

On appeal, appellant contends that the evidence of record supports her claim for compensation.

FACTUAL HISTORY

On April 25, 2012 appellant, then a 40-year-old contact representative, filed a traumatic injury claim alleging that on March 23, 2012 she sustained de Quervain tenosynovitis in her left wrist due to repetitive motion overuse of hand motions. The employing establishment noted that she stopped work on March 26, 2012 and did not report the injury. It received notice of injury on June 13, 2012 and that the claim should be reported as an occupational claim as opposed to a traumatic injury claim. No documentation was submitted with the claim form.

In a June 26, 2012 letter, OWCP advised appellant of the deficiencies in her claim. It requested additional evidence pertaining to both the factual and medical aspects of her claim. Appellant was accorded 30 days within which to submit the requested evidence.

In a July 12, 2012 response to OWCP's questionnaire, appellant indicated that she first noticed her pain in her arm while typing on the computer on March 22, 2012. She sought medical care on March 26, 2012. After reviewing the definitions of a traumatic injury and an occupational injury, appellant advised that she was claiming a traumatic injury rather than an occupational disease. She also provided medical notes for the time period March 26 through June 21, 2012.

The employing establishment controverted appellant's claim. In a July 10, 2012 statement, Christine Hellman, a manager, stated that on March 23, 2012 appellant requested to see the nurse because her hand was hurting. Appellant denied injuring it and did not file a claim after returning from the nurse. On April 10, 2012 she informed Ms. Hellman that her problem was work related. Ms. Hellman provided workers' compensation information to appellant.

In a July 12, 2012 statement, Ms. Hellman wrote to Tammy S. Payne, a human resource specialist, that in January 2012 appellant submitted an outside employment or business activity request, which was approved for the "home care" business. There had not been any request to have the outside employment removed due to lack of employment. In September 2009, an investigation revealed that appellant was also self-employed as a photographer. While appellant did not submit request for that business, she acknowledged such employment. Ms. Hellman requested that appellant's two outside employment situations be considered.

By decision dated August 2, 2012, OWCP denied appellant's claim on the grounds that fact of injury was not established. It found that the evidence was not sufficient to establish that the March 23, 2012 incident occurred as alleged. The evidence was inconsistent as to appellant's factual history to the employing establishment and her physicians. OWCP also found that there was no firm diagnosed condition established as causally related to the work incident.

In a December 21, 2012 letter, received by OWCP December 26, 2012, appellant requested reconsideration. She reiterated that her injury occurred on March 23, 2012. Appellant submitted physical therapy reports dated May 10 to August 2, 2012; October 3, 2012 diagnostic testing; reports dated August 13 to December 10, 2012 from Dr. Ghassem Kalani, a Board-

certified physiatrist, and an October 25, 2012 report from Dr. Thomas Gillon, a Board-certified orthopedic surgeon.

By decision dated May 23, 2013, OWCP denied appellant's request for reconsideration finding that the submitted medical evidence was not relevant. As the factual component of her claim had not been accepted.

LEGAL PRECEDENT

Section 8128(a) of FECA does not entitle a claimant to a review of OWCP's decision as a matter of right; it vests OWCP with discretionary authority to determine whether it will review an award for or against compensation. OWCP, through regulations, has imposed limitations on the exercise of its discretionary authority under section 8128(a).²

To require OWCP to reopen a case for merit review under section 8128(a) of FECA, OWCP's regulations provide that the evidence or argument submitted by 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.³ 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.⁴ 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.⁵

When reviewing an OWCP decision denying a merit review, the function of the Board is to determine whether 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.⁶

ANALYSIS

OWCP denied appellant's traumatic injury claim by decision dated August 2, 2012. It found that fact of injury was not established as she had failed to establish the March 23, 2012 incident of repetitive hand motions at work.

In her December 21, 2012 application for reconsideration, appellant did not contend that OWCP erroneously applied or interpreted a specific point of law. She did not identify a specific point of law or show that it was erroneously applied or interpreted. Appellant did not advance a

² Under section 8128 of FECA, 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 U.S.C. § 8128(a). See *Annette Louise*, 54 ECAB 783, 789-90 (2003).

³ 20 C.F.R. § 10.606(b)(2). See *A.L.*, Docket No. 08-1730 (issued March 16, 2009).

⁴ *Id.* at § 10.607(a).

⁵ *Id.* at § 10.608(b).

⁶ *Supra* note 3.

new and relevant legal argument. She reiterated that her injury occurred on March 23, 2012, but she did not submit any factual evidence relevant to establishing the incident occurred at work as alleged. While appellant submitted new medical evidence, this evidence is irrelevant to establish the factual component of her claim that the claimed injury happened in the manner alleged. The Board has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.⁷

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

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the May 23, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 19, 2013
Washington, DC

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

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

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

⁷ *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).