



## ISSUE

The issue is whether OWCP properly refused to reopen appellant's case for further review of the merits pursuant to 5 U.S.C. § 8128(a).

On appeal counsel argues that the decision is contrary to fact and law.

## FACTUAL HISTORY

On April 16, 2001 appellant, then a 49-year-old group secretary, filed an occupational disease claim alleging that in August 2000 she first became aware that her right wrist, arm and hand condition was due to her employment duties. OWCP accepted the claim for right thumb tendinitis, which was later expanded to include right bicipital tendinitis, right forearm tendinitis, right de Quervain's tendinitis, right lateral epicondylitis, bilateral carpal tunnel syndrome, right shoulder region localized primary osteoarthritis and calcium deposit in right tendon and bursa. It authorized right carpal tunnel surgery, which was performed on July 27, 2004.

In a January 8, 2013 report, Dr. Thomas J. O'Laughlin, a treating Board-certified physiatrist with a subspecialty in pain medicine, provided physical examination findings and diagnosed cervical myelopathy, cervical stenosis and multilevel degenerative disc changes. He provided a medical history and attributed appellant's cervical condition to her repetitive work duties. In concluding, Dr. O'Laughlin determined that appellant was disabled from working as her work "contribute[s] to further neurologic decline and disability."

On May 25, 2013 OWCP received appellant's claims for wage-loss compensation (Form CA-7) for the period December 30, 2012 to March 9, 2013.<sup>3</sup>

By letter dated June 14, 2013, OWCP informed appellant that the evidence of record was insufficient to support her claim for wage-loss compensation for period December 30, 2012 to March 23, 2013. She was advised as to the type of medical and factual evidence required to establish her claim and given 30 days to provide this information. No evidence was submitted.

By decision dated August 15, 2013, OWCP denied appellant's claim for wage-loss compensation for the period December 30, 2012 to March 23, 2013.

Subsequent to the denial of appellant's claim for wage-loss compensation, OWCP received additional medical evidence including progress notes from Dr. O'Laughlin for the period August 6 through January 21, 2014 detailing physical findings.

On February 18, 2014 appellant's counsel requested reconsideration and submitted an October 16, 2013 report by Dr. Randi A. Galli, an examining Board-certified plastic surgeon, in support of her request. Dr. Galli reported that appellant had reached maximum medical improvement and completed treatment. He then stated that the report was reimbursable and gave reasons for this conclusion.

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<sup>3</sup> In attached Time Analysis Forms, the period indicated was December 30, 2012 to March 23, 2013.

By decision dated March 3, 2014, OWCP denied reconsideration.

### **LEGAL PRECEDENT**

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,<sup>4</sup> 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.<sup>5</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>6</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>7</sup>

### **ANALYSIS**

OWCP accepted appellant's claim for right thumb tendinitis, right forearm tendinitis, right de Quervain's tendinitis, right lateral epicondylitis, bilateral carpal tunnel syndrome, right shoulder region localized primary osteoarthritis and calcium deposit in right tendon and bursa. Appellant filed claims for wage-loss compensation for the period December 30, 2012 to March 23, 2013, which OWCP denied by decision dated August 15, 2013. The Board finds that the refusal of OWCP to reopen appellant's case for further consideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a), did not constitute an abuse of discretion.

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 the case for review of the merits of the claim. In her February 18, 2014 application for reconsideration, appellant did not show that OWCP erroneously applied or interpreted a specific point of law. She did not advance a pertinent new and relevant legal argument. A claimant may obtain a merit review of an OWCP decision by submitting pertinent new and relevant evidence. In this case, however, appellant failed to submit any pertinent new and relevant evidence addressing her disability from work for the claimed period December 30, 2012 to March 23, 2013.

In support of her request for reconsideration, appellant submitted an October 16, 2013 report from Dr. Galli. OWCP also received progress notes for the period August 6 through January 21, 2014 from Dr. O'Laughlin. While these reports are new, they are not relevant to establishing her disability from work for the claimed period. In this regard, Dr. Galli's October 16, 2013 report notes that appellant had reached maximum medical improvement and

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<sup>4</sup> 5 U.S.C. §§ 8101-8193. 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.

<sup>5</sup> 20 C.F.R. § 10.606(b)(3). See *J.M.*, Docket No. 09-218 (issued July 24, 2009); *Susan A. Filkins*, 57 ECAB 630 (2006).

<sup>6</sup> *Id.* at § 10.607(a). See *S.J.*, Docket No. 08-2048 (issued July 9, 2009); *Robert G. Burns*, 57 ECAB 657 (2006).

<sup>7</sup> *Id.* at § 10.608(b). See *Y.S.*, Docket No. 08-440 (issued March 16, 2009); *Tina M. Parrelli-Ball*, 57 ECAB 598 (2006).

stated his report was reimbursible. It did not address the issue of employment-related disability. Dr. O’Laughlin’s progress notes contain physical findings, but offer no opinion on disability for the period claimed by appellant. Similarly, his progress notes provided physical findings, but offer no opinion as to appellant’s disability for the period in question. The submission of evidence that does not address the relevant issue involved does not constitute a basis for reopening a case.<sup>8</sup>

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

**CONCLUSION**

The Board finds that OWCP properly refused to reopen appellant’s case for further review of the merits pursuant to 5 U.S.C. § 8128(a).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers’ Compensation Programs dated March 3, 2014 is affirmed.

Issued: September 8, 2014  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees’ Compensation Appeals Board

Patricia Howard Fitzgerald, Judge  
Employees’ Compensation Appeals Board

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<sup>8</sup> *M.E.*, 58 ECAB 694 (2007); *D’Wayne Avila*, 57 ECAB 642 (2006).