

FACTUAL HISTORY

This is the third time the present case has been before the Board. By decision dated November 28, 2012, the Board affirmed a December 15, 2011 decision, finding that appellant did not meet her burden of proof to establish that her claimed de Quervain's tenosynovitis or intersection syndrome was causally related to employment factors.² In a decision dated September 10, 2013, the Board affirmed an OWCP decision dated March 15, 2013. The Board again found that appellant did not meet her burden of proof to establish that she claimed de Quervain's tenosynovitis or intersection syndrome was causally related to work factors.³ The facts and circumstances of the case up to that point are set forth in the Board's prior decisions and are incorporated herein by reference.

There was evidence in the prior appeal relevant to the present appeal before the Board. Appellant was treated for right wrist pain by Dr. A. George Dass, a Board-certified orthopedic surgeon, from November 23 to December 9, 2009. She reported experiencing right wrist pain for the past two years which was aggravated by her job as a mail carrier. Dr. Dass diagnosed right de Quervain's tenosynovitis and recommended cortisone injections and bracing. In a February 22, 2010 report, he treated appellant for worsening chronic right wrist pain, moderate to severe. Dr. Dass diagnosed right de Quervain's tenosynovitis and recommended a right de Quervain's release.

In an August 26, 2010 report, Dr. Dass noted appellant's complaints of right wrist pain related to her job as a rural carrier. Appellant's job involved handling mail and using her wrists in a radial to ulnar deviation manner which was very repetitive in nature. Her pain was moderate to severe and required splinting and anti-inflammatory medications. Dr. Dass diagnosed right de Quervain's tenosynovitis and opined that, given appellant's history as a mail handler and the repetitive nature of her job, the right de Quervain's tenosynovitis was caused or significantly aggravated by her work activities.

On September 10, 2014 appellant, through counsel, requested reconsideration. She referenced a September 8, 2014 report from Dr. Dass. Appellant indicated that based upon the new evidence the prior decision should be vacated.

In his September 8, 2014 report, Dr. Dass noted reviewing appellant's job duties. He diagnosed de Quervain's tenosynovitis or intersection syndrome based on the history and the physical examination. Dr. Dass explained that most patients affected by de Quervain's or hypothyroidism are women and risk factors include diabetes, hypothyroidism, pregnancy, and radial and ulnar deviation of the wrist for de Quervain's and flexion and extension for intersection syndrome. Physical examination revealed tenderness over the first dorsal compartment with swelling, positive Finkelstein's test and tenderness over the dorsal distal forearm over the second compartment. Treatment included bracing, anti-inflammatories, cortisone injections, and possibly surgery. Appellant's conditions were self-limiting and usually resolve without permanent deficit or disability. Dr. Dass noted that her repetitive job duties can

² Docket No. 12-484 (issued November 28, 2012).

³ Docket No. 13-1166 (issued September 10, 2013).

be aggravating factors. Appellant submitted a statement which listed her job duties, which included handing 450 to 750 customers, casing flats, sorting and casing letter mail, casing raw mail, loading bundles into trays, and moving trays. She indicated that all of these movements required grasping, pinching, twisting, pulling, and pushing of her hand and wrist which were done 3,000 to 8,000 times a day, five days a week.

In an October 20, 2014 decision, OWCP denied appellant's request for reconsideration as the evidence submitted was insufficient to warrant a merit review of the Board's September 10, 2013 decision.⁴

LEGAL PRECEDENT

Under section 8128(a) of FECA,⁵ OWCP has the discretion to reopen a case for review on the merits. It must exercise this discretion in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations, which provides that a claimant may obtain review of the merits of his or his written application for reconsideration, including all supporting documents, sets forth arguments, and contain evidence that: "(1) Shows that OWCP erroneously applied or interpreted a specific point of law; (2) Advances a relevant legal argument not previously considered by OWCP; or (3) Constitutes relevant and pertinent new evidence not previously considered by OWCP."⁶

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by OWCP without review of the merits of the claim.⁷

ANALYSIS

OWCP denied appellant's occupational disease claim as the medical evidence did not demonstrate that the claimed medical condition was causally related to the established work-related events. It denied her reconsideration request without a merit review.

The issue presented on appeal is whether appellant 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 her request for reconsideration, appellant did not show that OWCP erroneously applied or interpreted a specific point of law. Rather, her September 10, 2014 request argued that there was sufficient medical evidence to establish that her de Quervain's disease and intersection syndrome were causally related to her work duties. Appellant referenced Dr. Dass' September 10, 2014 report, which she believed provided a detailed and well-reasoned opinion

⁴ OWCP is not authorized to review the Board's decisions. Although the September 10, 2013 decision was the last merit decision, the hearing representative's December 15, 2011 decision is the appropriate subject of possible modification by OWCP. 20 C.F.R. § 501.6(d).

⁵ 5 U.S.C. § 8128(a).

⁶ 20 C.F.R. § 10.606(b)(2).

⁷ *Id.* at § 10.608(b).

that her de Quervain's disease and intersection syndrome was the direct result of the work-related activity. These assertions do not show a legal error by OWCP or a new and relevant legal argument. The underlying issue in this case is whether appellant submitted medical evidence establishing that her de Quervain's disease and intersection syndrome were causally related to her work duties. There remains a medical issue which must be addressed by relevant new medical evidence.⁸

Appellant submitted a September 8, 2014 report from Dr. Dass who reviewed her job duties and diagnosed de Quervain's tenosynovitis or intersection syndrome based on the history and the physical examination. Dr. Dass explained that most patients affected by de Quervain's or hypothyroidism were women with risk factors of diabetes, hypothyroidism, pregnancy, and radial and ulnar deviation of the wrist for de Quervain's and flexion and extension for intersection syndrome. He noted findings and diagnosed de Quervain's tenosynovitis or intersection syndrome. Dr. Dass stated that these two conditions are self-limiting and usually resolve without permanent deficit or disability. Appellant's job duties, which are repetitive in nature, can be aggravating factors. Although this report is new, it is not relevant because it is similar to Dr. Dass' reports dated November 23 and December 9, 2009, February 22 and August 26, 2010, previously considered and found to be insufficient.⁹ Therefore, this new evidence is not relevant and is insufficient to warrant reopening the case for a merit review.

Appellant also submitted a statement which listed her job duties and the movements required by those duties. The underlying issue in this claim is whether the medical evidence establishes that her claimed condition was caused or aggravated by her work duties. The list of job duties is not relevant to this medical issue. Therefore, this new evidence is not relevant to the underlying point at issue and is insufficient to warrant reopening the case for a merit review.

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, did not advance a relevant legal argument, or submit 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 reconsideration.

⁸ See *Bobbie F. Cowart*, 55 ECAB 746 (2004).

⁹ 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. *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

ORDER

IT IS HEREBY ORDERED THAT the October 20, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 20, 2015
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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