

On appeal, appellant asserts that the employing establishment forced her to work beyond her medical restrictions, resulting in numerous injuries, then engaged in a pattern of fraud and deceit in handling her compensation claim.

FACTUAL HISTORY

On July 28, 2011 appellant, then a 52-year-old housekeeping aide, filed an occupational disease claim (Form CA-2) alleging that she sustained bilateral wrist tendinitis due to cutting paper with scissors for eight hours a day, five days a week from March 22, 2010 to April 22, 2011 after her supervisor discarded a paper shredder.

In a June 27, 2011 report, Dr. Robert C. Dugan, a Board-certified orthopedic surgeon consulting to the employing establishment, diagnosed a Dupuytren's contracture of the left hand and de Quervain's tenosynovitis of the right wrist.²

In an August 9, 2011 report, OWCP advised appellant of the additional evidence needed to establish her claim, including a statement from her physician explaining how and why cutting paper at work would cause the claimed upper extremity conditions. Appellant was afforded 30 days to submit such evidence.

In response, appellant submitted an undated statement asserting that her supervisor assigned her to shred paper with a scissors as retaliation for filing prior compensation claims. In an August 16, 2011 note, she stated that she had an appointment to see a physician on September 22, 2011.

By decision dated October 5, 2011, OWCP denied the claim on the grounds that causal relationship was not established. It accepted as factual that appellant cut paper with a scissors from March 22, 2010 to April 2, 2011 as alleged. OWCP further found that appellant submitted insufficient medical evidence from her physician explaining how and why cutting paper with scissors would cause the diagnosed upper extremity conditions.

In a November 25, 2011 letter, appellant requested reconsideration. She noted a history of occupational injuries which she attributed to lifting 100-pound sacks of laundry into carts, then pushing the loaded carts weighing up to 750 pounds. Appellant submitted additional medical evidence.

In an October 17, 2011 report, Dr. Dugan noted that he had seen appellant at the employing establishment as a consulting physician, and would accept her as a private patient. On examination, he noted prominent thickening about the second dorsal compartment of the right wrist, a profoundly positive Finkelstein's test and no sensory or motor deficits. Dr. Dugan noted the same finding in the left wrist. He diagnosed bilateral de Quervain's tenosynovitis, worse on the right. Dr. Dugan requested authorization to perform a right de Quervain's release.

² Appellant submitted employing establishment health unit notes dated from November 8, 2010 to July 27, 2011 noting right hand and wrist pain. The notes were signed by physician assistants and by one provider whose signature is illegible. April 2, 2011 x-rays showed soft tissue swelling in the radial aspect of the right wrist.

By decision dated February 7, 2012, OWCP denied modification of the prior decision on the grounds that causal relationship was not established. It found that the additional medical evidence submitted was insufficient to establish that cutting paper at work caused the diagnosed de Quervain's tenosynovitis.

In a February 16, 2012 letter, appellant requested reconsideration. She asserted that forthcoming reports from Dr. Dugan would establish causal relationship.

By decision dated April 23, 2012, OWCP denied appellant's request for reconsideration. It found that her February 16, 2012 letter neither raised substantive legal questions nor included new and relevant evidence and was therefore insufficient to warrant a further merit review.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,³ section 10.606(b)(2) of Title 20 of the Code of Federal Regulations provide that 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.⁴ Section 10.608(b) provides that when an application for review of the merits of a claim does not meet at least one of the three requirements enumerated under section 10.606(b)(2), OWCP will deny the application for reconsideration without reopening the case for a review on the merits.⁵

In support of a request for reconsideration, an appellant is not required to submit all evidence which may be necessary to discharge his or her burden of proof.⁶ Appellant need only submit relevant, pertinent evidence not previously considered by OWCP.⁷ 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.⁸

ANALYSIS

The last merit decision issued by OWCP was on February 7, 2012, denying appellant's claim for bilateral upper extremity conditions on the grounds that causal relationship was not established.

³ 5 U.S.C. § 8128(a).

⁴ 20 C.F.R. § 10.606(b)(2).

⁵ *Id.* at § 10.608(b). *See also D.E.*, 59 ECAB 438 (2008).

⁶ *Helen E. Tschantz*, 39 ECAB 1382 (1988).

⁷ *See* 20 C.F.R. § 10.606(b)(3). *See also Mark H. Dever*, 53 ECAB 710 (2002).

⁸ *Annette Louise*, 54 ECAB 783 (2003).

Appellant's February 16, 2012 request for reconsideration did not allege or demonstrate that OWCP erroneously applied or interpreted a specific point of law or advance a new legal argument not previously considered by OWCP. The critical issue at the time of the February 7, 2012 merit decision was the medical issue of causal relationship. OWCP found that Dr. Dugan, an attending Board-certified orthopedic surgeon, did not explain how and why the established work factor of cutting paper with scissors for eight hours a day, five days a week from March 22, 2010 to April 2, 2011 would cause the diagnosed bilateral de Quervain's tenosynovitis. However, appellant's February 16, 2012 letter did not contain probative evidence on the relevant issue.⁹ The Board has held that the submission of evidence which does not address the particular issue involved does not comprise a basis for reopening a case.¹⁰ As FECA's implementing regulations note, an application for reconsideration must set forth arguments or evidence satisfying one of the three requirements for obtaining a merit review.¹¹ Consequently, appellant is not entitled to a review of her case on the merits based on the third requirement under section 10.606(b)(2).¹²

On appeal, appellant asserts that the employing establishment forced her to work beyond her medical restrictions, resulting in numerous injuries, then engaged in a pattern of fraud and deceit in handling her compensation claim. As stated, the Board does not have jurisdiction over the merits of the claim on the present appeal.

CONCLUSION

The Board finds that OWCP properly denied appellant's request for reconsideration.

⁹ *James A. Long*, 40 ECAB 538 (1989); *Susan M. Biles*, 40 ECAB 420 (1988) (where the Board held that the statement of a layperson is of not competent evidence on the issue of causal relationship).

¹⁰ *Joseph A. Brown, Jr.*, 55 ECAB 542 (2004).

¹¹ 20 C.F.R. § 10.608(b).

¹² *Id.* at § 10.606(b)(2)(iii).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 23, 2012 is affirmed.

Issued: March 4, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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