

FACTUAL HISTORY

On July 22, 1994 appellant, then a 41-year-old mail handler, filed an occupational disease claim alleging a neck and arm condition as a result of factors of her employment. OWCP accepted her claim for bilateral carpal tunnel syndrome, ganglion and cyst of synovium, and right wrist tendon and bursae as a result of factors of her employment. Appellant was intermittently disabled beginning August 15, 1995. On April 24, 1999 she returned to modified duty.

In June 25 and August 5, 2010 reports, Dr. Michael M. Moore, a Board-certified orthopedic surgeon, who specializes in hand surgery, related appellant's complaints of numbness in the fingers of both hands, neck pain and left shoulder pain. He reviewed appellant's history and noted that nerve conduction and electromyography (EMG) study of both hands were normal. A magnetic resonance imaging (MRI) scan of the cervical spine revealed degenerative changes at C4-5. Upon examination, Dr. Moore observed no swelling, inflammation, erythema or edema in either hand. Tinel's and Phalen's tests were negative. Dr. Moore stated that appellant's examination was unremarkable. He explained that, despite appellant's symptoms, her physical examination, nerve conduction and EMG study did not suggest recurrent carpal tunnel syndrome of either hand. Dr. Moore recommended that appellant have her left shoulder evaluated and a triphasic bone scan of both hands to determine whether appellant's symptoms were related to degenerative or inflammatory disease; however, appellant had declined further evaluation. He opined that appellant did not require any further evaluation or treatment of her hand pain symptoms. Dr. Moore concluded that appellant could continue her regular work activities. He included an August 5, 2010 duty status report.

On August 16, 2010 appellant submitted a recurrence of disability claim alleging that on August 16, 2010 she was no longer able to work because the employing establishment withdrew her limited-duty assignment due to the National Reassessment Process (NRP). The employing establishment advised that it was not able to accommodate her medical restrictions. Appellant requested wage-loss compensation beginning August 27, 2010.

By letter dated September 2, 2010, OWCP advised appellant that the evidence submitted was insufficient to establish that she continued to be disabled as a result of her employment injury. It requested additional medical evidence to establish that she was disabled beginning August 16, 2010 due to her accepted conditions.

In a September 28, 2010 statement, appellant noted that when Dr. Moore reported that she could return to her regular work activities, he meant that she could work under her permanent work restrictions that she had since 1994.

In an amended August 5, 2010 report, Dr. Moore reviewed appellant's history and noted that an August 5, 2010 nerve conduction study and EMG were normal. He noted that appellant was given permanent work restrictions by Dr. Marcia Hixson, a Board-certified orthopedic surgeon, who specializes in hand surgery, following her bilateral carpal tunnel syndrome. Dr. Moore did not recommend that the restrictions be changed but stated that appellant should continue to work within the previous restrictions outlined by Dr. Hixson. He reported that appellant no longer needed further surgical or medical treatment.

In a September 23 2010 report, Dr. Rodney F. Williams, a chiropractor, reviewed appellant's history of bilateral carpal tunnel condition and degenerative cervical disc disease and conducted an examination. He noted that her degenerative disc disease could clearly cause impingement of nerves by narrowing the spaces in which the nerve exits the spine and led to some of her symptoms.

In a decision dated October 5, 2010, OWCP denied appellant's recurrence claim of disability, finding insufficient medical evidence to establish that she was disabled from work as a result of her employment injury.

By appeal request form dated October 29, 2010, appellant requested a review of the written record. She resubmitted her recurrence claim and Dr. Moore's reports.

By decision dated February 18, 2011, an OWCP hearing representative affirmed the October 5, 2010 decision denying appellant's recurrence claim.

By letters and appeal request forms, appellant requested reconsideration of the February 18, 2011 decision.³ By decisions dated May 2 and October 31, 2011, OWCP denied her requests for reconsideration without further merit review.

Appellant submitted a December 21, 2010 accommodation decision by the employing establishment, several disciplinary and grievance letters dated May 11, 2009 to August 26, 2010 and various decisions from the Equal Employment Opportunity Commission.

Appellant submitted a January 13, 2010 psychological evaluation by Dr. James R. Moneypenny, a Board-certified psychiatrist, who described her treatment for symptoms including anxiety, fear, insomnia and depressed mood.

In an August 30, 2011 report, Dr. Darren Flamik, Board-certified in emergency medicine, related appellant's complaints of numbness, weakness and tingling in both wrists and hands and reviewed her history. Upon examination, he observed tenderness to palpation of both elbows. Examination of the wrists revealed no deformity, ecchymosis or swelling. Tinel's sign was positive.

In October 14 and December 2, 2011 reports, Dr. Hixson noted appellant's complaints of worsening bilateral carpal tunnel syndrome. She diagnosed hand pain and carpal tunnel syndrome. In the October 14, 2011 report and attached disability slip, Dr. Hixson stated that appellant could return to full duties without restrictions. In the December 2, 2011 report, she recommended appellant work with restrictions.

In a decision dated March 29, 2012, OWCP denied modification of the February 18, 2011 decision finding that the medical evidence failed to establish that appellant was disabled as a result of her accepted conditions.

³ Appellant requested reconsideration by letter dated April 11, 2011, an appeal request form dated October 17, 2011 and a letter dated December 19, 2011.

In an appeal request form dated June 14, 2012, appellant sought reconsideration of the March 29, 2012 decision.

In a June 13, 2012 report, Dr. William L. Rutledge, a Board-certified orthopedic surgeon, treated appellant for bilateral hand pain as a consequence of carpal tunnel syndrome. He reviewed appellant's history and noted that her work at the employing establishment involved repetitive use of her hands and wrists. Dr. Rutledge stated that appellant continued to experience symptoms of pain, discomfort, numbness and tingling of the hands and fingers. He opined that her symptoms were the result of her repetitive hand and wrist motion on her job at the employing establishment. Dr. Rutledge concluded that appellant would require continued medication and possible physical therapy.

