

FACTUAL HISTORY

On March 24, 2006 appellant, then a 39-year-old clerk, filed an occupational disease claim alleging that on March 17, 2006 she first realized that her carpal tunnel condition was employment related. OWCP accepted the claim for right carpal tunnel syndrome and paid appropriate compensation. By letter dated March 20, 2007, it placed appellant on the periodic rolls for temporary total disability.³ Right carpal tunnel syndrome surgery was authorized and performed on July 16, 2007.

On September 5, 2007 Dr. Mark C. Yates, appellant's treating Board-certified orthopedic surgeon, concluded that appellant was capable of performing her date-of-injury position.

In a May 15, 2008 report, Dr. Yates provided physical findings and reviewed a May 9, 2008 functional capacity evaluation. He found that appellant was capable of working based on the finding of no restrictions.

On January 7, 2009 Dr. Yates reiterated that appellant had been released to return to work by him as noted in his May 15, 2008 report.

On February 24, 2009 OWCP issued a notice proposing to terminate appellant's wage-loss compensation.

By decision dated April 16, 2009, OWCP finalized the termination of appellant's wage-loss compensation effective that day.

On May 1, 2009 appellant requested a written review of the record by an OWCP hearing representative, which she later changed to a request for a telephonic hearing. A telephonic hearing was held on August 10, 2009.

Subsequent to the hearing, appellant submitted medical evidence including reports from Dr. Allen S. Glushakow, an examining Board-certified internist and orthopedic surgeon, and Dr. Howard M. Pecker, an examining Board-certified orthopedic surgeon. OWCP also received evidence from the employing establishment.

On August 13 and 18, 2009 Dr. Pecker indicated that appellant was capable of working an eight-hour day. He found her disabled from work due to her inability to use or work a computer

In an August 18, 2009 report, Dr. Glushakow provided physical findings and history of the employment injury. He diagnosed right median neuritis and concluded that appellant was unable to work or use a computer.

In a September 18, 2009 form report, Dr. Glushakow diagnosed right median neuritis and checked that appellant was capable of working full time.

³ Appellant stopped work on January 31, 2007. The employing establishment terminated her employment for cause on February 9, 2007.

In a September 22, 2009 attending physician's report (Form CA-20), Dr. Glushakow diagnosed right median nerve lesion. He indicated that appellant was totally disabled for the period August 17 to September 18, 2009 and was able to resume work duties on approximately September 20, 2009.

By decision dated November 16, 2009, the hearing representative affirmed the April 16, 2009 decision.

On November 17, 2009 appellant requested reconsideration. She submitted an October 6, 2009 form report from Dr. Glushakow noting an onset date of March 17, 2006 and that she was capable of working 4 hours per day or 20 hours per week.

In a November 20, 2009 progress note, Dr. Glushakow diagnosed a recurrence of right median neuritis.

By decision dated January 19, 2010, OWCP denied modification.

OWCP subsequently received a January 8, 2010 progress note from Dr. Glushakow diagnosing bilateral carpal tunnel syndrome.

In a February 9, 2010 Form CA-20, Dr. Glushakow diagnosed right median neuritis and history of bilateral carpal tunnel syndrome. He checked "yes" to the question of whether the diagnosis was employment related. Dr. Glushakow indicated that appellant was totally disabled from September 20, 2009 to the present.

In correspondence dated February 15, 2010, appellant's counsel requested reconsideration and submitted a January 28, 2010 report from Dr. Glushakow, in support of appellant's claim. Dr. Glushakow, in his January 28, 2010 report, provided physical findings and history of the employment injury. He diagnosed bilateral carpal tunnel syndrome, which he attributed to appellant's employment duties and accepted employment injury and that she remained totally disabled.

By decision dated May 4, 2010, OWCP denied modification.

OWCP subsequently received progress notes for the period November 20, 2009 to May 24, 2010 from Dr. Glushakow diagnosing bilateral carpal tunnel syndrome.

