

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

E.C., Appellant)

and)

DEPARTMENT OF HOMELAND SECURITY,)
TRANSPORTATION SECURITY)
ADMINISTRATION, ORLANDO NATIONAL)
AIRPORT, Orlando, FL, Employer)

**Docket No. 11-1761
Issued: March 7, 2012**

Appearances:

Alan J. Shapiro, Esq., for the appellant
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 July 26, 2011 appellant, through her attorney, filed a timely appeal from the May 19, 2011 nonmerit decision of the Office of Workers' Compensation Programs (OWCP), which denied reconsideration. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review OWCP's May 19, 2011 nonmerit decision.

ISSUE

The issue is whether OWCP properly denied appellant's May 5, 2011 request for reconsideration under section 8128(a).

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On March 6, 2009 appellant, a 43-year-old transportation security officer (screener), sustained an injury in the performance of duty when she pulled a bag off the conveyor belt and experienced pain in her right hand and wrist. OWCP accepted her claim for right wrist sprain and right carpal tunnel syndrome.

In a decision dated January 19, 2011, an OWCP hearing representative found that appellant returned to work in a modified position and did not provide sufficient evidence to support that her total disability from December 25, 2009 to April 20, 2010 was causally related to the injury-related right wrist condition, nor did she present sufficient evidence to support that OWCP should expand her accepted conditions to include other, concurrent medical conditions for which she was later treated.

OWCP's hearing representative reviewed the reports of Dr. Edmundo I. Rivera, the attending Board-certified psychiatrist. Although Dr. Rivera found that carpal tunnel syndrome and nerve damage in the right arm had aggravated appellant's major depressive disorder and generalized anxiety disorder, the hearing representative noted that he did not discuss how he arrived at this conclusion or how appellant's adverse reaction to medication on December 25, 2009 related to the March 6, 2009 incident or the accepted conditions.

OWCP's hearing representative reviewed Dr. Rivera's January 28, 2010 report, wherein he explained that appellant had received treatment for major depression, anxiety disorder and fibromyalgia since September 2008, and that her condition had improved. The hearing representative noted that he did not discuss how he arrived at his conclusion that appellant was totally disabled for work. On August 26, 2010 he found that appellant was totally disabled from December 2009 to June 2010 because of severe anxiety, panic attacks and pain due to her injury, but the hearing representative again noted that he did not discuss how he arrived at this conclusion. Dr. Rivera's December 16, 2010 report indicated that appellant's psychiatric symptoms worsened after the work injury, that her constant pain clearly affected her mood symptoms, and that she continued to experience anxiety symptoms in the form of panic attacks in response to perceived tension, particularly in the work environment. He opined that this resulted in gastrointestinal problems and fibromyalgia. The hearing representative found, however, that he did not discuss how he arrived at this conclusion.

Appellant requested reconsideration on May 5, 2011. She stated that there were several inaccuracies in OWCP's description of the evidence. Appellant stated that she did not understand what further medical documentation or evidence OWCP needed from her doctors.

Appellant submitted the February 14, 2011 report of Dr. Rivera, who explained that appellant had experienced anxiety and depressive symptoms prior to her injury, but she responded well to treatment, which was relative brief. She returned to treatment in October 2009 with symptoms of depression and anxiety that were rather severe. "[Appellant] had been switched to night-time duty at the time and she felt overwhelmed of having to deal with the pain related to her arm injury and staying awake during the night." She described the pain as burning and stabbing. A few times, appellant fell asleep at the wheel. Dr. Rivera found that having to

deal with excruciating pain as well as a night shift clearly aggravated her symptoms, eventually leading to severe panic attacks.

Dr. Rivera added that fear of having a pulmonary embolism added to appellant's stress, and that her symptoms worsened further when she had to wait a lengthy amount of time to be approved for arm surgery. He stated that her psychiatric conditions had become so severe that she developed gastrointestinal inflammation and ulcer-type symptoms. Dr. Rivera stated that the relay pathways and neuroreceptor systems affected by pain were also affected by depression/anxiety, increasing their severity. He stated that data research supported these findings.

