



## **FACTUAL HISTORY**

On April 20, 2015 appellant, then a 59-year-old aircraft overhaul supervisor, filed a notice of occupational disease (Form CA-2) claiming that he sustained a basal joint arthrosis of the left thumb on or before August 15, 2014. He attributed the condition to a 25-year-occupational history of using hand tools, pneumatic tools, impact wrenches, air ratchets, drills, and working with heavy equipment. Appellant did not stop work.<sup>3</sup>

In an April 30, 2015 letter, OWCP advised appellant of the additional evidence needed to establish his claim, including a report from his attending physician explaining how and why the identified work factors would cause the claimed condition. It afforded appellant 30 days to submit such evidence.

In response, appellant submitted personnel documents corroborating that his duties as a mechanic and supervisor required the use of hand and pneumatic tools, as well as repetitive heavy lifting, from December 1991 onward. He also provided correspondence from previous claims under File No. xxxxxx204 and subfile xxxxxx409, accepted for intermittent left wrist tendinitis sustained on or before April 1, 2004. Appellant also submitted OWCP correspondence from File No. xxxxxx069 accepting that on December 29, 2006, he sustained a crush injury to the left index and middle fingers, a closed fracture of a left metacarpal bone, and closed dislocation of a finger on the left hand.

In a September 14, 2005 report, Dr. P. Jeffrey Jarrett, an attending Board-certified orthopedic surgeon, noted that appellant was developing carpometacarpal arthritis of the left thumb, with increased symptoms while working as an aircraft mechanic. He noted that appellant had “no other history of any injury or surgery to his thumb.” Dr. Jarrett opined on January 20, 2009 that appellant’s left thumb condition was not related to the December 29, 2006 employment-related crush injury. He recommended left thumb surgery. In a March 31, 2009 report, Dr. Jarrett opined that, within a reasonable degree of medical certainty, appellant’s carpometacarpal joint arthritis of the left thumb developed due to the left wrist tendinitis accepted under File No. xxxxxx204.

In a January 7, 2010 report, Dr. Guy D. Foulkes, an attending Board-certified orthopedic surgeon, opined that appellant had attained maximum medical improvement regarding the December 29, 2006 crush injuries to the left hand accepted under File No. xxxxxx069. He diagnosed a crush injury to the distal phalanx of the left index finger with nail bed avulsion, multiple fractures and dislocations of the left middle finger, “multiple stellate lacerations totaling 14 centimeters on hand, left thumb, index finger, middle finger and small finger.” On December 29, 2006 Dr. Foulkes performed surgical repairs of the soft tissue injuries and internal fixation of the middle finger fractures. Appellant underwent a second surgery on January 24, 2007 to remove a fixation pin and screw from his left middle finger, and additional soft tissue debridement.

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<sup>3</sup> Appellant also submitted an April 20, 2015 Occupational Health and Safety Administration (OSHA) incident report regarding right carpometacarpal joint arthritis.

Dr. Foulkes performed a third surgery on September 1, 2009, removing additional fixation hardware from the left middle finger, and extensor tenolysis of the left middle finger. Referring to Table 15-12 of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*,<sup>4</sup> he found seven percent permanent impairment of the left upper extremity due to amputation of the distal phalanx of the left index finger, and an additional eight percent permanent impairment due to motion deficits in the index and middle fingers. Dr. Foulkes totaled these impairments to equal 15 percent permanent impairment of the left upper extremity.

In an April 16, 2015 report, Dr. Foulkes injected appellant's right carpometacarpal joint to address right basilar joint arthritis. He noted that appellant underwent a "left trapezial excision arthroplasty and FCR [flexor carpi radialis] suspension plasty handled through [OWCP] on the base some years ago," in addition to the December 29, 2006 employment-related crush injury.

By decision dated July 7, 2015, OWCP denied the claim for left thumb arthritis, finding that the medical evidence was insufficient to establish causal relationship. It accepted that appellant worked with hand tools, pneumatic tools, and heavy equipment as alleged. However, OWCP found that appellant's physicians had failed to adequately explain how and why those tasks, or other work factors, caused the claimed left thumb condition.

In an appeal form signed on August 21, 2015, received by OWCP on August 27, 2015, appellant requested reconsideration. He did not submit additional evidence or argument in support of his request.

By decision dated September 3, 2015, OWCP denied reconsideration, finding that appellant's August 21, 2015 letter did not raise substantive legal questions or include new, relevant evidence sufficient to warrant a review of the merits.

### **LEGAL PRECEDENT**

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,<sup>5</sup> section 10.606(b)(3) of Title 20 of the Code of Federal Regulations provides that a claimant must: (1) show 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>6</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>7</sup>

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<sup>4</sup> Table 15-12, page 421 of the sixth edition of the A.M.A., *Guides* is entitled "Impairment Values Calculated from Digit Impairment."

<sup>5</sup> 5 U.S.C. § 8128(a).

<sup>6</sup> 20 C.F.R. § 10.606(b)(3).

<sup>7</sup> *Id.* at § 10.608(b). *See also D.E.*, 59 ECAB 438 (2008).

In support of a request for reconsideration, appellant is not required to submit all evidence which may be necessary to discharge her burden of proof.<sup>8</sup> She need only submit relevant, pertinent evidence not previously considered by OWCP.<sup>9</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>10</sup>

### **ANALYSIS**

Appellant requested reconsideration on August 27, 2015. He did not submit pertinent new and relevant evidence or offer a legal argument not previously considered by OWCP. OWCP denied reconsideration by September 3, 2015 decision, finding that appellant's appeal form did not contain new, relevant evidence or argument. Moreover, appellant did not show that OWCP erroneously applied or interpreted a specific point of law.

The Board finds that OWCP appropriately denied reconsideration as appellant's appeal form was not relevant to the claim. The critical issue was the medical question of whether he sustained a left thumb condition in the performance of duty. The appeal form is not medical evidence, and is thus irrelevant to that issue. Therefore, it does not comprise a basis for reopening the case.<sup>11</sup>

A claimant may be entitled to a merit review by showing that OWCP erroneously applied or interpreted a point of law, submitting pertinent new and relevant evidence, or advancing a legal argument not previously considered. Appellant did not do so in this case. Therefore, pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

### **CONCLUSION**

The Board finds that OWCP properly denied reconsideration of the merits of his claim under section 8128(a) of FECA.

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<sup>8</sup> *Helen E. Tschantz*, 39 ECAB 1382 (1988).

<sup>9</sup> *See* 20 C.F.R. § 10.606(b)(3). *See also Mark H. Dever*, 53 ECAB 710 (2002).

<sup>10</sup> *Annette Louise*, 54 ECAB 783 (2003).

<sup>11</sup> *Joseph A. Brown, Jr.*, 55 ECAB 542 (2004).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated September 3, 2015 is affirmed.

Issued: May 16, 2016  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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