

FACTUAL HISTORY

On December 14, 2000 appellant, a 49-year-old mail handler, filed an occupational disease claim alleging that he sustained bilateral cubital tunnel syndrome as a result of repetitive activity in his light-duty federal job. In the prior appeal,² the Board found that he did not meet his burden of proof. The medical evidence noted a possible cubital tunnel syndrome diagnosis but did not support causal relationship with employment. The medical evidence showed a diagnosis of lateral and medial epicondylitis but provided no rationalized opinion on causal relationship. The medical evidence did not provide a complete history of appellant's employment activities. The Board affirmed the denial of his injury claim.

OWCP reviewed the merits of appellant's case on December 22, 2010 and denied modification of its prior denial. It found that appellant's physician did not show knowledge of his work duties. Further, appellant's physician's did not provide a firm diagnosis of cubital tunnel syndrome, nor did they explain the relationship between any such condition and the implicated work factors.

On August 11, 2011 appellant requested reconsideration. He argued that his bilateral cubital tunnel syndrome was caused by performing the duties of a mail handler on the truck terminal from May until June 2, 1997. Appellant submitted a May 20, 1997 routing slip releasing him from temporary limited duty effective May 8, 1997 to his regular job assignment. He submitted the position description describing the duties and responsibilities of a mail handler. Appellant also submitted a September 16, 1997 functional capacity evaluation cover sheet showing a diagnosis of bilateral carpal tunnel syndrome and providing a description of mail handler duties.

In a decision dated October 5, 2011, OWCP denied appellant's reconsideration request without reviewing the merits of his case. It found that his letter, the functional capacity evaluation coversheet and the copy of his position description failed to provide evidence of a diagnosed medical condition arising out of his job duties.

On appeal, appellant argues the merits of his case, including how he was released to his regular job assignment when he was, in fact, released to work with restrictions that would gradually ease. He states that his cubital tunnel syndrome was a result of performing the duties of a mail handler after being released from limited duty and placed back on his regular job. Appellant addresses medical evidence discussed in the Board's prior decision.

LEGAL PRECEDENT

OWCP may review an award for or against payment of compensation at any time on its own motion or upon application.³ An employee (or representative) seeking reconsideration should send the request for reconsideration to the address as instructed by OWCP in the final

² Docket No. 08-1832 (issued January 21, 2009). The facts of this case, as set out in the Board's prior decision, are hereby incorporated by reference.

³ 5 U.S.C. § 8128(a).

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.⁴

A request for reconsideration must be sent within one year of the date of OWCP's decision for which review is sought.⁵ 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.⁶

ANALYSIS

Appellant timely sent his August 11, 2011 reconsideration request within one year of OWCP's December 22, 2010 merit decision denying his injury claim. The issue presented on appeal, therefore, is whether his request met any of the requirements of 20 C.F.R. § 10.606(b)(2), thereby requiring OWCP to reopen his case for a merit review.

Appellant did not show that OWCP erroneously applied or interpreted a specific point of law. He did not identify a specific point of law or show how OWCP erroneously applied or interpreted it. Appellant did not advance a relevant legal argument not previously considered by OWCP. He simply repeated his claim that his bilateral cubital tunnel was caused by performing the duties of a mail handler on the truck terminal from May until June 2, 1997.

OWCP denied that claim because appellant's physician did not show knowledge of his work duties, did not provide a firm diagnosis of cubital tunnel syndrome for the elbows and did not explain the relationship between any such condition and the implicated work factors. Rather than submit a medical report from his physician addressing each of these deficiencies, appellant submitted a routing slip releasing him from temporary limited duty to his regular job assignment, a position description for mail handler and a functional capacity evaluation cover sheet showing a diagnosis of bilateral carpal tunnel syndrome and providing a description of mail handler duties. A claimant may be entitled to a merit review by submitting pertinent new and relevant evidence, but the evidence appellant submitted was not pertinent or relevant. The evidence did not come from a qualified physician and did not address the deficiencies OWCP found in its most recent merit decision. It is appellant's physician who must demonstrate an understanding of the specific duties of his work duties; it is his physician who must provide a firm diagnosis of cubital tunnel syndrome; and it is his physician who must soundly explain the relationship between any diagnosed condition and the specific implicated work factors.

⁴ 20 C.F.R. § 10.606.

⁵ *Id.* at § 10.607(a).

⁶ *Id.* at § 10.608.

Accordingly, the Board finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(2). Appellant did not show that OWCP erroneously applied or interpreted a specific point of law, did not advance a relevant legal argument not previously considered by OWCP and did not submit relevant and pertinent new evidence not previously considered by OWCP. Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review. The Board will affirm OWCP's October 5, 2011 decision denying appellant's request.

Appellant argues the merits of his case on appeal, but the question presented to the Board is quite narrow: whether his August 11, 2011 reconsideration request met one of the three standards for obtaining a merit review of his case. His argument that he was released to his regular job assignment when he was, in fact, released to work with restrictions and his argument that his cubital tunnel syndrome was a result of performing the duties of a mail handler after being released from limited duty and placed back on his regular job, do not address the issue on appeal. To the extent that appellant disagrees with the Board's prior finding that the medical opinion evidence was insufficient to establish a diagnosed condition causally related to factors of his federal employment, decisions and orders of the Board are final as to the subject matter appealed. The Board's January 21, 2009 decision became final upon the expiration of 30 days from the date of issuance.⁷

CONCLUSION

The Board finds that OWCP properly denied appellant's August 11, 2011 reconsideration request.

⁷ *Id.* at § 501.6(d).

ORDER

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

Issued: May 21, 2012
Washington, DC

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

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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