On September 16, 2010 OWCP received appellant's undated reconsideration request. It also received an appeal request form dated August 17, 2010 from her requesting reconsideration.

In a letter dated December 7, 2010, appellant again requested reconsideration and provided argument.

By decision dated December 15, 2010, OWCP denied modification.

On June 10, 2011 appellant requested reconsideration and resubmitted medical and factual evidence previously considered including progress notes and reports from Dr. Glushakow.

By decision dated June 20, 2011, OWCP denied reconsideration.

On October 7, 2011 appellant requested reconsideration. In support of her request, she submitted a copy of her lawsuit against OWCP for failing to provide her with vocational rehabilitation services.

By decision dated October 24, 2011, OWCP denied reconsideration.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,⁴ OWCP's regulations provide that 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.⁵ 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.⁶ 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.⁷

ANALYSIS

The issue presented on appeal is whether appellant's June 10 and October 7, 2011 reconsideration requests met any of the conditions of 20 C.F.R. § 10.606(b)(2), requiring OWCP to reopen the case for further review of the merits. The underlying issue is whether she has established continuing disability due to her accepted right carpal tunnel syndrome. Appellant's June 10 and October 7, 2011 requests for reconsideration neither alleged, nor demonstrated that OWCP erroneously applied or interpreted a specific point of law. She argued that OWCP erred in failing to provide her with vocational rehabilitation services. OWCP terminated appellant's wage-loss compensation based on her treating physician's opinion that she had no disability due to her accepted employment injury. The issue of whether or not OWCP should have referred her for vocational rehabilitation services is irrelevant to the underlying issue.

Appellant also failed to submit any relevant and pertinent new evidence with her requests for reconsideration. The medical evidence accompanying her request was previously of record. Submitting evidence that repeats or duplicates information already in the record does not constitute a basis for reopening a claim.⁸ Appellant did submit new evidence in the form of a

⁴ 5 U.S.C. §§ 8101-8193. Section 8128(a) of FECA provides that the Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application.

⁵ 20 C.F.R. § 10.606(b)(2). See *J.M.*, Docket No. 09-218 (issued July 24, 2009); *Susan A. Filkins*, 57 ECAB 630 (2006).

⁶ *Id.* at § 10.607(a). See *S.J.*, Docket No. 08-2048 (issued July 9, 2009); *Robert G. Burns*, 57 ECAB 657 (2006).

⁷ *Id.* at § 10.608(b). See *Y.S.*, Docket No. 08-440 (issued March 16, 2009); *Tina M. Parrelli-Ball*, 57 ECAB 598 (2006).

⁸ *Arlesa Gibbs*, 53 ECAB 204 (2001); *James E. Norris*, 52 ECAB 93 (2000).

copy of a lawsuit she filed against OWCP for failing to provide vocational rehabilitation services. However, this is irrelevant to the underlying issue of whether she has any disability due to her accepted right carpal tunnel syndrome. The Board has held that the submission of evidence which does not address the particular issue involved in a case does not constitute a basis for reopening the claim.⁹ As it does not address whether appellant has any disability due to her accepted employment injury, it is insufficient to support her claim.

The Board finds that appellant did not submit arguments or evidence showing that OWCP erroneously applied or interpreted a specific point of law; advanced a relevant legal argument not previously considered; or constituted relevant and pertinent new evidence not previously considered by OWCP. Appellant did not meet any of the regulatory requirements and OWCP properly declined to reopen her claim for further merit review.¹⁰

CONCLUSION

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

⁹ *D'Wayne Avila*, 57 ECAB 642 (2006).

¹⁰ *A.K.*, Docket No. 09-2032 (issued August 3, 2010); *M.E.*, 58 ECAB 694 (2007); *Susan A. Filkins*, 57 ECAB 630 (2006) (when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), OWCP will deny the application for reconsideration without reopening the case for a review on the merits).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated October 24 and June 20, 2011 are affirmed.

Issued: October 1, 2012
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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