

**United States Department of Labor  
Employees' Compensation Appeals Board**

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M.C., Appellant )

and )

U.S. POSTAL SERVICE, VEHICLE )  
MAINTENANCE FACILITY, Baltimore, MD, )  
Employer )

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**Docket No. 15-1706  
Issued: October 22, 2015**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Alternate Judge  
JAMES A. HAYNES, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On August 11, 2015 appellant timely appealed the June 11, 2015 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days elapsed from the last merit decision of April 11, 2014 to the filing of the current appeal, pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of this claim.<sup>2</sup>

**ISSUE**

The issue is whether OWCP properly declined to reopen appellant's case for merit review under 5 U.S.C. § 8128(a).

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> Appellant provided additional evidence on appeal that was not part of the record when OWCP issued its June 11, 2015 decision. The Board is precluded from considering evidence that was not in the case record at the time OWCP rendered its final decision. 20 C.F.R. § 501.2(c)(1) (2014).

## **FACTUAL HISTORY**

On January 8, 2014 appellant, then a 60-year-old general clerk, filed an occupational disease claim (Form CA-2) for a work-related right upper extremity injury that she allegedly sustained on or about December 23, 2013. She indicated that her employment duties included computer data input. Ninety percent of her time was reportedly spent doing data entry and filing. Appellant also indicated that she had already been diagnosed with bilateral carpal tunnel syndrome (CTS), and lately she experienced shocking nerve pain and swelling in her right forearm, elbow, and shoulder. Additionally, she noted three prior claims that OWCP accepted for injuries involving her neck and upper extremities.

OWCP received a December 23, 2013 bilateral upper extremity nerve conduction study (NCS), as well as a similarly dated medical report from Dr. Margit L. Bleecker, a Board-certified neurologist. In her narrative report, Dr. Bleecker diagnosed right neurogenic thoracic outlet syndrome (TOS), which she explained was supported by examination findings (positive Adson's maneuver) and electrodiagnostic studies.<sup>3</sup> She noted that appellant worked for the employing establishment since 1986, and her duties as a general clerk involved frequent filing.<sup>4</sup> Dr. Bleecker further noted that appellant frequently had to reach above shoulder height for filing, and also the file drawers were extremely tight and required a lot of force to pull open. She explained that these were risk factors for right thoracic outlet syndrome, which diagnosis had been demonstrated on appellant's physical examination and her nerve conduction studies. Dr. Bleecker further explained that constant flexion and extension with filing put stress on the ulnar nerve in the cubital tunnel, which diagnosis was also demonstrated both by examination and nerve conduction studies.

OWCP incorporated various documents from one of appellant's other claim files (xxxxxxx451). The evidence included: (1) a March 4, 2013 Form CA-2 for bilateral CTS with a December 5, 2012 date of injury; (2) narrative reports from Dr. Bleecker dated September 10, November 14, and December 19, 2013; (3) a February 28, 2014 statement of accepted facts (SOAF); (4) a March 23, 2014 report from the district medical adviser (DMA) regarding entitlement to a schedule award; and (5) OWCP's April 4, 2014 schedule award for a combined 16 percent bilateral upper extremity impairment *i.e.*, 10 percent LUE impairment and 6 percent RUE impairment.

The above-noted reports from Dr. Bleecker pertained to appellant's December 5, 2012 injury. Dr. Bleecker diagnosed neck sprain, left shoulder sprain, bilateral CTS, and left brachial plexus lesions/TOS. She found an 18.1 bilateral upper extremity impairment.

The February 28, 2014 SOAF indicated that claim number xxxxxx451 had been accepted for sprain of the left shoulder and upper left arm (ICD-9 840.9), sprain of the neck (ICD-9 847.0), bilateral CTS (ICD-9 354.0), and left brachial plexus (ICD-9 353.0).

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<sup>3</sup> Dr. Bleecker reported that the NCS results revealed right ulnar neuropathy at the elbow, which supported the clinical presentation of right cubital tunnel syndrome. She also noted that a right brachial plexus lesion involving the lower roots supported a positive examination for right thoracic outlet syndrome.

<sup>4</sup> Appellant's duties also included extensive keyboarding and use of a mouse. Dr. Bleecker explained that constant flexion and extension of the elbow and reaching above shoulder height had proved to be difficult for appellant.

In his March 23, 2014 report, Dr. Arnold T. Berman, a Board-certified orthopedic surgeon and DMA, questioned Dr. Bleecker's February 11, 2012 bilateral upper extremity impairment rating, which was based in part on a diagnosis of TOS.<sup>5</sup> The DMA indicated that TOS was not an accepted condition, and further noted that there was no clinical evidence to support the diagnosis. Additionally, he indicated that he would not recommend adding TOS to the list of accepted conditions. Whereas Dr. Bleecker reportedly found a combined 18 percent bilateral upper extremity impairment, the DMA found only 16 percent.

The April 4, 2014 schedule award under claim number xxxxxx451 was based on the DMA's March 23, 2014 impairment rating.

In a decision dated April 11, 2014, OWCP denied appellant's claim for right thoracic outlet syndrome. The senior claims examiner found that Dr. Bleecker's December 23, 2013 narrative report was insufficient to establish that appellant's condition was causally related to the accepted work conditions. OWCP further noted that thoracic outlet syndrome had already been rejected under appellant's prior claim (xxxxxx451), and that the current claim was just an attempt to add a medical condition that had already been reviewed and ruled out by OWCP in its April 4, 2014 schedule award decision. The senior claims examiner quoted at length from the DMA's March 23, 2014 narrative report, including his statement that TOS was not an accepted condition, and his recommendation that TOS not be added to the list of accepted conditions under claim number xxxxxx451.

