

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

V.D., Appellant	)	
	)	
and	)	<b>Docket No. 14-1424</b>
	)	<b>Issued: October 20, 2014</b>
U.S. POSTAL SERVICE, POST OFFICE, Pulaski, TN, Employer	)	
	)	

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
CHRISTOPHER J. GODFREY, Chief Judge  
PATRICIA HOWARD FITZGERALD, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On June 10, 2014 appellant filed a timely appeal from the April 29, 2014 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over this nonmerit decision. The last OWCP merit decision of record was the May 14, 2013 decision.<sup>2</sup> Because more than 180 days has elapsed between the last merit decision and the filing of this appeal on June 10, 2014, the Board lacks jurisdiction to review the merits of this claim.<sup>3</sup>

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> The record contains a September 10, 2013 decision of OWCP affirming the May 14, 2013 decision. Appellant filed an earlier appeal with the Board on September 9, 2013 and under the principles discussed in *Douglas E. Billings*, 41 ECAB 880 (1990), OWCP's September 10, 2013 decision, issued while the Board had jurisdiction over the matter in dispute in that prior appeal, is null and void. See *Linda Thompson*, 51 ECAB 694 (2000).

<sup>3</sup> See 20 C.F.R. §§ 501.2(c) and 501.3.

## ISSUE

The issue is whether OWCP properly denied appellant's request for further review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

## FACTUAL HISTORY

On September 20, 2011 OWCP accepted that appellant, then a 54-year-old rural mail carrier, sustained bilateral thumb osteoarthritis and bilateral thumb synovitis due to the repetitive motions required by her job over the years. Appellant continued to work for the employing establishment in a limited-duty position.

On October 11, 2011 and March 20, 2012 Dr. Alton L. Hunter, Jr., an attending Board-certified orthopedic surgeon, performed left and right thumb carpometacarpal (CMC) arthroplasty with ligament reconstruction graft transfer respectively. Both procedures were authorized by OWCP.

In an October 31, 2012 report, Dr. Hunter provided an impairment rating for appellant's hands. The impairment rating incorporated findings of his October 11, 2012 physical examination of appellant, including the findings that no pain was reported with grind testing or CMC shucking and that range of motion in both thumbs was normal. Dr. Hunter opined or found that appellant had a 10 percent permanent impairment of her left hand and a 10 percent permanent impairment of her right hand under the standards of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (6<sup>th</sup> ed. 2009). He indicated that appellant had reached maximum medical improvement for both hands.

For the left hand, under Table 15-2 on page 394 of the sixth edition of the A.M.A., *Guides*, appellant had a 26 percent digit impairment using the diagnosis-based rating method for thumb CMC arthroplasty, an impairment which corresponded to a 10 percent impairment rating for the left hand. For the right hand, under Table 15-2, appellant had a 26 percent digit impairment using the diagnosis-based rating method for thumb CMC arthroplasty, an impairment which corresponded to a 10 percent impairment rating for the right hand.

On April 30, 2013 appellant filed a claim for a schedule award due to her accepted work conditions.

On May 7, 2013 an OWCP medical adviser reported that he reviewed the medical evidence, including the October 31, 2012 report of Dr. Hunter. He explained that he agreed with Dr. Hunter's impairment rating methods and indicated that appellant had a 10 percent permanent impairment of her left hand and a 10 percent permanent impairment of her right hand under the sixth edition of the A.M.A., *Guides*.

In a May 14, 2013 decision, OWCP granted appellant a schedule award for a 10 percent permanent impairment of her left hand and a 10 percent permanent impairment of her right hand. The award ran for 48.8 weeks from October 31, 2012 to October 7, 2013 and was based on the opinions of Dr. Hunter and OWCP's medical adviser.

In a February 12, 2014 decision,<sup>4</sup> the Board affirmed OWCP's finding that appellant did not meet her burden of proof to establish that she had more than 10 percent permanent impairment of her left hand and 10 percent permanent impairment of her right hand, for which she received a schedule award. The Board found that Dr. Hunter conducted a proper impairment rating evaluation under the standards of the A.M.A., *Guides* and concluded that appellant had 10 percent permanent impairment of her left hand and 10 percent permanent impairment of her right hand. Moreover, an OWCP medical adviser stated on May 7, 2013 that he agreed with Dr. Hunter's impairment rating methods.

In a February 19, 2014 letter addressed to OWCP and received on February 24, 2014, appellant requested reconsideration of her claim.<sup>5</sup> Appellant asserted in her letter that it was incorrect for Dr. Hunter to indicate that there was no pain reported with grind testing or CMC shucking in that she had pain in both hands at that time and she still had debilitating pain today. She noted that her continuing aches and pains were so severe that she often had to take painkilling medication. Appellant indicated she had legitimate limitations, including the inability to turn a doorknob or open a water bottle and asserted that she should receive 244 weeks of compensation for the loss of use of both hands.

