



On appeal, appellant contends that OWCP should have accepted her claim for left hand osteoarthritis as her prior claim for right hand osteoarthritis was accepted. She contended that after she injured her right hand she started using her left hand to perform her duties and that her x-rays showed similar osteoarthritis in both hands.

### **FACTUAL HISTORY**

On November 18, 2014 appellant, then a 60-year-old biologist, filed an occupational disease claim (Form CA-2) alleging that as a result of using a pipette repeatedly with her left hand, she developed swelling, soreness, and pain in her left wrist joint.

OWCP received a statement from the employing establishment on December 15, 2014 which noted that appellant had not stopped work after she filed her claim. It was noted that her work as a biologist required hand pipetting on a regular basis. Appellant had been provided equipment to accommodate her alleged injury by reducing stress on her thumb, wrist, and that her workload had been reduced.

Appellant submitted a December 18, 2014 note from Johanna Mencil, a physician assistant, which acknowledged that appellant had been seen on that day for wrist pain.

By decision dated December 31, 2014, OWCP denied appellant's claim. It determined that she had not established a medical diagnosis nor had she established that any medical condition was causally related to established work events.

On March 23, 2015 appellant filed a reconsideration request. In support of her claim, she resubmitted the December 18, 2014 note signed by Ms. Mencil, but this note had been countersigned by Dr. Marshall Kuremsky, a Board-certified orthopedic surgeon. This note indicated that appellant was seen on December 18, 2014 and diagnosed with localized primary osteoarthritis of her wrist. Appellant also submitted an accompanying encounter report signed by Ms. Mencil noting that appellant had received treatment for her left wrist. This report noted that appellant had complained of left wrist pain and had been having difficulty with range of motion since October 2014. Appellant had denied injury or trauma, but she noted that she worked as a scientist and performed repetitive hand motions with a pipette. She had experienced right hand pain earlier in August 2013 and had then used her left hand more frequently.

By decision dated April 2, 2015, OWCP reviewed appellant's claim on the merits, found that appellant had now established a diagnosis of localized osteoarthritis of the left forearm/wrist, but indicated that the case remained denied because the medical evidence failed to establish the causal relationship to her work factors.

On June 10, 2015 appellant again requested reconsideration. In support of her reconsideration request, she submitted a June 10, 2015 note from Dr. Kuremsky indicating that appellant was treated for localized primary osteoarthritis of the wrist, and was able to work full duty. Appellant also submitted an encounter summary report by Dr. Kuremsky, also dated June 10, 2015, wherein he noted that she was a scientist in a laboratory and performed a lot of repetitive pipetting. Dr. Kuremsky opined that appellant had localized primary osteoarthritis of

the wrist and osteoarthritis of the carpometacarpal joint of the thumb. He further noted that she would be filing a workers' compensation claim.

By decision dated September 2, 2015, OWCP denied reconsideration without conducting a merit review.

### **LEGAL PRECEDENT**

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,<sup>2</sup> OWCP's regulations provide that the evidence or argument submitted by 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>3</sup> When a claimant fails to meet one of the above standards, OWCP will deny the application for reconsideration without reopening the case for review on the merits.<sup>4</sup>

### **ANALYSIS**

OWCP found that appellant had established that she worked as a biologist, and performed repetitive pipetting with her hands. It also accepted that she had been diagnosed with localized osteoarthritis of the left forearm/wrist. However, OWCP denied appellant's claim because she had not submitted medical evidence establishing a causal relationship between the osteoarthritis in the left forearm/wrist and the accepted factors of her federal employment.

The last merit decision in this case was OWCP's April 2, 2015 decision. The Board's jurisdiction is restricted to reviewing OWCP decisions issued within 180 days of appellant's October 8, 2015 date of filing for this appeal. Accordingly, the Board lacks jurisdiction to review the April 2, 2015 merit decision.<sup>5</sup>

Causal relationship is a medical issue and must be established by rationalized medical evidence.

When appellant requested reconsideration on June 10, 2015 she submitted a new medical report from Dr. Kuremsky, wherein he noted a diagnosis of localized primary osteoarthritis of the wrist and osteoarthritis of the carpometacarpal joint of the thumb. The Board notes that the conclusions in Dr. Kuremsky's report of June 10, 2015 are largely repetitive of previously submitted medical evidence. The Board has held that evidence that is repetitive and duplicative of evidence previously of record is insufficient to warrant further merit review.<sup>6</sup>

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<sup>2</sup> 5 U.S.C. §§ 8101-8193. Under section 8128 of FECA, "[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>3</sup> 20 C.F.R. § 10.606(b)(3).

<sup>4</sup> *Id.* at § 10.608(b).

<sup>5</sup> *Id.* at § 501.3(e).

<sup>6</sup> *D.K.*, 59 ECAB 141 (2007); *see also L.K.*, Docket No. 14-1722 (issued September 29, 2015).

Appellant submitted statements wherein she argued that her left wrist/forearm condition was causally related to her federal employment duties. However, as the underlying issue is medical in nature, medical evidence addressing causal relationship must be submitted.

The Board finds that appellant has not shown that OWCP erroneously applied or interpreted a specific point of law, has not advanced a relevant legal argument not previously considered by OWCP, and has not submitted relevant and pertinent new evidence not previously considered by OWCP. Accordingly, the Board finds that she did not meet any of the necessary requirements and is not entitled to further merit review.<sup>7</sup>

**CONCLUSION**

The Board finds that OWCP properly refused to reopen appellant's case for further review on the merits pursuant to 5 U.S.C. § 8128(a).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated September 2, 2015 is affirmed.

Issued: February 25, 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

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<sup>7</sup> See *L.H.*, 59 ECAB 253 (2007).