

**United States Department of Labor
Employees' Compensation Appeals Board**

C.W., Appellant)

and)

U.S. POSTAL SERVICE, CITY GATE POST)
OFFICE, Columbus, OH, Employer)

**Docket No. 12-425
Issued: June 19, 2012**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On December 1, 2011 appellant filed a timely appeal from the July 20, 2011 nonmerit decision of the Office of Workers' Compensation Programs (OWCP) denying her request for reconsideration. As more than 180 days elapsed from the last merit decision of November 3, 2010 to the filing of this appeal, pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board does not have jurisdiction over the merits of this case.²

ISSUE

The issue is whether OWCP properly denied appellant's request for reconsideration of the merits pursuant to 5 U.S.C. § 8128(a).

¹ 5 U.S.C. § 8101 *et seq.*

² Appellant submitted new evidence to OWCP after its July 20, 2011 decision and to the Board on appeal. However, the Board lacks jurisdiction to review evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c)(1); *Sandra D. Pruitt*, 57 ECAB 126 (2005).

On appeal, appellant contends that, after her surgery, she returned to work but experienced numbness and tingling in her hand going up her arm.

FACTUAL HISTORY

On May 24, 2007 appellant, then a 63-year-old supervisor, filed an occupational disease claim alleging carpal tunnel syndrome as a result of pushing mail and casing mail every day for 8 to 10 hours. She also worked on a computer as part of her federal employment. On November 27, 2007 OWCP accepted appellant's claim for left carpal tunnel syndrome.

On January 22, 2009 OWCP issued a schedule award for a 25 percent impairment of appellant's left arm. On October 5, 2010 appellant filed a claim for an additional schedule award. The claim was denied by OWCP in a decision dated November 3, 2010. OWCP found the award was being sought as a result of duties after appellant's return to work following surgery. It advised appellant to file a new claim for a new period of work exposure following her return to work on July 7, 2008 after surgery.

On April 10, 2011 appellant requested reconsideration.

By decision dated July 20, 2011, OWCP denied appellant's request for reconsideration without conducting a merit review.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,³ OWCP's regulations provide that the evidence or argument submitted by a claimant must: (1) show that OWCP erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by OWCP; or (3) constitute relevant and pertinent new evidence not previously considered by OWCP.⁴ To be entitled to a merit review of an OWCP 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.⁵ When a claimant fails to meet one of the above standards, OWCP will deny the application for reconsideration without reopening the case for review on the merits.⁶

ANALYSIS

On January 22, 2009 OWCP issued appellant a schedule award for a 25 percent impairment to her left arm and denied her request for an additional schedule award. As

³ 5 U.S.C. §§ 8101-8193. Under section 8128 of FECA, "[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).

⁴ 20 C.F.R. § 10.606(b)(2).

⁵ *Id.* at § 10.607(a).

⁶ *Id.* at § 10.608(b).

explained above, the merits of the case are not before the Board. The only issue on appeal is whether OWCP properly denied reconsideration.

Appellant submitted no new evidence with her April 10, 2011 request for reconsideration. She did not contend that OWCP erroneously interpreted a specific point of law or advance a relevant legal argument not previously considered by OWCP. Accordingly, the Board finds that OWCP properly determined that appellant was not entitled to further review of the merits of her claim pursuant to any of the three requirements under section 10.606(b)(2) and properly denied her April 10, 2011 request for reconsideration.⁷

CONCLUSION

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 20, 2011 is affirmed.

Issued: June 19, 2012
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

⁷ *M.E.*, 58 ECAB 694 (2007) (when an application for reconsideration does not meet at least one of the three requirements enumerated under 20 C.F.R. § 10.606(b)(2), OWCP will deny the application for reconsideration without reopening the case for a review on the merits).