

form. On February 24, 2011 it issued another decision accepting appellant's claim for bilateral carpal tunnel syndrome.

By letter dated May 15, 2011, appellant requested reconsideration of the February 23, 2011 decision arguing that OWCP should have accepted her right thumb arthritis, neck and shoulder conditions along with her bilateral carpal tunnel syndrome. In support of her claim, she submitted new medical evidence documenting her treatment. On January 26, 2012 appellant requested reconsideration again and submitted the February 23, 2011 appeal request form which had accompanied OWCP's decision.

By decision dated March 30, 2012, OWCP denied appellant's request for reconsideration finding that she did not raise a substantive legal question or include any new and relevant evidence. It further noted that she requested an appeal for which there was no decision, stating that an upgrade of a claim to accept additional conditions was not an appealable action and was an administrative matter. Appellant again requested reconsideration and by letter dated July 9, 2012, OWCP informed her that the only form of appeal for the March 30, 2012 decision was to request an appeal before the Board. On July 17, 2012 she filed a notice of appeal to the Board contesting OWCP's denial of her right thumb, neck and shoulder condition.

The Board finds this case is not in posture for decision. Appellant properly filed a timely request for reconsideration for OWCP's February 23, 2011 merit decision. She submitted new and relevant medical evidence not previously considered. The Board finds that OWCP, in its March 30, 2012 decision, did not review the new medical reports and evidence which were received prior to the issuance of the March 30, 2012 decision. As the Board's decisions are final as to the subject matter appealed, it is crucial that all evidence relevant to the subject matter of the claim which was properly submitted to OWCP prior to the time of issuance of its final decision be reviewed and addressed by OWCP.¹ Because OWCP did not consider the new medical evidence submitted by appellant, the Board cannot review such evidence for the first time on appeal.²

Moreover, the Board notes that while OWCP accepted appellant's claim for aggravation of bilateral carpal tunnel syndrome, the February 23, 2011 decision denied her claim for her alleged right thumb, neck and shoulder conditions. In its March 30, 2012 nonmerit denial of appellant's claim, OWCP noted that appellant was requesting an appeal for which there was no decision and thus, not appealable. The Board finds, however, that OWCP's February 23, 2011 decision did contain a final decision which was appealable for reconsideration, namely, the denial of appellant's right thumb, neck and shoulder conditions.³ Appellant was provided with appeal rights and an appeal request form with OWCP's February 23, 2011 decision, which she

¹ See *Yvette N. Davis*, 55 ECAB 475 (2004); see also *William A. Couch*, 41 ECAB 548 (1990).

² 20 C.F.R. § 501.2(c).

³ If all claimed conditions have been developed, and the evidence of record supports acceptance of some but not all of the conditions claimed, the claims examiner should issue an acceptance letter for the compensable conditions and issue a formal decision with appeal rights denying the remaining claimed conditions. Like any other formal denial, this decision must make findings of fact and include appeal rights. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Acceptances*, Chapter 2.0806.4(a) (June 2011).

properly exercised when requesting reconsideration. OWCP failed to follow its own procedures, and there remains an outstanding request for reconsideration that must be considered.⁴ Thus, OWCP improperly denied appellant's reconsideration request in its March 30, 2012 decision.

The Board finds that this case is not in posture for a decision, as there exists an outstanding request for reconsideration. Consequently, the case will be remanded to OWCP for a decision on the merits of appellant's claim.⁵ On remand, OWCP should consider new factual and medical evidence submitted, together with the previously submitted evidence of record, to determine the merits of appellant's claim.

IT IS HEREBY ORDERED THAT the March 30, 2012 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further proceedings consistent with this order of the Board.

Issued: January 30, 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

⁴ FECA Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602 (March 2010).

⁵ It is the obligation of OWCP not to delay the claimant's reconsideration request unnecessarily and thereby, jeopardize her right to appeal the merit decision to the Board. The Board directs OWCP to perform a review of the merits of appellant's claim to preserve appellant's right to appeal the merits of the denial of her claim to the Board. *Id.* at Chapter 2.1602.9.