

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

V.H., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Cicero, NY, Employer**

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**Docket No. 14-760
Issued: July 11, 2014**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 23, 2014 appellant filed a timely appeal from a January 7, 2014 decision of the Office of Workers' Compensation Programs (OWCP) denying her application for reconsideration without merit review. 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 January 7, 2014 nonmerit decision. Since more than 180 days elapsed from the last merit decision of February 6, 2013 to 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 the claim pursuant to 5 U.S.C. § 8128(a).

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On February 17, 2009 appellant, then a 50-year-old rural carrier, filed an occupational claim (Form CA-2) alleging that she sustained carpal tunnel syndrome as a result of her federal employment. OWCP accepted the claim on March 27, 2009 for bilateral carpal tunnel syndrome. Appellant underwent a left carpal tunnel surgery on October 8, 2009, and a right carpal tunnel surgery on November 7, 2009.

In a report dated April 27, 2009, Dr. John Fatti, a Board-certified orthopedic surgeon, provided results on examination and diagnosed carpal tunnel syndrome and wrist joint pain. He opined that appellant had a 10 percent permanent loss to each hand and wrist as a result of her carpal tunnel syndrome.

OWCP referred appellant to Dr. Michael Wiese, a Board-certified orthopedic surgeon, for a second opinion examination. In a report dated January 6, 2012, Dr. Wiese reviewed her medical history and provided results on examination. He opined that under the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (sixth edition) at Table 15-23, appellant had one percent impairment to each arm. By report dated April 20, 2012, Dr. Harry J. Magliato, an OWCP medical adviser, agreed with Dr. Wiese's impairment rating. He stated that the date of maximum medical improvement was January 23, 2010. By report dated July 24, 2012, Dr. Magliato advised that the date of maximum medical improvement was January 6, 2012.

By decision dated February 6, 2013, OWCP granted appellant schedule awards for a one percent impairment to each arm. The period of the awards was 6.24 weeks from January 6, 2012.

In a letter dated December 9, 2013, appellant requested reconsideration. She contended that Dr. Wiese agreed with Dr. Fatti as to 10 percent impairment, and she did not understand why Dr. Wiese had changed his opinion. Appellant returned to Dr. Fatti's office for a more recent nerve conduction study (NCS) and still had carpal tunnel syndrome.

In a report dated November 25, 2013, Dr. Fatti noted that a November 18, 2013 NCS showed moderate bilateral carpal tunnel syndrome. The report stated that appellant was not interested in pursuing additional surgery, and she inquired whether this "will change the given schedule loss of use." Appellant was told that "the schedule loss of use that was given by Dr. Fatti will stand as it is. This is based on Workers' Comp Guidelines."²

By decision dated January 7, 2014, OWCP denied appellant's application for reconsideration. It found that the evidence was insufficient to warrant further merit review.

² The report was drafted by a nurse practitioner, but is cosigned by Dr. Fatti.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,³ 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."⁴ Title 20 of the Code of Federal Regulations § 10.608(b) states that any application for review that does not meet at least one of the requirements listed in 20 C.F.R. § 10.606(b)(3) will be denied by OWCP without review of the merits of the claim.⁵

ANALYSIS

Appellant submitted an application for reconsideration with respect to the February 6, 2013 schedule award. According to her, the second opinion physician, Dr. Wiese, had told her he agreed with Dr. Fatti as to a 10 percent arm bilateral impairment rating. Appellant did not understand why he changed his opinion, as Dr. Fatti opined that she had 10 percent impairment. With respect to the above requirements for a merit review, appellant has not established that OWCP erroneously applied or interpreted a specific point of law, or advanced a relevant legal argument not previously considered by OWCP. Dr. Wiese's January 6, 2012 report found one percent bilateral arm impairment. OWCP based its decision on the report of Dr. Wiese and an OWCP medical adviser. Appellant's assertion that Dr. Wiese supported greater impairment is not supported by the record.

With respect to the submission of new and relevant evidence, appellant did not meet this requirement. A new medical report dated November 25, 2013 signed by Dr. Fatti provided no new or relevant evidence with respect to the February 6, 2013 schedule award. The report simply states that the prior impairment "will stand as it is." No additional explanation was provided specifically as to how the A.M.A., *Guides* were applied to arrive at the impairment rating.

The Board finds that appellant did not meet the requirements of 20 C.F.R. § 10.606(b)(3) and OWCP properly denied her application for reconsideration without further merit review.

CONCLUSION

The Board finds OWCP properly denied further merit review of the claim.

³ 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").

⁴ 20 C.F.R. § 10.606(b)(3).

⁵ *Id.* at § 10.608(b); *see also Norman W. Hanson*, 45 ECAB 430 (1994).

ORDER

IT IS HEREBY ORDERED THAT the January 7, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 11, 2014
Washington, DC

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

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

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