

FACTUAL HISTORY

This case was previously before the Board. OWCP accepted that appellant, then a 41-year-old transportation security officer, developed bilateral carpal tunnel syndrome due to factors of her federal employment. It authorized right carpal tunnel release surgery, which appellant underwent on April 23, 2012 and paid appropriate compensation benefits. In a decision dated February 1, 2013, the Board affirmed OWCP's decisions dated September 18 and June 8, 2012 denying appellant's claims for disability compensation for the periods March 22, June 17 and 29, July 1 and 4, 2012.³ The facts of the case, as set forth in the prior decision, are incorporated by reference.

Appellant filed claims for wage-loss compensation for intermittent periods commencing November 19, 2011. She also filed a claim for a schedule award on December 21, 2012 and submitted a report dated November 28, 2012 from Dr. Harrison Tuttle, a Board-certified orthopedic hand surgeon.

By decision dated March 15, 2013, OWCP issued a schedule award for a two percent permanent impairment of the right upper extremity and a zero percent permanent impairment of the left upper extremity. The award ran for a total of 6.24 weeks for the period December 2, 2012 to January 14, 2013. OWCP based the schedule award on a weekly pay rate of \$738.51, effective November 19, 2011, the date appellant's disability began.

On March 7, 2014 appellant requested reconsideration and argued that she sustained more than a two percent permanent impairment of the right upper extremity and a zero percent permanent impairment of the left upper extremity, for which she received a schedule award. She submitted pay rate information dated January 16 to 29, October 9 to 22, and November 6 to 19, 2011, indicating that she had a weekly pay rate of \$618.49 on November 19, 2011.

By decision dated April 21, 2014, OWCP denied appellant's request for reconsideration of the merits finding that she did not submit pertinent new and relevant evidence and did not show that OWCP erroneously applied or interpreted a point of law not previously considered by OWCP.

LEGAL PRECEDENT

Section 8128(a) of FECA does not entitle a claimant to a review of an OWCP decision as a matter of right; it vests OWCP with discretionary authority to determine whether it will review an award for or against compensation.⁴ OWCP, through regulations, has imposed limitations on the exercise of its discretionary authority under section 8128(a).⁵

³ Docket No. 12-1832 (issued February 1, 2013).

⁴ 5 U.S.C. § 8101 *et seq.* Under section 8128 of FECA, the 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).

⁵ See *Annette Louise*, 54 ECAB 783, 789-90 (2003).

To require OWCP to reopen a case for merit review under section 8128(a) of FECA, 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.⁶ 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.⁷ 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.⁸

The Board has held that the submission of evidence or argument which repeats or duplicates evidence or argument already in the case record⁹ and the submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.¹⁰

ANALYSIS

In support of her March 7, 2014 reconsideration request, appellant submitted pay rate information dated January 16 to 29, October 9 to 22, and November 6 to 19, 2011, indicating that she had a weekly pay rate of \$618.49 on November 19, 2011. The Board finds that submission of these documents did not require reopening her case for merit review as they did not advance a relevant legal argument not previously considered by OWCP or demonstrate that OWCP erroneously applied or interpreted a point of law. In its March 15, 2013 decision, OWCP issued a schedule award based on a weekly pay rate of \$738.51, which is greater than the weekly pay rate of \$618.49 demonstrated in the evidence submitted. Thus, these documents do not constitute relevant and pertinent new evidence and are not sufficient to require OWCP to reopen the claim for consideration of the merits. Additionally, with regard to whether appellant is entitled to a schedule award for a greater percentage of impairment than that awarded the Board notes that this is a question that is medical in nature. As the pay rate information is not medical evidence, this submission does not constitute pertinent new and relevant evidence.

Appellant also resubmitted a November 28, 2012 report from Dr. Tuttle. The Board finds that the submission of this report did not require reopening appellant's case for merit review because he had submitted the same report by Dr. Tuttle, which was previously reviewed by OWCP in its March 15, 2013 schedule award decision. As the report repeats evidence already in

⁶ 20 C.F.R. § 10.606(b)(3). See *A.L.*, Docket No. 08-1730 (issued March 16, 2009).

⁷ *Id.* at § 10.607(a).

⁸ *Id.* at § 10.608(b).

⁹ See *A.L.*, *supra* note 6. See also *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

¹⁰ *Id.* See also *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

the case record, it is duplicative and does not constitute relevant and pertinent new evidence. Thus, appellant has not established a basis for reopening her case.¹¹

Appellant did not submit any evidence to show that OWCP erroneously applied or interpreted a specific point of law or advanced a relevant legal argument not previously considered by OWCP, nor did she submit any relevant and pertinent new evidence not previously considered. The Board finds that she did not meet any of the necessary requirements and is not entitled to further merit review.¹²

On appeal, appellant argues the merits of her claim. The Board noted above that it lacks jurisdiction over OWCP's March 15, 2013 merit decision which denied her request for reconsideration and therefore is precluded from conducting a merit review.

CONCLUSION

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

¹¹ See *D.K.*, 59 ECAB 141 (2007).

¹² See *L.H.*, 59 ECAB 253 (2007).

ORDER

IT IS HEREBY ORDERED THAT the April 21, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 4, 2015
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