

was delivering mail to a curbside box in her postal vehicle. While her hand was in the mailbox, her foot slipped from the brake, and pressed the gas trapping her hand in the curbside box and fracturing her wrist. Appellant's December 9, 2010 x-rays demonstrated distal radial fracture of the right forearm. On December 10, 2010 she underwent an open reduction and internal fixation of the right distal radius fracture. OWCP accepted appellant's claim on January 10, 2011 for closed fracture of the lower end of the radius of the right wrist. Appellant returned to light-duty work on February 11, 2011 working four hours a day.

Dr. Jeff Pokorny, a Board-certified hand surgeon, examined appellant on January 17, 2011 and described her history of injury. He reported her consistent complaints of palm numbness and pain at the base of her thumb. Dr. Pokorny found that appellant's right wrist was still swollen with wrist extension of 20 degrees, wrist flexion of 20 degrees, and 65 degrees of supination. He noted that her finger motion was limited and that she could not reach her palm. Dr. Pokorny found Tinel's sign proximal to appellant's wrist crease with dysesthesias in her palm. He diagnosed right wrist left distal radius fracture with likely neuroma of the palmar cutaneous branch of the median nerve. Dr. Pokorny noted that it was difficult to determine if the palmar cutaneous branch of the median nerve was contused or lacerated.

Appellant filed a claim for compensation (Form CA-7) and requested a schedule award on April 7, 2011. By decision dated August 25, 2011, OWCP granted her a schedule award for eight percent impairment of her right arm.

Appellant filed a recurrence claim (Form CA-2a) on April 2, 2012 alleging that on March 30, 2012 she sustained a recurrence of disability while attempting to restore a cabinet with a hand sander. She stated that her right wrist began to hurt and that she sought treatment at the hospital where she was advised that she had soft tissue irritation from her preexisting injury.

By decision dated May 21, 2012, OWCP denied appellant's claim for a recurrence of disability as she sustained a new nonemployment-related injury to her wrist on March 30, 2012.

Dr. Marc Joseph Richard, a Board-certified hand surgeon, performed a surgical removal of appellant's hardware, neurolysis of the median nerve, carpal tunnel release and nerve wrap of the palmar cutaneous branch of the right median nerve on July 23, 2012.

OWCP accepted appellant's claim for the additional condition of injury to the right ulnar nerve on January 28, 2013.

Dr. Richard performed a right ulnar nerve decompression at the cubital tunnel with anterior subfascial transposition on February 11, 2013.

Appellant filed a Form CA-7 on February 14, 2013 requesting wage-loss compensation from July 2 through 5, 2012.

By decision dated April 24, 2013, OWCP denied appellant's claim for compensation for the period July 2 through 4, 2012. Appellant requested reconsideration of the April 24, 2013 decision on a form dated May 23, 2013 and received by OWCP on May 24, 2013. She alleged that there was no work available for her within her restrictions on July 2, 2012. By decision

dated July 24, 2013, OWCP vacated its April 24, 2013 decision finding that there was no light-duty work available for appellant on July 2, 2012.

Appellant filed a Form CA-7 requesting a schedule award on February 3, 2014.

On April 29, 2014 OWCP referred appellant for a second opinion evaluation with Dr. Francis McCarthy, a Board-certified orthopedic surgeon. In reports dated May 15 and 22, 2014, Dr. McCarthy described appellant's history of injury and diagnosed right wrist fracture, surgical repair, and additional diagnosis of neuritis of the palmar cutaneous branch of the median nerve. He described her additional surgeries on July 23, 2012 and February 11, 2013. Dr. McCarthy provided his findings on physical examination and diagnosed osteoarthritis of the forearm. He found six percent impairment of the right arm and four percent impairment of the whole person. An OWCP medical adviser reviewed this report on June 26, 2014 and found that the right upper extremity rating was correct.

