



## **FACTUAL HISTORY**

This case has previously been before the Board.<sup>2</sup> On the most recent appeal the Board, in a May 14, 2014 decision, found that appellant had not met his burden of proof to establish that he sustained cubital tunnel syndrome in the performance of duty causally related to factors of his federal employment.<sup>3</sup> The facts of the previous Board decision are incorporated herein by reference.

On June 19, 2014 appellant, through counsel, requested reconsideration. In support of his reconsideration request, counsel submitted portions of a December 3, 2012 report by Dr. John Ellis, a physician Board-certified in family practice, which counsel alleged had not been previously considered. This report consists of a worksheet by the Ellis Clinic dated December 3, 2012 evaluating appellant's impairment for schedule award purposes.

By decision dated September 9, 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 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 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**

As stated above, the only decision before the Board on this appeal is the nonmerit decision of OWCP dated September 9, 2014 denying appellant's reconsideration request.

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<sup>2</sup> On April 9, 2009 appellant, then a 39-year-old mail handler, filed an occupational disease claim attributing his bilateral carpal tunnel syndrome and decreased muscle strength in his hands to repetitive employment tasks he performed while sorting mail. The Board remanded the case for further development to OWCP on November 3, 2010. *See* Docket No. 10-728 (issued November 3, 2010).

<sup>3</sup> Docket No. 14-309 (issued May 14, 2014).

<sup>4</sup> 5 U.S.C. §§ 8101-8193. 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).

<sup>5</sup> 20 C.F.R. § 10.606(b)(3).

<sup>6</sup> *Id.* at § 10.607(a).

<sup>7</sup> *Id.* at § 10.608(b).

In support of his reconsideration request, appellant neither demonstrated that OWCP erroneously applied or interpreted a specific point of law, nor did he advance a relevant legal argument not previously considered by OWCP. He submitted portions of a December 3, 2012 report by Dr. Ellis dealing with a schedule award. Although appellant's counsel stated that this report had not previously been submitted, the Board notes that the full December 3, 2012 narrative report and later submitted portions dealing with a schedule award was actually received by OWCP on March 5, 2013. Accordingly, this report does not constitute pertinent new and relevant evidence. Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.<sup>8</sup> The Board also notes that the pages from the incomplete report that were submitted address appellant's entitlement to a schedule award, not whether appellant sustained cubital tunnel syndrome in the performance of duty causally related to factors of his federal employment, which was the underlying issue in this case. The Board has held that the submission of evidence which does not address the particular issue involved in the case does not constitute a basis for reopening the case.<sup>9</sup>

The Board finds that appellant has not shown that OWCP erroneously applied or interpreted a specific point of law, has not advanced a relevant legal argument not previously considered by OWCP, and has not submitted relevant and pertinent new evidence not previously considered by OWCP. Accordingly, the Board finds that he did not meet any of the necessary requirements and is not entitled to further merit review.<sup>10</sup>

### **CONCLUSION**

The Board finds that OWCP properly refused to reopen appellant's claim for merit review pursuant to 5 U.S.C. § 8128(a).

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<sup>8</sup> *T.T.*, Docket No. 13-1717 (issued February 26, 2014).

<sup>9</sup> *D.H.*, Docket No. 14-735 (issued June 20, 2014).

<sup>10</sup> *See L.H.*, 59 ECAB 253 (2007).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated September 9, 2014 is affirmed.

Issued: February 12, 2015  
Washington, DC

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

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

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