In a decision dated May 19, 2011, OWCP denied appellant's request for reconsideration. It found that she did not identify the alleged inconsistencies and that her opinion on the medical evidence was immaterial. OWCP found that Dr. Rivera's report was repetitious. Dr. Rivera restated previous comments, and his arguments regarding appellant's subjective reports of pain and administrative issues were previously considered and addressed by the hearing representative's merit decision. Further, he did not address how or why pain from the March 6, 2009 employment injury contributed to the diagnosed psychiatric conditions, and his report was just as unrationalized as his earlier reports. OWCP noted that Dr. Rivera did not clearly discuss whether appellant was disabled during the period in question, rendering his opinion irrelevant or immaterial to the issue to be decided. It therefore denied a merit review of appellant's case.

LEGAL PRECEDENT

OWCP may review an award for or against payment of compensation at any time on its own motion or upon application.² 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.³

A request for reconsideration must be sent within one year of the date of OWCP's decision for which review is sought.⁴ 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.⁵

² 5 U.S.C. § 8128(a).

³ 20 C.F.R. § 10.606.

⁴ *Id.* at § 10.607(a).

⁵ *Id.* at § 10.608.

ANALYSIS

Appellant sent her May 5, 2011 request for reconsideration within one year of OWCP's January 19, 2011 merit decision. Her request was therefore timely. The issue is whether the request meets at least one of the three standards for obtaining a merit review of her case.

OWCP accepted that appellant sustained an injury in the performance of duty on March 6, 2009 when she pulled a bag off the conveyor belt. It accepted her claim for right wrist sprain and right carpal tunnel syndrome. In its January 19, 2011 decision, OWCP denied compensation for total disability from December 25, 2009 to April 20, 2010 and denied expansion of the accepted medical conditions.

To support 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 an erroneous application or interpretation by OWCP.

Appellant did not advance a new and relevant legal argument. She stated that there were several inaccuracies in OWCP's description or presentation of the evidence, but she did not elaborate or explain how any such inaccuracies prejudiced her claim. Appellant stated that she did not understand what further medical evidence was needed; but this is not considered a legal argument unless she meant to suggest that the medical evidence already submitted was sufficient to discharge her burden of proof. OWCP was correct to find that her opinion on the sufficiency of the evidence was immaterial.

Appellant did not submit relevant and pertinent new evidence not previously considered by OWCP. Dr. Rivera's February 14, 2011 report followed the hearing representative's January 29, 2011 decision, but the contents of the report were repetitious. The hearing representative reviewed Dr. Rivera's earlier reports. He addressed appellant's psychiatric treatment in 2008, how her symptoms had worsened after the injury, her reaction to administrative issues, his opinion that constant pain affected her mood symptoms, her panic attacks in response to perceived tension, and his opinion that this resulted in gastrointestinal problems and fibromyalgia. Dr. Rivera's newest report repeated the physician's opinion that OWCP had previously considered.

OWCP denied appellant's disability claim for the lack of medical rationale to establish that her total disability from December 25, 2009 to April 20, 2010 was causally related to the March 6, 2009 wrist injury, accepted for a right wrist sprain and carpal tunnel syndrome.

Appellant's May 5, 2011 request for reconsideration did not meet any of the requirements of 20 C.F.R. § 10.606(b)(2). It did not establish that OWCP erroneously applied or interpreted a specific point of law, it did not advance a relevant legal argument not previously considered by OWCP, and it did not contain relevant and pertinent new evidence not previously considered by OWCP. The Board therefore finds that OWCP properly denied a merit review of appellant's case pursuant to 20 C.F.R. § 10.608.

CONCLUSION

The Board finds that OWCP properly denied appellant's May 5, 2011 request for reconsideration.

ORDER

IT IS HEREBY ORDERED THAT the May 19, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 7, 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