

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

J.P., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Aurora, IL, Employer**

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**Docket No. 13-1543
Issued: January 2, 2014**

Appearances:
William Hackney, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 18, 2013 appellant filed a timely appeal from a May 15, 2013 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Because more than 180 days has elapsed since the most recent merit decision dated December 10, 2012 and the filing of this appeal on June 18, 2013, and pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction to review the merits of the claim.²

ISSUE

The issue is whether OWCP properly denied appellant's request for reconsideration without a review of the merits of the claim.

¹ 5 U.S.C. §§ 8101-8193.

² Regarding appellant's assertions that OWCP should accept an additional condition, the Board notes that it has no jurisdiction over such matter as the May 15, 2013 decision did not adjudicate this. *See* 20 C.F.R. § 501.2(c). This decision of the Board does not preclude appellant from requesting that OWCP issue a decision addressing this matter.

FACTUAL HISTORY

On October 2, 2006 appellant, then a 57-year-old mail handler, filed an occupational disease claim alleging she developed painful and swollen hands from performing repetitive movements and cutting straps, plastic bundles and trays. OWCP accepted the claim for bilateral carpal tunnel syndrome, right lateral epicondylitis and left trigger finger. It authorized a left carpal tunnel release performed on August 17, 2006, left middle trigger finger release performed on May 13, 2008 and later a right middle trigger finger release performed on September 8, 2009. The surgeries were performed by Dr. Brian A. Murphy, a Board-certified orthopedic surgeon, who continued submitting reports regarding appellant's status.

On October 15, 2008 appellant filed a claim for a schedule award. She submitted an October 1, 2008 report from Dr. Syed M. Zaffer, a Board-certified physiatrist, who diagnosed residual symptoms related to the bilateral carpal tunnel syndrome, status post carpal tunnel release and left middle finger stiffness and weakness following a trigger finger release. On October 1, 2008 Dr. Zaffer opined that appellant had reached maximum medical improvement and had 38 percent upper extremity impairment and 23 percent whole person impairment in accordance with the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*³ (A.M.A., *Guides*).

On November 26, 2008 Drs. Zaffer and Murphy's reports and the case record were referred to OWCP's medical adviser, who reviewed Drs. Zaffer and Murphy's findings and opined that appellant had 20 percent permanent impairment of each arm under the A.M.A., *Guides*.

In a decision dated March 18, 2009, OWCP granted appellant a schedule award for 20 percent permanent impairment of each arm. The period of the schedule award was from October 1, 2008 to February 21, 2011.⁴

Appellant continued to submit reports from Dr. Murphy who, on September 8, 2009 performed a right middle trigger finger release and diagnosed right middle trigger finger. She submitted reports from Dr. Zaffer dated December 22, 2010 who opined that appellant sustained a 38 percent right upper extremity or a 23 percent whole person impairment in accordance with the A.M.A., *Guides*.

On February 14, 2011 appellant filed a claim for an additional schedule award.

On July 18, 2011 OWCP requested Dr. Zaffer to provide an impairment rating in accordance with the sixth edition of the A.M.A., *Guides*.⁵

³ A.M.A., *Guides* (5th ed. 2001).

⁴ In a March 23, 2009 decision, OWCP reduced appellant's compensation to reflect her actual earnings as a part-time modified mail handler effective August 27, 2008. On May 15, 2009 it combined her current claim, number file xxxxxx097, with file number xxxxxx646, a consequential injury.

⁵ A.M.A., *Guides* (6th ed. 2008).

In a June 25, 2011 report, Dr. Zaffer advised that appellant was being referred to another physician who specialized in impairment ratings. In an August 3, 2011 report, Dr. Luis Munoz, Board-certified in occupational medicine, opined that she had 23 percent impairment of the left hand, 42 percent impairment of the arm and 25 percent whole person impairment in accordance with the A.M.A., *Guides*.

On November 20, 2011 OWCP's medical adviser reviewed Dr. Munoz's report and opined that appellant had nine percent impairment of the right and left upper extremities in accordance with the A.M.A., *Guides*.

In a decision dated June 29, 2012, OWCP denied appellant's claim for an additional schedule award as appellant had already been granted a schedule award for 20 percent impairment of each arm.

On August 23, 2012 appellant requested reconsideration. She submitted a July 25, 2012 report from Dr. Murphy, who noted findings of mild stiffness with range of motion of the middle fingers, no evidence of triggering and intact sensation with pain. Dr. Murphy diagnosed stiffness of the joint of the hand. In a report dated July 26, 2012, he noted that appellant had been under his care for bilateral carpal tunnel syndrome, right-sided lateral epicondylitis and bilateral middle trigger fingers. He noted performing bilateral carpal tunnel releases and A1 pulley releases on the middle fingers and opined that appellant's condition was work related. Dr. Murphy noted that appellant was at maximum medical improvement with residual symptoms.

On November 9, 2012 the case record was referred to OWCP medical adviser, who in a November 11, 2012 report reviewed Dr. Murphy's findings and opined that appellant had nine percent impairment of the right and left upper extremities in accordance with the A.M.A., *Guides*. OWCP's medical adviser noted that appellant was previously granted 20 percent impairment of the bilateral upper extremities. He noted that Dr. Murphy found no evidence of triggering and advised that the epicondylitis had resolved. The medical adviser noted no impairment with regards to the accepted left trigger finger and lateral epicondylitis. He noted that impairment for bilateral carpal tunnel syndrome was nine percent for each arm.

In a December 10, 2012 decision, OWCP denied modification of the decision dated June 29, 2012. It noted that the evidence submitted was insufficient to warrant an impairment rating greater than the previously granted 20 percent impairment of the bilateral upper extremities previously granted. OWCP noted that left trigger finger was accepted as work related; however, the evidence was insufficient to support acceptance of right trigger finger as work related.