By decision dated August 16, 2012, OWCP denied modification of the March 29, 2012 decision.

By letter dated November 6, 2012, appellant requested reconsideration. She contended that OWCP acted erroneously because her recurrence claim was not based on a worsening of her medical condition but on the employing establishment's inability to accommodate her work restrictions pursuant to NRP. Appellant contended that Dr. Moore's August 5, 2010 medical report authorized her to resume her regular work duties, which was limited duty. She argued that Dr. Moore never changed her permanent work restrictions and that he corrected that statement in a second August 5, 2010 report.

In a decision dated November 19, 2012, OWCP denied appellant's reconsideration request finding that she did not provide any new and relevant evidence to support her claim.

By appeal form dated May 9, 2013, appellant requested reconsideration.

In a May 2, 2013 report, Dr. Rutledge noted appellant's accepted conditions and reviewed her history. He related that in 1999 she underwent right carpal tunnel release and excision of a dorsal ganglion cyst and was released to modified duty. Dr. Rutledge stated that in 2000 appellant was assigned a permanent rehabilitation position for her medical accommodation but on August 16, 2010 her accommodation was withdrawn by NRP process. He reported that she was unable to work because her job could no longer provide accommodations for her injury. Dr. Rutledge stated that the work stoppage was due to the withdrawal of appellant's permanent accommodations for which she was unable to work without the accommodations due to her work-related conditions. He opined that she was unable to work since August 16, 2010 until this present time.

On July 12, 2013 OWCP received a June 20, 2013 statement from appellant who continued to receive medical treatment, but had not received compensation for her wage loss due to her recurrence.

By decision dated August 12, 2013, OWCP denied appellant's request for reconsideration finding that no evidence was submitted sufficient to warrant further merit review under 5 U.S.C. § 8128(a). It determined that the evidence submitted was cumulative and repetitive of evidence previously considered.

LEGAL PRECEDENT

Section 8128(a) of FECA vests OWCP with discretionary authority to determine whether to review an award for or against compensation.⁴ OWCP's regulations provide that it may review an award for or against compensation at any time on its own motion or upon application. The employee shall exercise her right through a request to the district Office.⁵

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or an argument that: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.⁶

A request for reconsideration must also be submitted within one year of the date of OWCP's decision for which review is sought.⁷ A timely request for reconsideration may be granted if OWCP determines that the employee has presented evidence or provided an argument that meets at least one of the requirements for reconsideration. If OWCP chooses to grant reconsideration, it reopens and reviews the case on its merits.⁸ If the request is timely but fails to meet at least one of the requirements for reconsideration, OWCP will deny the request for reconsideration without reopening the case for review on the merits.⁹

ANALYSIS

The Board finds that appellant has not shown that OWCP erroneously applied or interpreted a specific point of law; she has not advanced a relevant legal argument not previously considered by OWCP; and she has not submitted relevant and pertinent new evidence not previously considered by OWCP.

On August 16, 2010 appellant filed a recurrence claim alleging that she stopped work because her modified-duty position was withdrawn under NRP. In a decision dated October 5, 2010, OWCP denied her recurrence claim finding that the evidence did not establish that she was unable to work beginning August 16, 2010 as a result of her accepted conditions. The decision noted that appellant's accepted bilateral carpal tunnel syndrome no longer required work restrictions and therefore the medical evidence of record established that she could perform her

⁴ 5 U.S.C. § 8128(a); *see also D.L.*, Docket No. 09-1549 (issued February 23, 2010); *W.C.*, 59 ECAB 372 (2008).

⁵ 20 C.F.R. § 10.605; *see also R.B.*, Docket No. 09-1241 (issued January 4, 2010); *A.L.*, Docket No. 08-1730 (issued March 16, 2009).

⁶ *Id.* at § 10.606(b); *see also L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

⁷ *Id.* at § 10.607(a).

⁸ *Id.* at § 10.608(a); *see also M.S.*, 59 ECAB 231 (2007).

⁹ *Id.* at § 10.608(b); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

regular work duties. Appellant submitted several requests for reconsideration and OWCP continued to deny modification of the denial decision.

On May 9, 2013 appellant submitted another request for reconsideration and a new May 2, 2013 report by Dr. Rutledge. This report, however, did not provide any new and relevant evidence to the underlying medical issue regarding an employment-related recurrence of disability beginning August 16, 2010. Dr. Rutledge merely repeated appellant's contentions that the employing establishment could no longer accommodate her work restrictions. He still failed to address the underlying medical issue of why she was unable to work as a result of her accepted hand conditions. Thus, the Board finds that Dr. Rutledge's report did not provide any new, relevant and pertinent evidence with respect to the medical issue.

Appellant did not meet any requirements of 20 C.F.R. § 10.606(b)(2). She did not submit any evidence along with her request for reconsideration to show that OWCP erroneously applied or interpreted a specific point of law, or advances a relevant legal argument not previously considered by OWCP. Pursuant to 20 C.F.R. § 10.608(b), OWCP properly declined to reopen the case for review of the merits.

The Board finds that appellant failed to submit relevant and pertinent new evidence, a relevant legal argument not previously considered by OWCP or evidence or argument which shows that OWCP erroneously applied or interpreted a specific point of law. Therefore, OWCP properly refused to reopen her case for further consideration of the merits of her claim under 5 U.S.C. § 8128.

CONCLUSION

The Board finds that OWCP properly denied appellant's May 9, 2013 request for reconsideration pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the August 12, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 20, 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