

FACTUAL HISTORY

This case has previously been before the Board. In decisions dated March 15 and December 20, 2006, March 19, 2008 and July 27, 2010, the Board affirmed OWCP decisions finding that appellant failed to establish that he sustained bilateral carpal tunnel syndrome due to factors of his federal employment.² By order dated February 15, 2012, the Board set aside a March 22, 2011 decision that did not properly advise appellant of his appeal rights.³ It remanded the case for an appropriate decision on his request for reconsideration.⁴ By decision dated February 11, 2014, the Board affirmed a July 15, 2013 decision finding that appellant had no more than a one percent permanent impairment of each upper extremity.⁵ It determined that the opinion of Dr. Charles Mannis, a Board-certified orthopedic surgeon and OWCP referral physician, represented the weight of the evidence. The Board considered August 2, 2012 and January 22, 2013 reports from Dr. Neil Allen, an attending Board-certified internist and neurologist, but found that his impairment rating did not conform to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (6th ed. 2009). The facts and circumstances as set forth in the Board's prior decisions and order are hereby incorporated by reference.

On April 17, 2014 appellant, through his attorney, requested reconsideration. He indicated that he had enclosed August 3, 2012 worksheets that were not previously considered. Counsel submitted an undated and unidentified worksheet containing range of motion measurements for the wrists. He also submitted an unsigned summary of wrist range of motion measurements for appellant dated August 3, 2012.

By decision dated May 22, 2014, OWCP denied appellant's request for reconsideration. It found that he failed to submit evidence or raised an argument sufficient to warrant reopening his case for further review of the merits under section 8128.

On appeal, appellant contends that an electrodiagnostic study was insufficient to establish that he had only a one percent impairment of each extremity. He notes that Dr. Allen considered his history in rating a 25 percent permanent impairment.

² Docket No. 06-328 (issued March 15, 2006); Docket No. 06-1999 (issued December 20, 2006); Docket No. 07-2326 (issued March 19, 2008); Docket No. 10-144 (issued July 27, 2010). On May 25, 2005 appellant, then a 42-year-old medical technologist, filed an occupational disease claim alleging that he sustained a repetitive injury to both hands in the course of his federal employment.

³ *Order Remanding Case*, Docket No. 11-1228 (issued February 15, 2012).

⁴ In a decision dated April 10, 2012, OWCP vacated its September 25, 2009 decision and accepted appellant's claim for bilateral carpal tunnel syndrome.

⁵ Docket No. 13-2086 (issued February 11, 2014).

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,⁶ OWCP's 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.⁷ To be entitled to a merit review of an OWCP decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.⁸ When a claimant fails to meet one of the above standards, OWCP will deny the application for reconsideration without reopening the case for review on the merits.⁹

The Board has held that the submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.¹⁰ The Board also has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.¹¹ While the reopening of a case may be predicated solely on a legal premise not previously considered, such reopening is not required where the legal contention does not have a reasonable color of validity.¹²

ANALYSIS

In the last merit decision dated February 11, 2014, the Board affirmed a July 15, 2013 decision finding that appellant had no more than a one percent permanent impairment of each upper extremity. On April 17, 2014 appellant requested reconsideration.

As noted, the Board does not have jurisdiction over OWCP merit decision. The issue presented on appeal is whether appellant met any of the requirements of 20 C.F.R. § 10.606(b)(3), requiring OWCP to reopen his case for review of the merits. In his request for reconsideration received April 17, 2104, appellant did not contend that OWCP erroneously applied or interpreted a specific point of law. He did not identify a specific point of law or establish that it was erroneously applied or interpreted. Appellant did not advance a new and relevant legal argument not previously considered. Counsel indicated that he was submitting August 3, 2012 worksheets regarding the extent of his upper extremity impairment. A claimant

⁶ 5 U.S.C. § 8101 *et seq.* Section 8128(a) of FECA provides 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.”

⁷ 20 C.F.R. § 10.606(b)(3).

⁸ *Id.* at § 10.607(a).

⁹ *Id.* at § 10.608(b).

¹⁰ *F.R.*, 58 ECAB 607 (2007); *Arlesa Gibbs*, 53 ECAB 204 (2001).

¹¹ *P.C.*, 58 ECAB 405 (2007); *Ronald A. Eldridge*, 53 ECAB 218 (2001); *Alan G. Williams*, 52 ECAB 180 (2000).

¹² *Vincent Holmes*, 53 ECAB 468 (2002); *Robert P. Mitchell*, 52 ECAB 116 (2000).

may be entitled to a merit review by submitting pertinent new and relevant evidence, but appellant did not submit any pertinent new and relevant medical evidence supporting reconsideration. OWCP received an undated and unidentified worksheet containing measurements for the wrist. This evidence does not contain examination findings or indicate that it is pertinent to appellant. Consequently, this evidence is irrelevant and insufficient to warrant reopening his case for further merit review.¹³ Appellant also submitted a form with range of motion findings for the wrist dated August 3, 2012. However, the form was not signed by a physician and does not contain a physician's opinion addressing the extent of any impairment.

The Board finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(3). 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 new evidence not previously considered. Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

On appeal, appellant contends an electrodiagnostic study did not establish that he only had a one percent impairment of each extremity given his history. He asserts that Dr. Allen considered his history in finding a 25 percent permanent impairment. As discussed, however, appellant did not submit any new medical evidence to support an increased impairment or raise any argument relevant to the issue of whether he has more than a one percent permanent impairment of each upper extremity. His lay opinion is not relevant to the medical issue in this case, which can only be resolved through the submission of probative medical evidence from a physician.¹⁴

This decision does not preclude appellant from requesting a schedule award based on evidence of new exposure or medical evidence showing progression of an employment-related condition resulting in permanent impairment.¹⁵

CONCLUSION

The Board finds that OWCP properly denied appellant's request to reopen his claim for further merit review under section 8128.

¹³ See *Joseph A. Brown, Jr.*, 55 ECAB 542 (2004) (the Board has held that medical evidence that does not address the particular issue involved does not constitute a basis for reopening a case).

¹⁴ See *L.G.*, Docket No. 09-1517 (issued March 3, 2010); *Gloria J. McPherson*, 51 ECAB 441 (2000).

¹⁵ See *Linda T. Brown*, 51 ECAB 115 (1999).

ORDER

IT IS HEREBY ORDERED THAT the May 22, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 12, 2014
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

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

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