



## **FACTUAL HISTORY**

On May 20, 2015 appellant, a 63-year-old program support assistant, filed an occupational disease claim (Form CA-2) alleging that she developed a bilateral carpal tunnel condition causally related to factors of her federal employment.

With her claim, appellant submitted an April 15, 2014 report from Dr. Michelle Kane, Board-certified in internal medicine, who noted appellant's complaints of bilateral hand pain. Dr. Kane noted that it was likely that appellant had bilateral carpal tunnel syndrome, worse on the right side. OWCP also received an April 21, 2014 nerve conduction study from Dr. James Goldring, a Board-certified neurologist, which noted an impression of bilateral median neuropathy localized to the carpal tunnels.

On June 8, 2015 OWCP advised appellant that it required factual and medical evidence to determine whether she was eligible for compensation benefits. It asked her to submit a comprehensive report from a treating physician describing her symptoms and the medical reasons for her condition, with an opinion as to whether her claimed condition was causally related to her federal employment. OWCP afforded appellant 30 days to submit this evidence.

In a July 6, 2015 report, received by OWCP on July 10, 2015, Dr. William K. Feinstein, Board-certified in orthopedic surgery, advised that appellant had symptoms of pain, numbness, and tingling in both hands. He reported that these symptoms had been present since February 2014 and that; the right side was worse than the left and her pain was waking her up at night. Dr. Feinstein noted that on examination provocative maneuvers for carpal tunnel syndrome were positive bilaterally. He advised that Tinel's, Phalen's, and median nerve compression tests were all positive bilaterally. Appellant also underwent electrodiagnostic studies which showed evidence of bilateral median neuropathies localized to the carpal tunnels. Dr. Feinstein diagnosed bilateral carpal tunnel syndrome. He recommended that appellant undergo surgery with open right carpal tunnel release surgery, to be followed two weeks later by open left carpal tunnel release surgery. Dr. Feinstein related that appellant's job as a program support assistant required her to perform repetitious movements with her hands and use a keyboard and mouse repeatedly. Appellant was also required to flip through folders and search for documents on a daily basis, make boxes, separate and support records, place the records in the boxes, and perform other activities that involved constant turning and twisting of the wrists, as well as pulling with the hands. Dr. Feinstein advised that she lifted boxes, pushed carts, and delivered boxes at work.

By decision dated August 24, 2015, OWCP denied the claim, finding that appellant failed to submit medical evidence establishing that she sustained a bilateral carpal tunnel condition causally related to factors of her federal employment.

On November 30, 2015 appellant requested reconsideration. She resubmitted Dr. Feinstein's July 6, 2015 report with a November 23, 2015 addendum.

In the November 23, 2015 addendum, Dr. Feinstein related that, based upon his examination of appellant and her medical records, it was his opinion that appellant's work activities were the prevailing factor in causing appellant's medical condition. He noted that

appellant had described work activities of making boxes, separating and supporting records, placing the records in the boxes, and performing other activities that involved constant turning and twisting of the wrists and pulling with the hands. Dr. Feinstein also noted that appellant had described heavier activities that would contribute to the development of carpal tunnel syndrome.

By decision dated January 20, 2016, OWCP denied appellant's application for review as it neither raised substantive legal questions nor included relevant and pertinent new evidence sufficient to require OWCP to review its prior decision.

### **LEGAL PRECEDENT**

Section 8128(a) of FECA vests OWCP with 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.<sup>2</sup> Section 10.608(a) 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).<sup>3</sup> This section provides that the application for reconsideration must be submitted in writing and set forth arguments and contain evidence that either: (i) shows that OWCP erroneously applied or interpreted a specific point of law; or (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>4</sup> Section 10.608(b) provides that when a request for reconsideration is timely filed, 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.<sup>5</sup>

### **ANALYSIS**

In the present case, appellant has not shown that OWCP erroneously applied or interpreted a specific point of law; nor has she advanced a relevant legal argument not previously considered by OWCP, or constitutes relevant and pertinent new evidence not previously considered by OWCP. Appellant did submit an addendum report from Dr. Feinstein dated November 23, 2015.

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.<sup>6</sup> The issue in this case is medical; *i.e.*, whether appellant submitted probative, rationalized medical evidence sufficient to establish that her claimed bilateral carpal tunnel condition was causally related to employment factors. Dr. Feinstein's July 6, 2015 report was previously reviewed by OWCP.

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<sup>2</sup> 5 U.S.C. § 8128(a).

<sup>3</sup> 20 C.F.R. § 10.608(a).

<sup>4</sup> *Id.* at § 10.606(b)(3).

<sup>5</sup> *Id.* at § 10.606(b).

<sup>6</sup> *See David J. McDonald*, 50 ECAB 185 (1998).

The Board finds that his addendum report of November 23, 2015 is cumulative and duplicative of his July 6, 2015 report.<sup>7</sup> Dr. Feinstein merely reiterated appellant's description of her employment duties. He offered no further explanation regarding causal relationship between appellant's alleged carpal tunnel syndrome and these employment factors.

Appellant's reconsideration request failed to show that OWCP erroneously applied or interpreted a point of law nor did it advance a point of law or fact not previously considered by OWCP. The additional evidence submitted by appellant with her request for reconsideration did not constitute relevant and pertinent new evidence. The Board thus finds that OWCP did not abuse its discretion in refusing to reopen appellant's claim for a review on the merits.

### **CONCLUSION**

The Board finds that OWCP properly refused to reopen appellant's case for reconsideration on the merits of her claim under 5 U.S.C. § 8128(a).

### **ORDER**

**IT IS HEREBY ORDERED THAT** the January 20, 2016 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: June 27, 2016  
Washington, DC

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

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

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

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<sup>7</sup> See *Patricia G. Aiken*, 57 ECAB 441 (2006).