On January 16, 2013 appellant requested reconsideration. She asserted that her current accepted conditions should be expanded to include right trigger finger. Appellant indicated that Dr. Murphy had noted findings in 2006 of stiffness and pain along the flexor tendon sheath of the right middle finger which occurred when appellant was doing repetitive activities. She advised that on February 21, 2007 Dr. Murphy noted her difficulty and tenosynovitis symptoms with the right middle finger and on April 9, 2008 he noted her difficulties with the middle finger consistent with tenosynovitis and/or trigger finger. Appellant contended that he documented her

condition in the record and these injuries were causally related to her repetitive work duties and shared the same origin as the left trigger finger and bilateral carpal tunnel syndrome.

Appellant submitted a December 24, 2012 report from Dr. Murphy, who treated her for numbness at the tips of her fingers with stiffness with cracking of her skin on the fingers. He noted findings of mild stiffness in the middle finger especially on the right side with no further evidence of triggering. Dr. Murphy diagnosed stiffness of the joint of the hand and referred appellant to a dermatologist. In a December 26, 2012 report, he referenced his April 12, 2006 treatment record in which he noted findings of stiffness and pain along the flexor tendon sheath of the right middle finger, when she was using a hook knife and performing repetitive activities. Dr. Murphy stated that on February 21, 2007 he noted that appellant reported difficulty and tenosynovitis-type symptoms with the right middle finger and on April 9, 2008 she noted difficulties with the middle finger that were consistent with tenosynovitis and trigger finger. He opined that these conditions were documented and causally related to her repetitive activities at work and share the same origin as the left trigger finger and bilateral carpal tunnel syndrome.

In a May 15, 2013 decision, OWCP denied appellant's request for reconsideration on the grounds that the evidence submitted was insufficient to warrant a merit review.

LEGAL PRECEDENT

Under section 8128(a) of FECA,⁶ OWCP has the discretion to reopen a case for review on the merits. It must exercise this discretion in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations, which provides that a claimant may obtain review of the merits of his or her written application for reconsideration, including all supporting documents, sets forth arguments and contain evidence that:

- “(1) Shows that OWCP erroneously applied or interpreted a specific point of law;
or
- (2) Advances a relevant legal argument not previously considered by OWCP; or
- (3) Constitutes relevant and pertinent new evidence not previously considered by OWCP.”⁷

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by OWCP without review of the merits of the claim.⁸

⁶ 5 U.S.C. § 8128(a).

⁷ 20 C.F.R. § 10.606(b)(2).

⁸ *Id.* at § 10.608(b).

ANALYSIS

OWCP's most recent merit decision dated December 10, 2012 denied appellant's claim for an additional schedule award on the grounds that the evidence submitted was insufficient to warrant impairment rating greater than the 20 percent impairment of the bilateral upper extremities previously granted. On May 15, 2013 it denied her reconsideration request, without a merit review and she appealed this decision to the Board.

The issue presented is whether appellant met any of the requirements of 20 C.F.R. § 10.606(b)(2), requiring OWCP to reopen the case for review of the merits of the claim. In her reconsideration request, appellant did not show 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 new and relevant legal argument.

Appellant asserted in her January 16, 2013 reconsideration request that her current conditions needed to be expanded to include right trigger finger as work related. She indicated that Dr. Murphy, in his report dated December 26, 2012, documented appellant's right trigger finger diagnosis in reports dated April 12, 2006, February 21, 2007 and April 9, 2008, specifically noting stiffness along the flexor tendon sheath of the right middle finger when appellant was using a hook knife and doing repetitive activities and difficulties with the middle finger consistent with tenosynovitis and/or trigger finger. Appellant contends that Dr. Murphy found these injuries were causally related to her repetitive duties at work and share the same origin as the left trigger finger and bilateral carpal tunnel syndrome. These assertions do not show a legal error by OWCP or a new and relevant legal argument. The underlying issue in this case is whether appellant was entitled to an additional schedule award pursuant to the A.M.A., *Guides*. That is a medical issue which must be addressed by relevant medical evidence.⁹

A claimant may also be entitled to a merit review by submitting new and relevant evidence, but appellant did not submit any new and relevant medical evidence in support of her claim. Appellant submitted a December 24, 2012 report from Dr. Murphy, who treated her for numbness at the tips of her fingers with stiffness with cracking of her skin on the fingers. Dr. Murphy did not address her permanent impairment under the A.M.A., *Guides*. In a report dated December 26, 2012, he referenced his notes asserting that this documented that appellant had right trigger finger which was work related. The Board notes that these reports are similar to Dr. Murphy's prior July 24 and 26, 2012 reports which were previously considered by OWCP in its December 10, 2012 decision and found insufficient. Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.¹⁰ Therefore, this report is insufficient to require OWCP to reopen the claim for a merit review.¹¹ Therefore, this new evidence is not relevant and is insufficient to warrant reopening the case for a merit review.

⁹ See *Bobbie F. Cowart*, 55 ECAB 746 (2004).

¹⁰ See *Daniel Deparini*, 44 ECAB 657 (1993); *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984).

¹¹ See *id.*

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

On appeal, appellant reiterated that she sustained a right trigger finger injury and underwent surgery for this condition and should have been granted a schedule award for impairment based on the reports submitted by her treating physician, Dr. Murphy. As explained, the Board does not have jurisdiction to review the merits of the claim. Appellant did not submit any evidence or argument in support of her reconsideration request that warrants reopening of her claim for a merit review under 20 C.F.R. § 10.606(b)(2).

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the May 15, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 2, 2014
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