

**United States Department of Labor
Employees' Compensation Appeals Board**

R.A., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Los Angeles, CA, Employer**

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**Docket No. 13-1188
Issued: August 23, 2013**

Appearances:

Alan J. Shapiro, Esq., for the appellant

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge

ALEC J. KOROMILAS, Alternate Judge

JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 17, 2013 appellant, through his attorney, filed a timely appeal of a March 6, 2013 decision of the Office of Workers' Compensation Programs (OWCP) denying his request for reconsideration without further merit review. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over this decision. Because more than 180 days elapsed from March 7, 2012, the date of the most recent merit decision of OWCP, to the filing of this appeal, the Board lacks jurisdiction to review the merits of the case.

ISSUE

The issue is whether OWCP properly denied appellant's request for reconsideration under 5 U.S.C. § 8128(a).

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On November 22, 2010 appellant, then a 51-year-old mail handler, filed an occupational disease claim alleging that he sustained carpal tunnel syndrome while undergoing vocational rehabilitation. He was enrolled in an office management systems program to receive training in various computerized business office applications.² Appellant became aware of his condition on October 15, 2010 when he experienced pain, soreness and other symptoms after typing.

In an October 8, 2010 report, Dr. Ani V. Markarian, a Board-certified internist diagnosed right wrist pain “most likely related to computer training at [appellant’s] work.”

Dr. Steve Y. Huang, a Board-certified physiatrist, advised in a November 9, 2010 report that appellant experienced right wrist symptoms at vocational school on October 15, 2010. On examination, he observed right palmar wrist tenderness to palpation, positive Tinel’s and Phalen’s maneuvers and decreased sensation of the median nerve distribution. A nerve conduction study and electromyogram exhibited evidence of right median mononeuropathy consistent with carpal tunnel syndrome. Dr. Huang diagnosed right carpal tunnel syndrome and answered “yes” to a form question asking whether this condition was work related.

By decision dated January 13, 2011, OWCP denied appellant’s claim, finding the medical evidence insufficient to establish that vocational rehabilitation caused or contributed to right carpal tunnel syndrome.

Counsel requested reconsideration on December 9, 2011 and submitted new evidence. In a March 19, 2007 report, Dr. Karen K. Murata, a Board-certified physiatrist, confirmed median neuropathy of the wrists indicative of bilateral carpal tunnel syndrome.³

OWCP referred appellant to Dr. Joseph P. Conaty, a Board-certified orthopedic surgeon, for a second opinion examination. In an April 18, 2011 report, Dr. Conaty reviewed the history of injury and medical file, pointing out that appellant first experienced right wrist and hand symptoms approximately five years earlier. Physical examination findings were unremarkable. Dr. Conaty opined that the objective evidence demonstrated that appellant’s right carpal tunnel syndrome had already resolved.

On March 7, 2012 OWCP denied modification of its January 13, 2011 decision.

Counsel requested reconsideration on February 28, 2013 and submitted a February 19, 2013 report from Dr. Huang diagnosing right carpal tunnel syndrome and answering “yes” to a form question asking whether this condition was work related. By decision dated March 6, 2013,

² Appellant previously filed a September 22, 1992 traumatic injury claim, which was accepted for lumbar strain and right knee contusion. OWCP File No. xxxxxx782. Appellant was eventually released to modified duty. He stopped work on April 14, 2009 because the employing establishment was unable to accommodate his physical restrictions. Appellant thereafter participated in vocational rehabilitation for the period April 21 to October 22, 2010.

³ Appellant also provided a December 3, 2010 “amendment” consisting of an unsigned medical report excerpt with handwritten remarks.

OWCP denied the request on the grounds that it did not receive new and pertinent 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

The case record supports that appellant participated in vocational rehabilitation for the period April 21 to October 22, 2010, receiving training in various computerized business office applications.⁷ By decisions dated January 13, 2011 and March 7, 2012, OWCP denied his occupational disease claim on the grounds that the medical evidence did not establish that this activity caused or contributed to right carpal tunnel syndrome. Appellant, through his attorney, requested reconsideration on February 28, 2013 and submitted Dr. Huang's February 19, 2013 report. OWCP denied the request on March 6, 2013, finding that he did not present new and pertinent evidence warranting further merit review.

The Board finds that OWCP properly denied appellant's request for reconsideration without further merit review. Appellant's application included Dr. Huang's February 19, 2013 report diagnosing right carpal tunnel syndrome and answering "yes" to a form question asking whether this condition was work related. Although this report was not previously considered by OWCP, it nonetheless restated verbatim the diagnosis and opinion regarding causal relationship that was presented in Dr. Huang's earlier November 9, 2010 report. The submission of evidence that repeats or duplicates evidence already found in the record does not constitute a basis for reopening a case.⁸ 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 he failed to meet one of the standards enumerated under section 8128(a) of FECA, he was not entitled to further merit review of his 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 See *Thomas M. Schuerman*, 51 ECAB 336 (2000); *Elvira B. Lightner (Donald F. Lightner)*, 39 ECAB 118 (1987) (an individual participating in vocational rehabilitation is considered in the performance of duty for purposes of the receipt of compensation benefits if he or she sustains an injury while undergoing vocational rehabilitation or traveling to and from the rehabilitation).

⁸ *Edward W. Malaniak*, 51 ECAB 279 (2000).

Counsel argues on appeal that the March 6, 2013 decision is 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 6, 2013 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: August 23, 2013
Washington, DC

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

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

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