On March 9, 2015 appellant requested reconsideration. In a letter dated March 25 and April 7, 2015, appellant noted, *inter alia*, that her prior claim (xxxxxx451) had been accepted for left thoracic outlet syndrome, contrary to what both the DMA and the senior claims examiner indicated. According to appellant, the May 24, 2013 acceptance letter she received from OWCP included left thoracic outlet syndrome as an accepted condition under claim number xxxxxx451. Appellant further noted that brachial plexus lesions and thoracic outlet syndrome share the same ICD-9 Code, "353.0."

By decision dated June 11, 2015, OWCP denied appellant's request for reconsideration. It explained that appellant had not submitted any new medical evidence with her request.

### **LEGAL PRECEDENT**

Section 8128(a) of FECA does not entitle a claimant to review of an OWCP decision as a matter of right.<sup>6</sup> OWCP has discretionary authority in this regard and has imposed certain limitations in exercising its authority.<sup>7</sup> One such limitation is that the application for reconsideration must be received by OWCP within one year of the date of the decision for which

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<sup>5</sup> The current record does not include a copy of the referenced February 11, 2012 impairment rating from Dr. Bleecker.

<sup>6</sup> This section provides in pertinent part: "[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>7</sup> 20 C.F.R. § 10.607.

review is sought.<sup>8</sup> A timely application for reconsideration, including all supporting documents, must set forth arguments and contain evidence that either: (i) shows that OWCP erroneously applied or interpreted a specific point of law; (ii) advances a relevant legal argument not previously considered by OWCP; or (iii) constitutes relevant and pertinent new evidence not previously considered by OWCP.<sup>9</sup> When a timely application for reconsideration does not meet at least one of the above-noted requirements, OWCP will deny the request for reconsideration without reopening the case for a review on the merits.<sup>10</sup>

### ANALYSIS

The Board finds that the case is not in posture for decision. OWCP referenced claim number xxxxxx451 in both the April 11, 2014 merit decision and the June 11, 2015 nonmerit decision. However, the complete record associated with claim number xxxxxx451 is not currently available for review by the Board. Although OWCP included some information from claim number xxxxxx451 in the current record (xxxxxx032), it did not double/combine the respective case files associated with appellant's two latest upper extremity claims.<sup>11</sup>

Appellant argued that OWCP's May 24, 2013 acceptance letter identified left thoracic outlet syndrome as one of several accepted conditions under claim number xxxxxx451. However, the claims acceptance letter was not among the various documents OWCP included in the current record. The February 28, 2014 SOAF lists "left brachial plexus" (ICD-9 353.0) as one of four conditions accepted under claim number xxxxxx451.<sup>12</sup> Appellant correctly noted that the ICD-9 code for brachial plexus lesions includes thoracic outlet syndrome. The Board notes that the June 11, 2015 nonmerit decision did not specifically address appellant's argument that the DMA and senior claims examiner were both incorrect regarding acceptance of thoracic outlet syndrome under claim number xxxxxx451.

Decisions on claims are based on the written record, which may include forms, reports, letters, and other evidence of various types such as photographs, videotapes or drawings.<sup>13</sup>

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<sup>8</sup> *Id.* at § 10.607(a). The one-year period begins on the date of the original decision, and an application for reconsideration must be received by OWCP within one year of OWCP's decision for which review is sought for merit decisions issued on or after August 29, 2011. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (October 2011). Timeliness is determined by the document receipt date of the request for reconsideration as indicated by the "received date" in the Integrated Federal Employees' Compensation System (iFECS). *Id.* at Chapter 2.1602.4b.

<sup>9</sup> 20 C.F.R. § 10.606(b)(3).

<sup>10</sup> *Id.* at §§ 10.607(b), 10.608(b).

<sup>11</sup> *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance and Management*, Chapter 2.400.8c (February 2000). (Cases should be doubled when correct adjudication of the issues depends on frequent cross-reference between files).

<sup>12</sup> The accepted conditions identified in a SOAF do not always mirror the conditions described in a formal acceptance letter. This is particularly true when the SOAF reflects information obtained directly from iFECS (ICD-9) "Accepted Conditions," rather than from a review of OWCP's acceptance letter and/or subsequent correspondence expanding the list of accepted conditions.

<sup>13</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.800.5a (June 2011).

Evidence may not be incorporated by reference, nor may evidence from another claimant's case file be used.<sup>14</sup> Evidence contained in another of the claimant's case files may be used, but a copy of that evidence should be placed into the case file being adjudicated.<sup>15</sup> All evidence that forms the basis of a decision must be in that claimant's case record.<sup>16</sup>

Because the record lacks sufficient evidence for the Board to render an informed decision, the case shall be remanded to OWCP for further development. After OWCP has developed the record consistent with the above-noted directive, it shall issue an appropriate decision regarding appellant's request for reconsideration.

**CONCLUSION**

The case is not in posture for decision.

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 11, 2015 decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded for further action consistent with this decision.

Issued: October 22, 2015  
Washington, DC

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

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

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*