



## **FACTUAL HISTORY**

This case has previously been before the Board. In a May 22, 2002 decision, the Board set aside a May 23, 2000 loss of wage-earning capacity determination, finding that OWCP did not establish that the modified part-time audiologist position, which appellant performed beginning September 9, 1997, fairly and reasonably represented her wage-earning capacity. The Board also found that OWCP improperly denied her request for reconsideration without conducting a merit review.<sup>2</sup> On June 10, 2003 the Board affirmed an August 28, 2002 OWCP decision finding that appellant submitted insufficient medical evidence to establish that she sustained a recurrence of disability from October 1 to December 8, 1997 causally related to accepted bilateral carpal tunnel syndrome.<sup>3</sup> The facts and circumstances of the case as set forth in the Board's prior decisions are incorporated herein by reference.

Dr. Arendall performed a right carpal tunnel release on December 30, 2003 and a left carpal tunnel release on June 13, 2005, authorized by OWCP. Appellant remained off work and received compensation on the periodic rolls.

On November 14, 2007 OWCP obtained a second opinion from Dr. John Lamb, a Board-certified orthopedic surgeon, who diagnosed bilateral carpal tunnel syndrome. He opined that appellant could perform full-time work with no repetitive upper extremity motion, and lifting, pulling, and pushing limited to 25 pounds.

OWCP prepared a statement of accepted facts (SOAF) on November 21, 2008, which noted the November 14, 1996 right and May 8, 1997 left carpal tunnel releases. It did not mention the December 3, 2003 right and June 14, 2005 left carpal tunnel releases.

On January 13, 2009 OWCP obtained a second opinion regarding the duration and extent of the accepted depression from Dr. Deepak Patel, a Board-certified psychiatrist and neurologist. Dr. Patel diagnosed moderately severe major depressive disorder, and an anxiety disorder. He opined that both conditions continued to be work related. Dr. Patel found appellant able to work from a psychiatric standpoint, but cautioned that she was unable to use her hands due to carpal tunnel syndrome.

OWCP obtained a second opinion on January 19, 2009 from Dr. H. James Weisman, a Board-certified orthopedic surgeon, who diagnosed severe bilateral carpal tunnel syndrome. Dr. Weisman opined that appellant could work four hours a day light duty with minimal hand movements.

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<sup>2</sup> Docket No. 01-0647 (issued May 22, 2002). OWCP accepted that appellant, then a 43-year-old speech language pathologist and audiologist, sustained bilateral carpal tunnel syndrome in the performance of duty in 1995. Dr. Rex E.H. Arendall, an attending Board-certified neurosurgeon, performed an authorized right carpal tunnel release on November 14, 1996 and left carpal tunnel release on May 8, 1997. On October 15, 2001 OWCP granted appellant a schedule award for 22 percent permanent impairment of the right upper extremity and 13 percent permanent impairment of the left upper extremity, attributable to the accepted bilateral carpal tunnel syndrome.

<sup>3</sup> Docket No. 03-0162 (issued June 10, 2003).

On March 26, 2009 Dr. Arendall reviewed Dr. Weisman's report at OWCP's request, and opined that she was totally disabled from all work due to clinical findings and electrodiagnostic evidence of severe bilateral carpal tunnel syndrome.<sup>4</sup> Dr. Arendall reiterated on November 17, 2010 that appellant was permanently disabled from all work.<sup>5</sup> Appellant remained off work.

On November 8, 2013 OWCP obtained a second opinion from Dr. Steven D. Graham, a Board-certified orthopedic surgeon. Dr. Graham reviewed the medical record and the November 21, 2008 SOAF. On examination, he found no objective motor or sensory loss in either hand. Dr. Graham noted that appellant's complaints of pain, paresthesias, and sensory loss were far out of proportion to her objective presentation. He attributed her apparent difficulties with stiffness and limited mobility in the hands and fingers to subjective, self-limiting behaviors. Dr. Graham also noted that appellant had a maximum two percent impairment of each arm due to carpal tunnel syndrome. He found her able to work full time with no restrictions. An OWCP medical adviser reviewed Dr. Graham's report and found no impairment of both upper extremities.

On November 11, 2013 OWCP obtained a second opinion from Dr. Casey C. Arney, a Board-certified psychiatrist. Dr. Arney reviewed the medical record and a SOAF. He related appellant's account of anxiety among groups of strangers, panic attacks, and rumination about her symptoms. Dr. Arney noted that she was under psychiatric care and responding well to treatment. He diagnosed major depressive disorder, single episode, severe, and anxiety disorder not otherwise specified. Dr. Arney found appellant unable to work, noting that her psychiatric condition was debilitating, and made her unable to interact with the public or supervisors.<sup>6</sup>

By notice dated July 24, 2014, OWCP advised appellant that it proposed to terminate her wage-loss compensation benefits, as Dr. Graham opined that she could resume full duty and was thus no longer disabled for work. It afforded her 30 days to submit additional evidence or argument.

Appellant responded by August 5, 2014 letter, contending that she was in the process of obtaining additional medical evidence. She also contended that the SOAF provided to Dr. Graham omitted her December 3, 2003 and June 14, 2005 surgeries.

By decision dated August 29, 2014, OWCP terminated appellant's wage-loss compensation benefits effective that date, finding that the accepted carpal tunnel syndrome had ceased without residuals. It accorded Dr. Graham the weight of the medical evidence.

