in diagnostic radiologist, diagnosed osteoarthritis.

In an April 18, 2007 report, Dr. Timothy Gilmore, Board-certified in family medicine and a treating physician requested an accommodation for appellant. He noted that she had “well-documented degenerative joint disease of her hands and cervical spine, which is aggravated by her work activities, constant keyboard work.” Dr. Gilmore noted that appellant was working full time and doing well with ergonomic adjustments to her workstation; however, he noted that when required to type large volumes of narrative text, a dictation system or a voice-activated software would assist her. In a separate report of the same date, he also diagnosed herniation of the cervical intervertebral disc and opined that it was aggravated but not caused by her workplace activities.

On July 19, 2007 appellant requested that OWCP expand her claim to include the conditions of bilateral arthritis of the hands and cervical herniated disc at C6-7.

In an October 26, 2009 decision, OWCP denied the claim. It found that the evidence was insufficient to support that appellant’s bilateral hand and cervical conditions were medically related to her work activities.

On January 12, 2010 appellant requested reconsideration.

In a December 21, 2009 report, Dr. Gilmore diagnosed osteoarthritis of the hand. Appellant had inflammatory arthritis for which she took immunosuppressive medication for over 10 years. Her inflammatory arthritis was controlled with the medication, but she also developed degenerative disease of the hands and cervical spine. Dr. Gilmore noted that appellant’s work activity was modified to a great extent by ergonomic measures such as voice-activated software, but she spent about 60 percent of her time using a keyboard. He opined that the constant repetitive keyboard use placed pressure on the distal finger joints which were affected by osteoarthritis. Dr. Gilmore noted that appellant was able to maintain work but only at the part-time rate with frequent use of sick or annual leave to give her hands time to rest. He opined that she was unable to spend eight hours a day for five days a week keyboarding and needed frequent breaks to allow some recovery time. Dr. Gilmore advised that appellant’s hands were similar to those of a much older person. He noted that she could do her work but not at the pace or the longevity that was required to meet a 40-hour week standard. Dr. Gilmore advised that appellant had “constant pressure on her neck and shoulder areas with the seated posture and observing the monitor and keyboard on a continuous basis” which tended to aggravate her cervical degenerative disease, shoulder pain and on occasion, hand numbness. He noted that this could be relieved by adopting other postures but “the constant static posture sitting at a

keyboard” placed stresses on the neck and shoulder muscles aggravating the underlying cervical degenerative problems.

In a March 17, 2010 report, Dr. Gilmore opined that he believed that he had provided a firm diagnosis clarifying information about the permanent aggravation of the cervical spine.

By decision dated April 9, 2010, OWCP modified the October 26, 2009 decision to accept the condition of bilateral hand arthritis. It denied the cervical spine condition. OWCP noted that Dr. Gilmore did not sufficiently explain why the cervical spine condition was related to appellant’s work activity.

In November 30, 2010 letters, counsel requested that OWCP expand the accepted conditions in appellant’s claim.

On April 8, 2011 counsel requested reconsideration. He alleged that the December 21, 2009 report from Dr. Gilmore established that “the cervical spine is causally related” to appellant’s federal employment. Counsel noted Dr. Gilmore’s explanation that appellant had constant pressure on her neck and shoulder areas with the seated posture and observing the monitor and keyboard on a continuous basis, which aggravated the underlying cervical condition.” In a September 30, 2010 report, Dr. Gilmore noted that it was unclear if the diagnosed condition of herniation of the cervical intervertebral disc was work related. In a November 5, 2010 treatment note, he noted seeing appellant for cervical disc protrusion, left arm radicular symptoms and underlying connective tissue disease. Dr. Gilmore stated that she had an OWCP claim for her cervical condition. Also provided was a copy of his March 17, 2010 report.

In treatment notes from November 24, 2009 to April 10, 2011, Dr. John Eggert, a Board-certified internist, noted degenerative right knee changes in addition to inflammatory arthritis and osteoarthritis of the hands. He also noted treatment recommendations. April 22 and October 29, 2010 treatment notes and an operative report from Dr. Joseph Morris, Jr., a Board-certified orthopedic surgeon, contained a diagnosis for arthritis of the left thumb-metacarpal joint and left carpal tunnel syndrome.

