



## **FACTUAL HISTORY**

On June 2, 2008 appellant, a 63-year-old revenue agent, filed an occupational disease claim alleging bilateral shoulder pain and tenderness radiating into the elbows due to his work duties that included lifting and computer usage. He did not stop work.<sup>2</sup>

On June 11, 2008 OWCP advised appellant of the factual and medical evidence needed to establish his claim.

On October 24, 2007 appellant was treated by Dr. David C. Collipp, a Board-certified physiatrist, for right elbow pain. Dr. Collipp diagnosed possible radial tunnel syndrome. In an attending physician's report dated June 17, 2008, he noted tenderness of the bilateral epicondylitis and diagnosed lateral epicondylitis. Dr. Collipp noted with a checkmark "yes" that appellant's condition was caused by his work duties.

In a letter dated July 21, 2008, OWCP requested that Dr. Collipp provide additional information regarding appellants diagnosed lateral epicondylitis and address whether the condition was work related. In an undated statement, Dr. Collipp diagnosed lateral epicondylitis by magnetic resonance imaging (MRI) scan. He noted that appellant's condition was new; however, he was unclear as to appellant's work duties and was unable to address whether the work duties caused the condition. Appellant submitted an MRI scan of the right elbow dated August 4, 2008 which revealed epicondylitis.

In an August 25, 2008 decision, OWCP denied appellant's claim finding that the medical evidence did not establish that the right elbow condition was causally related to the established work activities. Appellant requested a review of the written record.

In a decision dated February 3, 2009, a hearing representative vacated the August 25, 2008 decision and remanded the case for further medical development. The hearing representative noted that OWCP failed to provide Dr. Collipp with a statement of accepted facts or a description of appellant's job duties.

OWCP requested that Dr. Collipp provide additional information regarding appellants diagnosed lateral epicondylitis and address whether the condition was work related. In an undated response, Dr. Collipp noted that he could not assess whether there was a change in appellant's condition but noted that appellant reported impaired arm use.

On March 25, 2009 OWCP denied appellant's claim for compensation. No appeal rights were attached.

On March 30, 2010 appellant requested reconsideration. In a decision dated April 7, 2010, OWCP vacated the March 25, 2009 decision and noted that the decision purported to be a final decision but provided appellant 30 days to respond and failed to attach appeal rights.

---

<sup>2</sup> Appellant filed a claim for an elbow injury which was accepted for bilateral arm tendinitis, right arm cubital tunnel syndrome, right bilateral elbow epicondylitis and sprain of the right finger, file number xxxxxx550. This claim is not before the Board on this appeal.

On April 8, 2010 OWCP requested additional information from appellant advising him that the information submitted was insufficient to establish his claim. On April 24, 2010 appellant requested reconsideration.

In a decision dated May 12, 2010, OWCP denied appellant's claim for compensation on the grounds that the medical evidence failed to establish that his right elbow condition was related to the accepted work activities.

On May 31, 2010 appellant requested a review of the written record. He submitted reports from Dr. Collipp dated September 23, 2008 and March 2, 2009. Dr. Collipp reiterated that he did not have a clear work description for appellant other than he performed computer duties. He opined that there was no other explanation for appellant's ongoing lateral epicondylitis.

In a decision dated October 22, 2010, an OWCP hearing representative affirmed the May 12, 2010 decision.

On January 11, 2011 appellant requested reconsideration. He submitted a December 22, 2010 report from Dr. Robert Maiello, a Board-certified physiatrist, who stated that appellant's work required extensive use of the computer and that the cause of the lateral epicondylitis to his work duties could be assumed.

On March 28, 2011 OWCP denied modification of the October 22, 2010 decision.

In an appeal request form dated February 16, 2012, appellant requested reconsideration. In a February 16, 2012 statement, he asserted that Dr. Maiello unequivocally stated that his condition was work related. Appellant stated that as a revenue agent he used his computer at least four hours per day and the employing establishment failed to accommodate his limitations or provide an ergonomic work space. He asserted that Dr. Collipp stated that he could find no other reason for his worsening condition than his work duties. Appellant noted that he was forced to take early retirement because he could not perform his job duties.

In a March 21, 2012 decision, OWCP denied appellant's request for reconsideration on the grounds that the evidence submitted was insufficient to warrant further merit review.

### **LEGAL PRECEDENT**

Under section 8128(a) of FECA,<sup>3</sup> OWCP has the discretion to reopen a case for review on the merits. It must exercise this discretion in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations, which provide that a claimant may obtain review of the merits of his or her written application for reconsideration, including all supporting documents, sets forth arguments and contain evidence that:

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

---

<sup>3</sup> 5 U.S.C. § 8128(a).

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

“(iii) Constitutes relevant and pertinent new evidence not previously considered by OWCP.”<sup>4</sup>

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.<sup>5</sup>

### ANALYSIS

OWCP’s most recent merit decision of March 28, 2011 denied appellant’s claim for compensation on the grounds that he failed to provide sufficient medical evidence to establish that the diagnosed condition was causally related to his work duties. On March 21, 2012 it denied his reconsideration request, without a merit review and he appealed this decision to the Board.

The Board does not have jurisdiction over the March 21, 2011 OWCP merit decision. The issue presented on appeal is whether appellant met any of the requirements of 20 C.F.R. § 10.606(b)(2), requiring OWCP to reopen the case for review of the merits of the claim. In his request for reconsideration, he did not establish that OWCP erroneously applied or interpreted a specific point of law. Appellant did not identify a specific point of law or show that it was erroneously applied or interpreted. He did not advance a new and relevant legal argument.

Appellant asserted in his February 16, 2012 reconsideration request that Dr. Maiello unequivocally stated that his condition was work related. He added that as a revenue agent he used his computer at least four hours per day and the employing establishment failed to accommodate his limitations or provide an ergonomic work space. Appellant asserted that Dr. Collipp could find no other reason for his worsening condition than his work duties and he was forced to take early retirement because he could not perform his job duties. These assertions about evidence previously considered by OWCP do not show a legal error by OWCP or constitute a new and relevant legal argument. The underlying issue in this case is whether appellant’s right elbow condition is causally related to his work duties. That is a medical issue which must be addressed by relevant medical evidence.<sup>6</sup> A claimant may be also entitled to a merit review by submitting new and relevant evidence, but appellant did not submit any new or relevant medical evidence with his request for reconsideration. Rather, he argued that the evidence previously considered merited greater weight.

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, advance a relevant legal argument not previously considered by OWCP, or

---

<sup>4</sup> 20 C.F.R. § 10.606(b)(2).

<sup>5</sup> *Id.* at § 10.608(b).

<sup>6</sup> *See Bobbie F. Cowart*, 55 ECAB 746 (2004).

constitute relevant and pertinent evidence not previously considered. Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

On appeal, appellant asserted that he submitted sufficient medical evidence to support that his diagnosed lateral epicondylitis was work related and referenced reports by Drs. Collipp and Maiello. After he retired, his condition improved and he was granted a two percent permanent impairment disability rating. As explained, the Board does not have jurisdiction to review the merits of the claim. Appellant did not submit any evidence or argument in support of his reconsideration request that warrants reopening of his claim for a merit review under 20 C.F.R. § 10.606(b)(2).

**CONCLUSION**

The Board finds that OWCP properly denied appellant's request for reconsideration.

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 21, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 1, 2012  
Washington, DC

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

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

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