

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

J.W., Appellant

and

**DEPARTMENT OF THE ARMY,
Fort Irwin, CA, Employer**

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**Docket No. 13-599
Issued: June 10, 2013**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On January 17, 2013 appellant filed a timely appeal of a July 25, 2012 decision of the Office of Workers' Compensation Programs (OWCP), denying her application for reconsideration without merit review of the claim. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the July 25, 2012 nonmerit decision. Since more than 180 days has elapsed between the last merit decision on March 26, 2012 and the filing of this appeal, the Board lacks jurisdiction to review the merits of the claim pursuant to 20 C.F.R. § 501.3(e).

ISSUE

The issue is whether OWCP properly determined that appellant's application for reconsideration was insufficient to warrant a review of the merits of her claim for compensation pursuant to 5 U.S.C. § 8128(a).

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On November 29, 2011 appellant, then a 64-year-old transportation assistant, filed an occupational claim (Form CA-2) alleging that she sustained carpal tunnel syndrome as a result of her federal employment. She indicated on the claim form that she used the computer to work on spreadsheets and monthly reports.

By decision dated January 5, 2012, OWCP denied the claim for compensation. It stated that it accepted the employment factors alleged, but found the medical evidence was insufficient to establish the claim. Appellant requested reconsideration and submitted a report from Dr. Eugene Farnig, an orthopedic surgeon, indicating that she underwent a right carpal tunnel release, with ring/middle finger trigger injections, on December 19, 2011.

In a decision dated March 26, 2012, OWCP reviewed the merits of the claim.² It found that the medical evidence did not establish causal relationship between a diagnosed condition and federal employment.

On May 9, 2012 appellant requested reconsideration. She submitted a factual statement describing her job duties, stating that the majority of her time was spent on computers and she sometimes worked overtime. The record also contains partial statements signed by coworkers on April 30, 2012.³ Appellant submitted the initial page of a December 15, 2011 report indicating that she received treatment from Dr. Farnig, with diagnoses of carpal tunnel syndrome and trigger finger.

By decision dated July 25, 2012, OWCP denied the request for reconsideration without review of the merits of the claim.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,⁴ OWCP's regulations provide that a claimant may obtain review of the merits of the claim by submitting a written application for reconsideration that sets forth arguments and contains evidence that either: "(i) shows that OWCP erroneously applied or interpreted a specific point of law; (ii) advances a relevant legal argument not previously considered by OWCP; or (iii) constitutes relevant and pertinent evidence not previously considered by OWCP."⁵ 20 C.F.R. § 10.608(b) states that any application for review that does not meet at least one of the

² The cover letter of the decision states that the merits of the claim were reviewed, the conclusion states that the evidence was insufficient to warrant modification and the discussion of evidence clearly indicates OWCP reviewed the merits of the claim. The discussion under the heading "basis for decision" incorrectly indicates that appellant did not meet the standards for reopening the case for merit review.

³ These documents appear to be the final page of identical statements describing job duties.

⁴ 5 U.S.C. § 8128(a) (providing that "[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 20 C.F.R. § 10.606(b)(2).

requirements listed in 20 C.F.R. § 10.606(b)(2) will be denied by OWCP without review of the merits of the claim.⁶

ANALYSIS

In the present case, appellant filed a claim alleging that she sustained carpal tunnel syndrome as a result of repetitive hand movements in her federal employment. OWCP denied the claim on the grounds that the medical evidence was insufficient to establish the claim for compensation. To require it to review the merits of the claim on reconsideration, appellant must meet one of the standards noted above.

The application for reconsideration in this case did not show that OWCP erroneously applied or interpreted a specific point of law. Appellant did not discuss a specific point of law or present evidence of error in the application or interpretation of a specific point of law. In addition, she did not advance a relevant legal argument not previously considered by OWCP. Appellant did not raise a relevant legal argument with her application for reconsideration.

With respect to the submission of relevant and pertinent evidence not previously considered by OWCP, the Board finds appellant did not meet this standard. The claim for compensation was denied on the grounds that the medical evidence did not establish causal relationship between a diagnosed condition and the identified employment factors. The medical evidence previously submitted prior to the March 26, 2012 merit decision indicated that appellant underwent a right carpal tunnel release, with ring/middle finger trigger injections, on December 19, 2011. The evidence submitted on reconsideration included the first page of a report from Dr. Farnig dated December 15, 2011, providing diagnoses of carpal tunnel syndrome and trigger finger. This evidence is incomplete and does not address the medical issue presented or provide new and relevant information. It does not constitute new, relevant and pertinent evidence.

OWCP accepted that appellant's federal employment involved repetitive activity with computer entry. The factual evidence submitted with respect to job duties does not constitute new, relevant and pertinent evidence.⁷ While appellant is not required to submit medical evidence that is sufficient to establish the claim, she must submit new and relevant evidence on the medical issue presented to require OWCP to reopen the claim for merit review.

The Board 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 submit relevant and pertinent evidence not previously considered by OWCP. Pursuant to 20 C.F.R. § 10.608(b), OWCP properly declined to reopen the case for merit review.

⁶ 20 C.F.R. § 10.608(b); *see also Norman W. Hanson*, 45 ECAB 430 (1994). In the present case, the "merits" of the claim would be the termination of compensation effective October 13, 2011.

⁷ *See D.K.*, 59 ECAB 141 (2007) (evidence submitted on reconsideration that does not address the underlying medical issue is not relevant evidence); *see also R.P.*, Docket No. 11-500 (issued September 12, 2011) (factual statements not relevant to medical issue on causal relationship).

On appeal, appellant states that she was not initially told about a CA-35H form, and this form required her complete work history and she had only reported her work experience at the current work site. She stated that she had worked for the Federal Government for 34 years in clerical jobs. As noted above, the issue on appeal was whether appellant's application for reconsideration was sufficient to warrant a merit review of the claim. The underlying issue with respect to her claim was a medical issue, and for the reasons stated above her application for reconsideration was not sufficient to require a merit review.

CONCLUSION

The Board finds that OWCP properly determined that appellant's application for reconsideration was insufficient to warrant a review of the merits of her claim for compensation.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 25, 2012 is affirmed.

Issued: June 10, 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