

FACTUAL HISTORY

On July 17, 2011 appellant, then a 51-year-old mail processing clerk, filed an occupational disease claim alleging that she sustained right hand tendinitis while in the performance of duty. She became aware of her condition and its relationship to her federal employment on July 16, 2011. Appellant submitted a July 13, 2011 report from Dr. Kevin Kendzierski, a family practitioner, and an illegible July 16, 2011 duty status report.²

OWCP informed appellant in a July 26, 2011 letter that additional evidence was needed to establish her claim. It gave her 30 days to submit a factual statement detailing the work factors that led to her right upper extremity condition and a report from a qualified physician explaining how the injury resulted from her federal employment.

In July 16, 2011 emergency department records, Dr. John A. Russ III, a Board-certified emergency physician, stated that appellant experienced right wrist and thumb pain since early July 2011. He examined her and observed extensor pollicis brevis tenderness to palpation. Dr. Russ diagnosed right extensor pollicis brevis tendinitis and released appellant to sedentary duty effective July 18, 2011.

Dr. Mark E. Reardon, a family practitioner, related in a July 18, 2011 report that appellant primarily operated machinery and carried mail trays at work. When appellant performed these activities on July 16, 2011, her right hand symptoms worsened. On examination, she complained of extreme pain from the metacarpophalangeal joint to the radial styloid process. Dr. Reardon also observed the absence of edema, ecchymosis or deformity. He diagnosed right extensor pollicis brevis tendinitis and recommended physical therapy.³ In an August 25, 2011 report, Dr. Reardon reexamined appellant and noted the lack of objective findings to confirm her lingering pain. He discharged her to regular duty.

By decision dated September 9, 2011, OWCP denied appellant's claim, finding the evidence insufficient to establish that the work factors alleged to have caused an injury.

Appellant specified in an August 25, 2011 statement that she used her right hand to case mail eight hours a day each workday. She subsequently requested a telephonic hearing, which was held on February 6, 2012. Appellant testified that she cased mail, lifted heavy mail trays, pushed and pulled containers and stood for protracted periods at work for over a decade.

In a January 18, 2012 note, Dr. Mary M. Baldwin, a Board-certified family practitioner, remarked that appellant sustained right hand tendinitis and prohibited pushing, pulling and lifting of items weighing over five pounds.

On April 12, 2012 an OWCP hearing representative modified the September 9, 2011 decision to find that appellant cased mail, lifted heavy mail trays, pushed and pulled containers

² Appellant later provided an August 25, 2011 report from Dr. Kendzierski. In both of his reports, Dr. Kendzierski addressed an injury to the left wrist and diagnosed left de Quervain's tenosynovitis. The case record indicates that this condition was accepted under a separate claim. *See* OWCP File No. xxxxxx551.

³ The case record contains physical therapy records for the period August 5 to 29, 2011.

and stood for protracted periods at work, but affirmed denial of her claim because the medical evidence did not sufficiently demonstrate that the accepted work factors caused or contributed to a right hand condition.

Appellant, through counsel, requested reconsideration on December 19, 2012 and submitted copies of Dr. Russ' July 16, 2011 emergency department records, Dr. Reardon's July 18 and August 25, 2011 reports and August 5, 2011 physical therapy records.

By decision dated March 14, 2013, OWCP denied appellant's request on the grounds that it did not receive new and relevant evidence warranting further merit review.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,⁴ OWCP's regulations provide that the evidence or argument submitted by a claimant must either: (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 Where the request for reconsideration fails to meet at least one of these standards, OWCP will deny the application for reconsideration without reopening the case for a review on the merits.⁶

ANALYSIS

OWCP originally denied appellant's occupational disease claim on the grounds that the evidence failed to establish the particular work factors that caused an injury. Following a telephonic hearing, an OWCP hearing representative determined that she cased mail, lifted heavy mail trays, pushed and pulled containers and stood for protracted periods at work. Nonetheless, denial of appellant's claim was affirmed because the medical evidence did not sufficiently demonstrate that this job activity caused or contributed to a right hand condition. Appellant, through her attorney, requested reconsideration on December 19, 2012.

The Board finds that OWCP properly denied appellant's request for reconsideration without further merit review. Appellant's application included copies of reports already contained in the case record and previously considered by OWCP. The submission of evidence that repeats or duplicates evidence already found in the record does not constitute a basis for reopening a case.⁷ Furthermore, appellant neither showed that OWCP erroneously applied or interpreted a specific point of law, nor advanced a relevant legal argument not previously considered by OWCP. Because she failed to meet one of the standards enumerated under section 8128(a) of FECA, she was not entitled to further merit review of her claim.

⁴ 5 U.S.C. § 8128(a).

⁵ *E.K.*, Docket No. 09-1827 (issued April 21, 2010). *See* 20 C.F.R. § 10.606(b)(2).

⁶ *L.D.*, 59 ECAB 648 (2008). *See* 20 C.F.R. § 10.608(b).

⁷ *Edward W. Malaniak*, 51 ECAB 279 (2000).

Counsel argues on appeal that the March 14, 2013 decision was contrary to fact and law. As discussed above, appellant did not provide evidence or argument satisfying any of the three regulatory criteria for reopening a claim. Therefore, OWCP properly denied the request for reconsideration.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the March 14, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 28, 2013
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board