

FACTUAL HISTORY

On February 26, 2015 appellant, then a 71-year-old contract specialist, filed an occupational disease claim (Form CA-2) alleging that on January 22, 2015 she first became aware of her sore wrists which made it difficult for her to type and realized that her condition was caused or aggravated by typing on a computer at work. She did not submit any evidence with her claim.

By letter dated March 10, 2015, OWCP informed appellant about the deficiencies in her claim and provided her the opportunity to submit medical and factual evidence within 30 days. No response was received within the allotted time period.

In an April 30, 2015 decision, OWCP denied appellant's claim as she did not submit any medical evidence to establish that a medical condition was diagnosed in connection with the claimed work factor.

On May 14, 2015 appellant provided a history of her employment, described her hobbies, and claimed that she had experienced soreness in her left hand and wrist, off and on over the years. She also submitted a description of her contract specialist position.

In an after-summary visit report dated February 2, 2015, Dr. Rose Eng, a Board-certified internist, provided appellant with instructions for the medical treatment of her wrist and work recommendations.

On November 13, 2015 appellant requested reconsideration of the April 30, 2015 decision.

Documentation of medical treatment from Kaiser Permanente described appellant's home exercise program and care instructions for trigger finger.

Employment records addressed appellant's request for an ergonomic consultation and equipment regarding her wrist, neck, shoulder, and upper back discomfort and pain.

Appellant submitted a Form CA-2 dated February 4, 2015 for a wrist injury which was nearly identical to the one previously submitted on February 26, 2015.

In an undated narrative statement, appellant described the medical treatment she received for her trigger finger condition. She also described her work duties, which primarily included computer usage which she performed six hours a day on weekdays and also on weekends as required. Appellant asserted that, during 14 years of working at the employing establishment, she had issues with trigger fingers for which she took medication and treated with ice. She maintained that her physicians had stated that repeated typing caused her condition.

In a February 17, 2016 decision, OWCP denied further merit review of appellant's claim. It found that the evidence submitted was not sufficient to warrant a merit review.

LEGAL PRECEDENT

Section 8128 of FECA vests OWCP with a discretionary authority to determine whether it will review an award for or against compensation, either under its own authority or on application by a claimant.² Section 10.608(b) of OWCP's regulations provide that a timely request for reconsideration may be granted if OWCP determines that the claimant has presented evidence and/or argument that meet at least one of the standards described in section 10.606(b)(3).³ This section provides that the application for reconsideration must be submitted in writing and set forth arguments and contain evidence that either: (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.⁴ Section 10.608(b) provides that when a request for reconsideration is timely but fails to meet at least one of these three requirements, OWCP will deny the application for reconsideration without reopening the case for a review on the merits.⁵

ANALYSIS

On November 13, 2015 appellant requested reconsideration of the April 30, 2015 decision that denied her occupational disease claim. OWCP found that she failed to submit any medical evidence to establish a medical condition causally related to her accepted employment factors.

The Board finds that appellant did not show that OWCP erroneously applied or interpreted a specific point of law. Moreover, she did not advance a relevant legal argument not previously considered.

The Board further finds that appellant did not submit any relevant or pertinent new evidence not previously considered. Dr. Eng's February 2, 2015 after summary visit report which addressed the treatment of appellant's wrist condition and provided work recommendations is not relevant to the issue of whether she had a medical condition causally related to the accepted employment factors. She did not provide an opinion as to whether appellant's wrist condition was causally related to the accepted employment factors. Similarly, the medical treatment documentation from Kaiser Permanente which described appellant's home exercise program and care instructions for her trigger finger condition did not contain a physician's opinion that addressed the issue of causal relationship. The Board has held that the submission of evidence which does not address the particular issue involved in the case does not constitute a basis for reopening the claim.⁶ Thus, these reports do not constitute pertinent new and relevant evidence and are thus insufficient to require OWCP to reopen appellant's case for further review of the merits.

² 5 U.S.C. § 8128(a).

³ 20 C.F.R. § 10.608(a).

⁴ *Id.* at § 10.606(b)(3).

⁵ *Id.* at § 10.608(b).

⁶ *D'Wayne Avila*, 57 ECAB 642 (2006).

Likewise, the employment records which addressed appellant's request for an ergonomic consultation and equipment regarding her wrist, neck, shoulder, and upper back discomfort and pain and provided a description of her contract specialist job, and the February 4, 2015 Form CA-2 do not constitute relevant and pertinent new evidence sufficient to warrant reopening the claim. This evidence did not address the underlying relevant medical issue of causal relationship.⁷

The Board accordingly finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(3). Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

On appeal, appellant contends that her attending physician had submitted a medical diagnosis as requested. This argument pertains to the merits of the claim. As noted, the Board does not have jurisdiction over the merits of the 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 February 17, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 15, 2016
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

⁷ *Id.*