

FACTUAL HISTORY

On August 9, 2010 appellant, then a 60-year-old mail handler on modified duty, filed an occupational disease claim (Form CA-2) claiming that he sustained bilateral carpal tunnel syndrome in the performance of duty on or before May 27, 2010. He attributed the condition to repetitive lifting and carrying trays of mail and pushing postal containers.²

Appellant submitted April 29, 2010 emergency room reports regarding chest pain. May 27, 2010 electromyography (EMG) and nerve conduction velocity (NCV) studies showed mild bilateral carpal tunnel syndrome.

In an August 25, 2010 letter, OWCP advised appellant of the additional evidence needed to establish his claim, including a detailed factual statement describing the employment factors alleged to have caused the claimed condition and a medical report from his attending physician explaining how and why those work factors would cause bilateral carpal tunnel syndrome. It afforded appellant 30 days in which to submit such evidence. Appellant did not respond to OWCP's August 25, 2010 letter prior to November 15, 2010.

By decision dated November 15, 2010, OWCP denied appellant's claim on the grounds that fact of injury was not established. It found that appellant submitted insufficient factual evidence to establish that the identified work factors occurred as alleged. OWCP further found that the medical evidence was insufficient to establish causal relationship.

In a December 29, 2010 letter, counsel requested reconsideration, asserting that new medical reports were sufficient to meet appellant's burden of proof. In a May 5, 2010 report, Dr. William Beatie, an attending Board-certified orthopedic surgeon, related appellant's account of an April 29, 2010 occupational left shoulder injury. He noted that May 27, 2010 electromyography (EMG) studies showed mild bilateral carpal tunnel syndrome. On June 3, 2010 Dr. Beatie opined that appellant's mild bilateral carpal tunnel syndrome was related to the April 29, 2010 left shoulder injury.

In a January 20, 2011 report, Dr. Mark Allen, an attending orthopedic surgeon, diagnosed "[p]ost-traumatic carpal tunnel syndrome" resulting from "repetitive use of the upper extremities and repetitive trauma."

By decision dated April 6, 2011, OWCP denied modification on the grounds that the additional evidence submitted was insufficient to meet appellant's burden of proof. It found that Dr. Beatie's and Dr. Allen's reports did not contain medical rationale explaining how and why repetitive upper extremity motions at work would cause the claimed bilateral carpal tunnel syndrome. OWCP further found that appellant failed to provide the factual information requested in its August 25, 2010 development letter.

² The employing establishment controverted the claim, asserting that OWCP denied appellant's claim for traumatic bilateral carpal syndrome sustained on April 29, 2010 under File No. xxxxxx564. File No. xxxxxx564 is not before the Board on the present appeal.

In an August 16, 2011 letter, counsel requested reconsideration. He enclosed appellant's August 3, 2011 response to OWCP's August 25, 2010 development letter, in which appellant contended that supervisors disregarded his work restrictions, leading to neck, shoulder, wrist and back pain. Appellant asserted that he had no hobbies or other nonoccupational activities involving repetitive upper extremity movements.

By decision dated November 7, 2011, OWCP found that appellant had established that his duties as a modified mail handler required repetitive upper extremity motions. It denied the claim on the grounds that the new evidence submitted was insufficient to establish causal relationship. OWCP found that Dr. Beatie and Dr. Allen did not explain why the accepted work factors would cause bilateral carpal tunnel syndrome.

In a March 5, 2012 letter, counsel requested reconsideration. He asserted that the medical evidence was sufficient to establish that appellant sustained bilateral carpal tunnel syndrome in the performance of duty. Counsel included a February 16, 2012 letter from Dr. Allen, stating in its entirety that appellant's "carpal tunnel syndrome [was] a result of repetitive use of both hands while working as a mail handler for the [employing establishment]."

By decision dated June 1, 2012, OWCP denied reconsideration on the grounds that the evidence submitted in support of counsel's March 5, 2012 request was irrelevant to the critical issue of causal relationship. It found that Dr. Allen's February 16, 2012 report did not contain medical rationale addressing the cause of the diagnosed carpal tunnel syndrome.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,³ section 10.606(b)(2) of Title 20 of the Code of Federal Regulations provides 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.⁴ Section 10.608(b) provides that when an application for review of the merits of a claim 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.⁵

In support of a request for reconsideration, a claimant is not required to submit all evidence which may be necessary to discharge his or her burden of proof.⁶ He or she need only submit relevant, pertinent evidence not previously considered by OWCP.⁷ When reviewing an OWCP decision denying a merit review, the function of the Board is to determine whether

³ 5 U.S.C. § 8128(a).

⁴ 20 C.F.R. § 10.606(b)(2).

⁵ *Id.* at § 10.608(b). *See also D.E.*, 59 ECAB 438 (2008).

⁶ *Helen E. Tschantz*, 39 ECAB 1382 (1988).

⁷ *See* 20 C.F.R. § 10.606(b)(3). *See also Mark H. Dever*, 53 ECAB 710 (2002).

OWCP properly applied the standards set forth at section 10.606(b)(2) to the claimant's application for reconsideration and any evidence submitted in support thereof.⁸

ANALYSIS

OWCP issued a November 7, 2011 decision finding that appellant established repetitive upper extremity use as factual but that the medical evidence did not support that those work factors caused claimed bilateral carpal tunnel syndrome. Counsel requested reconsideration on March 5, 2012, asserting that new medical evidence warranted a merit review.

As noted above, the Board does not have jurisdiction over the November 7, 2011 OWCP 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 March 5, 2012 application for reconsideration, appellant did not show that OWCP erroneously applied or interpreted a specific point of law or advance a new and relevant legal argument. He asserted that a February 16, 2012 letter from Dr. Allen, an attending orthopedic surgeon, was sufficient to establish causal relationship.

Dr. Allen's February 16, 2012 letter consists of a single sentence, stating that appellant's carpal tunnel syndrome resulted from repetitive hand motions while working as a mail handler. This statement is repetitive of his January 20, 2011 opinion that appellant's carpal tunnel syndrome was due to repetitive upper extremity use. OWCP considered and rejected Dr. Allen's January 20, 2011 report in its April 6, 2011 merit decision. The Board has held that evidence which is duplicative or cumulative in nature is insufficient to warrant reopening a claim for merit review.⁹

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

On appeal, appellant asserts that evidence submitted in support of his March 5, 2012 request for reconsideration was sufficient to warrant a merit review. As stated, Dr. Allen's February 16, 2012 report was cumulative of his prior opinion and therefore insufficient to warrant reopening the case on its merits.

CONCLUSION

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

⁸ *Annette Louise*, 54 ECAB 783 (2003).

⁹ *Denis M. Dupor*, 51 ECAB 482 (2000).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 1, 2012 is affirmed.

Issued: April 5, 2013
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

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