The record also contains an April 15, 2014 letter, received on April 25, 2014, in which she requested reconsideration.<sup>6</sup> Appellant included the same text contained in her February 19, 2014 letter but also noted that she had a permanent restriction of no repetitive lifting over 10 pounds in both hands which left her unemployable. She resubmitted documents that had previously been considered by OWCP, including an October 31, 2012 report of Dr. Hunter and the findings of an October 29, 2012 functional capacity evaluation.

In an April 29, 2014 decision, OWCP denied appellant's request for further review of the merits of her claim pursuant to 5 U.S.C. § 8128(a). It noted that her February 19 and April 15, 2014 letters did not identify any error in fact of law in OWCP's prior schedule award decisions. The issue in the present case is a medical issue that must be supported by proper medical evidence. However, appellant did not provide new medical evidence for consideration.

### **LEGAL PRECEDENT**

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,<sup>7</sup> OWCP's regulations provide that the evidence or argument submitted by 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

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<sup>4</sup> Docket No. 13-2064 (issued February 12, 2014).

<sup>5</sup> Appellant actually stated that she was requesting reconsideration of the Board's February 12, 2014 decision, but OWCP interpreted the letter as a request for reconsideration before OWCP under 5 U.S.C. § 8128. The record also contains a February 20, 2014 letter addressed to the Board which includes the same text.

<sup>6</sup> In this letter, appellant requested reconsideration of her case by OWCP.

<sup>7</sup> Under section 8128 of FECA, "[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." 5 U.S.C. § 8128(a).

pertinent new evidence not previously considered by OWCP.<sup>8</sup> 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.<sup>9</sup> 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.<sup>10</sup> The Board has held that the submission of evidence or argument which repeats or duplicates evidence or argument already in the case record<sup>11</sup> and the submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.<sup>12</sup> While a 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.<sup>13</sup>

### ANALYSIS

As noted above, the Board does not have jurisdiction for a merit review of a prior OWCP decision. The issue presented on appeal is whether appellant has 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 the February 19 and April 15, 2014 letters, submitted as part of in her reconsideration request, appellant asserts that she was entitled to additional schedule award compensation because she had severe hand pain and accompanying physical limitations.<sup>14</sup> However, she did not show that OWCP erroneously applied or interpreted a specific point of law. Appellant did not advance a new and relevant legal argument. The underlying issue in this case is whether the medical evidence shows that appellant has more than a 10 percent permanent impairment of her left hand and a 10 percent permanent impairment of her right hand under the standards of the sixth edition of the A.M.A., *Guides*.<sup>15</sup>

A claimant may be entitled to a merit review by submitting new and relevant evidence, but appellant did not submit any new and relevant medical evidence in this case.<sup>16</sup> Appellant claimed that she was entitled to 244 weeks of schedule award compensation, but she did not

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<sup>8</sup> 20 C.F.R. § 10.606(b)(2).

<sup>9</sup> *Id.* at § 10.607(a).

<sup>10</sup> *Id.* at § 10.608(b).

<sup>11</sup> *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Jerome Ginsberg*, 32 ECAB 31, 33 (1980).

<sup>12</sup> *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

<sup>13</sup> *John F. Critz*, 44 ECAB 788, 794 (1993).

<sup>14</sup> Appellant asserted that it was incorrect to state that Dr. Hunter, an attending Board-certified orthopedic surgeon, had indicated that there was no pain reported with grind testing or CMC shucking. However, a review of the record reveals that Dr. Hunter did, in fact, make such a finding on October 11, 2012.

<sup>15</sup> *See Bobbie F. Cowart*, 55 ECAB 746 (2004).

<sup>16</sup> Appellant resubmitted documents that had previously been considered by OWCP, including an October 31, 2012 report of Dr. Hunter and the findings of an October 29, 2012 functional capacity evaluation. The submission of these documents would not require reopening of appellant's claim for merit review because the Board has held that the submission of evidence which repeats or duplicates evidence already in the case record does not address the particular issue involved does not constitute a basis for reopening a case. *See supra* note 11.

submit medical evidence showing such a loss. Under FECA, 244 weeks of compensation is paid for complete loss of a hand and compensation for partial losses is proportionate.<sup>17</sup> Given that appellant has a 10 percent impairment in each hand (20 percent total for both hands) it was appropriate that she received proportionate compensation for her partial loss in the amount of 48.8 weeks.

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

### **CONCLUSION**

The Board finds that OWCP properly denied appellant's request for further review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

### **ORDER**

**IT IS HEREBY ORDERED THAT** the April 29, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 20, 2014  
Washington, DC

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

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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

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<sup>17</sup> 5 U.S.C. §§ 8107(c)(3), 8107(c)(19).