In an August 21, 2015 letter, received August 26, 2015, appellant requested reconsideration. She contended that the second opinion physicians did not fully consider the medical record, and that the November 21, 2008 SOAF provided to Dr. Graham omitted the December 3, 2003 right and June 14, 2005 left carpal tunnel releases. Appellant submitted

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<sup>4</sup> January 15, 2009 electromyogram (EMG) and nerve conduction capacity (NCV) studies showed profound right carpal tunnel syndrome, severe left carpal tunnel syndrome, and left ulnar neuropathy with entrapment at the elbow.

<sup>5</sup> September 10, 2010 EMG and NCV studies showed severe right and mild left carpal tunnel syndrome.

<sup>6</sup> OWCP has not accepted an emotional condition as employment related.

copies of medical evidence previously of record. She also provided a new report from Dr. Arendall.

In an August 3, 2000 report, Dr. Arendall reviewed appellant's history of injury and treatment. He opined that her diagnosis was "chronic, intractable carpal tunnel syndrome. [Appellant's] condition ha[d] become static" and she did not completely recover. Dr. Arendall noted that he did not expect appellant's condition would improve. He found her able to work for four hours a day with lifting limited to 25 pounds, and frequent changes of position.

By decision dated November 23, 2015, OWCP denied reconsideration, finding that appellant's August 21, 2015 letter and accompanying documents did not constitute new, relevant, or pertinent evidence. It found that Dr. Arendall's August 3, 2000 report, although new, was repetitive of his reports previously of record and was therefore cumulative in nature. OWCP further found that the copies of evidence previously of record were duplicative, and therefore insufficient to warrant a review of the claim on the merits.

### **LEGAL PRECEDENT**

To require the office to reopen a case for merit review under section 8128(a) of FECA,<sup>7</sup> section 10.606(b)(3) of Title 20 of the Code of Federal Regulations provides that 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>8</sup> Section 10.608(b) provides that when an application for review of the merits of a claim does not meet at least one of the three requirements enumerated under section 10.606(b)(3), OWCP will deny the application for reconsideration without reopening the case for a review on the merits.<sup>9</sup>

In support of a request for reconsideration, an appellant is not required to submit all evidence which may be necessary to discharge his or her burden of proof.<sup>10</sup> Appellant need only submit relevant, pertinent evidence not previously considered by OWCP.<sup>11</sup> When reviewing an OWCP decision denying a merit review, the function of the Board is to determine whether OWCP properly applied the standards set forth at section 10.606(b)(3) to the claimant's application for reconsideration and any evidence submitted in support thereof.<sup>12</sup>

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<sup>7</sup> 5 U.S.C. § 8128(a).

<sup>8</sup> 20 C.F.R. § 10.606(b)(3).

<sup>9</sup> *Id.* at § 10.608(b). *See also D.E.*, 59 ECAB 438 (2008).

<sup>10</sup> *Helen E. Tschantz*, 39 ECAB 1382 (1988).

<sup>11</sup> *See supra* note 8. *See also Mark H. Dever*, 53 ECAB 710 (2002).

<sup>12</sup> *Annette Louise*, 54 ECAB 783 (2003).

## ANALYSIS

OWCP accepted that appellant sustained bilateral carpal tunnel syndrome. Appellant stopped work in August 1999 and did not return. She received wage-loss compensation benefits on the periodic rolls. On August 29, 2014 OWCP terminated appellant's wage-loss compensation benefits effective that day, finding that the opinion of Dr. Graham, a Board-certified orthopedic surgeon and second opinion examiner, established that the accepted carpal tunnel syndrome had ceased without residuals.

Appellant requested reconsideration, contending that Dr. Graham did not consider the complete medical record and that the SOAF provided to him omitted February and June 2005 carpal tunnel release surgeries. In support of her request, she provided copies of medical evidence previously considered by OWCP, and an August 3, 2000 report from Dr. Arendall, an attending Board-certified neurosurgeon, not previously of record. By decision dated November 23, 2015, OWCP denied reconsideration, finding that appellant's letter and accompanying documents were cumulative or irrelevant.

The Board finds that OWCP properly denied reconsideration as appellant's argument was not relevant to the claim. The critical issue was the medical question of whether she had disabling residuals of the accepted bilateral carpal tunnel syndrome on and after August 29, 2014. Appellant's letter is not medical evidence, and is thus irrelevant to the remaining issue. Therefore, it does not comprise a basis for reopening the case.<sup>13</sup> The copies of medical evidence previously of record are duplicative. Likewise, OWCP had previously considered appellant's argument regarding the SOAF. Evidence which is duplicative, cumulative, or repetitive in nature is insufficient to warrant reopening a claim for merit review.<sup>14</sup> The duplicate copies of medical evidence are therefore insufficient to warrant consideration on the merits.

Dr. Arendall's August 3, 2000 report is new medical evidence, not previously considered by OWCP. However, it is irrelevant to the claim as it significantly predates the termination of compensation benefits. It does not address appellant's medical condition on or after August 29, 2014.<sup>15</sup> Therefore, it does warrant a review of the merits of the claim.

Appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(3). Therefore, pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

On appeal, appellant asserts that OWCP did not consider the totality of the medical record or provide a complete SOAF. These arguments pertain to the merits of the claim, which are not before the Board on the present appeal.

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<sup>13</sup> *Joseph A. Brown, Jr.*, 55 ECAB 542 (2004).

<sup>14</sup> *Denis M. Dupor*, 51 ECAB 482 (2000).

<sup>15</sup> See *Edward Matthews DieKemper*, 31 ECAB 224, 225 (1979) (the submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case).

**CONCLUSION**

The Board finds that OWCP properly denied appellant's request for further merit review of her claim pursuant to 5 U.S.C. § 8128(a).

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 23, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 23, 2016  
Washington, DC

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

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

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