By decision dated August 5, 2014, OWCP denied appellant's claim for an increased schedule award based on Dr. McCarthy's finding of six percent impairment of the right arm. It noted that she was previously paid a schedule award for eight percent impairment and that the medical evidence did not support an increased schedule award. Appellant requested an oral hearing on a form dated September 1, 2014 and postmarked September 5, 2014.

In a decision dated September 22, 2014, OWCP's Branch of Hearings and Review declined to reopen appellant's claim for an oral hearing as her request was not timely filed within 30 days of OWCP's August 5, 2014 decision.

Appellant requested reconsideration in a letter dated February 2, 2015 and received by OWCP on February 10, 2015. She argued that she was entitled to an increased schedule award as Dr. McCarthy found she had six percent impairment of the right arm. Appellant alleged that this was in addition to the previous schedule award for eight percent impairment. She stated that she did not believe that she had two percent improvement in her permanent impairment and alleged difficulty in performing daily activities that required fine manipulation including writing. In support of her reconsideration request, appellant resubmitted her January 28, 2013 acceptance letter from OWCP. She also resubmitted the July 23, 2012 operative report.

By decision dated February 25, 2015, OWCP declined to reopen appellant's claim for consideration of the merits as she failed to submit relevant and pertinent new evidence or argument in support of her timely request for reconsideration.

LEGAL PRECEDENT

FECA provides in section 8128(a) that OWCP may review an award for or against payment of compensation at any time on its own motion or on application by the claimant.² Section 10.606(b)(3) of the Code of Federal Regulations provide that a claimant may obtain review of the merits of the claim by submitting in writing an application for reconsideration which sets forth arguments or evidence and shows that OWCP erroneously applied or interpreted

² 5 U.S.C. §§ 8101-8193, 8128(a).

a specific point of law; or advances a relevant legal argument not previously considered by OWCP; or includes relevant and pertinent new evidence not previously considered by OWCP.³ Section 10.608 of OWCP's regulations provide that when a request for reconsideration is timely, but does not meet at least one of these three requirements, OWCP will deny the application for review without reopening the case for a review on the merits.⁴ Section 10.607(a) of OWCP's regulations provide that to be considered timely an application for reconsideration must be received by OWCP within one year of the date of OWCP's merit decision for which review is sought.⁵

ANALYSIS

The Board finds that OWCP properly declined to reopen appellant's claim for consideration of the merits on February 24, 2015 as her timely request for reconsideration did not comply with section 10.606(b)(3) of OWCP's regulations.⁶

In support of her request for reconsideration, appellant resubmitted a report from Dr. Richard dated July 23, 2012. As this report was already in the record and considered by OWCP in reaching the August 5, 2014 decision, it does not constitute relevant and pertinent new evidence requiring OWCP to reopen appellant's claim for consideration of the merits.⁷

Appellant did not satisfy the first standard under section 10.606 of OWCP's regulations as she did not identify any point of law that OWCP erroneously applied or interpreted. In addition, she did not submit any pertinent new and relevant evidence in support of her request for reconsideration and therefore did not comply with the third standard. With respect to the second standard, advancing a relevant legal argument not previously considered by OWCP, appellant also failed to meet this standard. The application for reconsideration generally alleged that she was entitled to an increased schedule award over the eight percent previously awarded without providing any additional explanation, legal precedent, or any other supporting evidence. Where the legal argument has no basis, OWCP is not required to reopen the case for merit review.⁸

CONCLUSION

The Board further finds that OWCP properly declined to reopen appellant's claim for consideration of the merits in its February 24, 2015 decision.

³ 20 C.F.R. § 10.606(b)(3).

⁴ *Id.* at § 10.608.

⁵ *Id.* at § 10.607(a). Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (October 2011).

⁶ *Id.* at § 10.606(b)(3).

⁷ *Denis M. Dupor*, 51 ECAB 482 (2000).

⁸ *A.J.*, Docket No. 14-1988 (issued June 26, 2015).

ORDER

IT IS HEREBY ORDERED THAT the February 24, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 18, 2015
Washington, DC

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

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

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