

FACTUAL HISTORY

Appellant, a 62-year-old mail processor, has an accepted claim for bilateral carpal tunnel syndrome and ganglion cysts, which arose on March 23, 1998. Since June 2002, OWCP paid her wage-loss compensation for temporary total disability (TTD) on the periodic rolls. By decision dated June 29, 2012, it terminated appellant's TTD compensation effective July 1, 2012.³ OWCP based its decision on the April 27 and May 18, 2012 reports of Dr. James A. Maultsby, a Board-certified orthopedic surgeon and OWCP-referral physician.⁴ Appellant subsequently requested a review of the written record which the Branch of Hearings and Review denied on August 27, 2012 as untimely.

Utilizing the appeal rights form accompanying the June 29, 2012 decision, on December 20, 2012 appellant requested reconsideration. Since issuing its June 2012 decision, OWCP had received several copies of an undated letter from appellant wherein she accused Dr. Maultsby of being a liar and a racist.

In a February 5, 2013 decision, OWCP denied appellant's December 20, 2012 request for reconsideration and did not revisit the merits of her claim.

LEGAL PRECEDENT

Section 8128(a) of FECA does not entitle a claimant to review of an OWCP decision as a matter of right.⁵ OWCP has discretionary authority in this regard and has imposed certain limitations in exercising its authority.⁶ One such limitation is that the application for reconsideration must be sent within one year of the date of the merit decision for which review is sought.⁷

A timely application for reconsideration, including all supporting documents, must set forth arguments and contain evidence that either: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.⁸ When a timely application for reconsideration does not meet at least one

³ Appellant remained entitled to medical benefits for her accepted bilateral upper extremity conditions.

⁴ Dr. Maultsby believed that appellant was malingering and it was his impression that she was capable of performing the duties of a mail processor without restriction. OWCP provided her a copy of his opinion along with its May 24, 2012 notice of proposed termination.

⁵ This section provides in pertinent part: "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application." 5 U.S.C. § 8128(a).

⁶ 20 C.F.R. § 10.607.

⁷ *Id.* at § 10.607(a).

⁸ *Id.* at § 10.606(b)(2).

of the above-noted requirements, OWCP will deny the request for reconsideration without reopening the case for a review on the merits.⁹

ANALYSIS

Appellant's December 20, 2012 request for reconsideration neither alleged nor demonstrated that OWCP erroneously applied or interpreted a specific point of law. Moreover, she did not advance a relevant legal argument not previously considered by OWCP. Appellant submitted the appeal request form that accompanied OWCP's June 29, 2012 merit decision. She placed a checkmark on the appropriate line indicating reconsideration, but did not otherwise elaborate. Consequently, appellant is not entitled to a review of the merits based on the first and second requirements under section 10.606(b)(2).¹⁰

Appellant also failed to submit "relevant and pertinent new evidence" with her December 20, 2012 request for reconsideration. OWCP previously received correspondence from her criticizing Dr. Maultsby. However, appellant did not submit any medical evidence contradicting his findings with respect to her ability to resume work as a mail processor. Because she did not provide any new medical evidence that might arguably impact the prior decision, she is not entitled to a review of the merits based on the third requirement under section 10.606(b)(2).¹¹

CONCLUSION

The Board finds that OWCP properly denied merit review with respect to appellant's December 20, 2012 request for reconsideration.

⁹ *Id.* at § 10.608(b).

¹⁰ *Id.* at § 10.606(b)(2)(i) and (ii).

¹¹ *Id.* at § 10.606(b)(2)(iii).

ORDER

IT IS HEREBY ORDERED THAT the February 5, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 9, 2013
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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