In a January 31, 2011 report, Dr. Randi Beck, a Board-certified internist, treated appellant for neck pain and carpal tunnel syndrome. She noted that appellant had a herniated disc at C6-7 but had no symptoms or findings on examination consistent with myelopathy. Dr. Beck stated that appellant reported increased pain with keyboarding and computer use, along with gripping, handling and lifting.

Appellant also provided April 28, 2010 records from her ophthalmologist and optometrist. OWCP also received duplicate copies of March 29, 2007 diagnostic reports. Physical therapy and nurses’ notes were also submitted.

By decision dated April 14, 2011, OWCP denied appellant’s request for reconsideration finding that it was insufficient to warrant a merit review of the claim.

LEGAL PRECEDENT

Under section 8128(a) of FECA,² OWCP may reopen a case for review on the merits in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations, which provides that a claimant may obtain review of the merits if the written application for reconsideration, including all supporting documents, sets forth arguments and contains evidence that:

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

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

“(3) Constitutes relevant and pertinent new evidence not previously considered by OWCP.”³

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by OWCP without review of the merits of the claim.⁴

ANALYSIS

Appellant disagreed with OWCP’s April 9, 2010 decision, which denied her request to expand her claim for a cervical spine condition. The underlying issue on reconsideration was whether she submitted sufficient medical evidence to show that she sustained a cervical spine condition causally related to her accepted employment injury. However, appellant did not provide any relevant or pertinent new evidence to the issue of whether she sustained a cervical spine condition causally related to her accepted employment injury.

On April 8, 2011 counsel requested reconsideration. He referred to the December 21, 2009 report from Dr. Gilmore, which was previously considered by OWCP and argued that it established that “the cervical spine is causally related” to appellant’s federal employment. The Board notes that this report was previously considered by OWCP. Furthermore, OWCP also received duplicate copies of March 29, 2007 diagnostic reports and a copy of a March 17, 2010 report from Dr. Gilmore. The Board has held that submission of duplicative or repetitious evidence is insufficient to require OWCP to reopen a case for merit review.⁵

Although Dr. Gilmore’s September 30 and November 2, 2010 reports were new to the record neither is relevant as they provide no opinion on causal relationship. Instead they dispute

² 5 U.S.C. § 8128(a).

³ 20 C.F.R. § 10.606(b).

⁴ *Id.*

⁵ *Edward W. Malaniak*, 51 ECAB 279 (2000); *Eugene F. Butler*, 36 ECAB 393 (1984); *Jerome Ginsburg*, 32 ECAB 31 (1980).

whether appellant's cervical condition was employment related. Consequently, these reports are not relevant as they do not address the underlying issue of causal relationship. The Board notes that the submission of evidence that does not address the particular issue involved does not constitute a basis for reopening a case.⁶

OWCP also received numerous other reports that did not address the cervical spine condition and its relation to her employment. They included treatment notes from Dr. Eggert, reports from Dr. Morris and records from appellant's ophthalmologist and optometrist, that pertained to inflammatory arthritis and osteoarthritis of the hands. They offered no specific opinion on whether appellant's employment caused her cervical condition. Additionally, the January 31, 2011 treatment note from Dr. Beck noted appellant's complaints and conditions but Dr. Beck did not address whether the cervical condition is causally related to appellant's employment.

OWCP also received numerous physical therapy and nurses' notes dating from March 22 to October 28, 2010. As these practitioners do not qualify as a physician under FECA, their reports cannot be considered as competent medical evidence by the Board.⁷ As the underlying issue is medical in nature, these documents do not constitute relevant evidence.

Consequently, the evidence submitted by appellant on reconsideration does not satisfy the third criterion, noted above, for reopening a claim for merit review. Furthermore, appellant also has not shown that OWCP erroneously applied or interpreted a specific point of law or advanced a relevant new argument not previously submitted. Therefore, OWCP properly denied her request for reconsideration.

CONCLUSION

The Board finds that OWCP properly refused to reopen appellant's case for further review of the merits of her claim under 5 U.S.C. § 8128(a).

⁶ *Alan G. Williams*, 52 ECAB 180 (2000); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000); *Robert P. Mitchell*, 52 ECAB116 (2000).

⁷ 5 U.S.C. § 8101(2); *Paul Foster*, 56 ECAB 208 (2004); *E.K.*, Docket No. 09-1827 (issued April 21, 2010).

ORDER

IT IS HEREBY ORDERED THAT the April 14, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 4, 2012
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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