



## **FACTUAL HISTORY**

On November 26, 2014 appellant, then a 55-year-old former licensed practical nurse, filed an occupational disease claim (Form CA-2) alleging that she injured her hands on or about June 12, 2008 while doing chest compressions.<sup>3</sup> She further alleged that her condition had progressively worsened over the years due to repeated use of her hands at work. Prior to her January 6, 2012 resignation, appellant had been working as a health technician (telemetry); a position she held since September 30, 2011.<sup>4</sup>

The relevant medical evidence included a July 11, 2012 electromyogram/nerve conduction velocity (EMG/NCV) study that revealed bilateral carpal tunnel syndrome, right greater than left.

In an August 9, 2012 report, Dr. Ellis O. Cooper III, a Board-certified hand surgeon, noted complaints of bilateral hand pain, numbness, and tingling which had reportedly been going on for about five years. He also reported that appellant “knows of no trauma that started this.” Dr. Cooper diagnosed bilateral carpal tunnel syndrome. On physical examination, appellant had positive Tinel’s test and positive carpal compression test, bilaterally. Dr. Cooper also noted appellant’s positive EMG/NCV study results. He diagnosed bilateral carpal tunnel syndrome and recommended carpal tunnel releases.

Dr. John D. Googe, a Board-certified orthopedic surgeon, examined appellant on August 15, 2012 and diagnosed bilateral carpal tunnel syndrome.<sup>5</sup> He attributed appellant’s condition to a February 22, 2001 employment injury “doing chest compressions.” Dr. Googe noted that appellant’s injury was initially treated as a rotator cuff tear.

In a report dated August 23, 2012, Dr. Austin W. Gleason, a Board-certified orthopedic surgeon, referenced five separate employment injuries occurring between February 2001 and May 2011. He indicated that appellant had been disabled since January 2, 2012 due to various on-the-job injuries. Appellant’s employment-related conditions included bilateral carpal tunnel syndrome, right shoulder rotator cuff tear -- status postsurgery with acromioclavicular joint arthritis, lumbar degenerative disc disease (L2-3, L3-4), multilevel cervical degenerative disc disease, and trauma-related fibromyalgia.

In a September 26, 2012 progress report, Dr. Googe noted that appellant continued to complain of bilateral hand pain, with associated weakness and numbness. He continued to diagnose work-related bilateral carpal tunnel syndrome.<sup>6</sup>

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<sup>3</sup> Appellant has an accepted traumatic injury claim for neck sprain and right rotator cuff sprain, which occurred on June 12, 2008 (OWCP File No. xxxxxx830).

<sup>4</sup> According to the employing establishment, appellant’s permanent reassignment as a health technician (telemetry) was the result of an April 8, 2009 work-related injury under File No. xxxxxx627.

<sup>5</sup> Dr. Googe is a colleague of Dr. Cooper’s at Orthopedic Specialists of Louisiana.

<sup>6</sup> Dr. Googe provided similar information in his April 3, 2013 progress report.

On October 15, 2012 the Office of Personnel Management (OPM) authorized appellant's disability retirement. It found appellant disabled due to bilateral carpal tunnel syndrome, residual pain from rotator cuff tear status postsurgery, lumbar degenerative disc disease, cervical degenerative disc disease, and fibromyalgia due to trauma with generalized pain.<sup>7</sup>

On December 9, 2014 OWCP advised appellant that she needed to submit additional factual and medical information regarding her claim. In its claim development letter, it requested, *inter alia*, a comprehensive narrative medical report. The December 9, 2014 letter identified specific types of information the attending physician's narrative report should include. OWCP also requested a detailed description of the particular job duties appellant believed caused or contributed to her claimed bilateral hand condition.

In a December 12, 2014 supplemental statement, appellant indicated that she previously advised her physician that she had been "working with telemetry equipment and typing at the computer."

By decision dated January 22, 2015, OWCP denied appellant's claim because she failed to establish fact of injury. Although she submitted additional factual and medical information in response to OWCP's December 9, 2014 inquiry, appellant did not provide detailed information regarding her specific duties or the frequency and/or duration of any implicated job duties. Consequently, OWCP found that she failed to satisfy the factual component of fact of injury.

Appellant timely requested reconsideration, which OWCP received on March 2, 2015. In a February 9, 2015 statement, she indicated that she had been assigned to telemetry where she continuously cleaned equipment. This activity reportedly occurred on a daily basis. Appellant claimed it contributed to her condition. She also reported that she had no hobbies or recreational activities outside of her federal employment. Appellant contended that her carpal tunnel syndrome worsened after starting her new job in telemetry, which involved cleaning equipment and continuous typing on a computer 12 hours per day.

OWCP also received additional medical evidence from Dr. Cooper and Dr. Googe. In a May 24, 2013 addendum, Dr. Cooper indicated that appellant's bilateral carpal tunnel syndrome was indeed likely a result of her repetitive motion activities while employed at the employing establishment. He also provided follow-up reports dated June 7, 2013, July 28 and August 4, 2014, and February 2, 2015. Dr. Cooper continued to diagnose bilateral carpal tunnel syndrome, which he attributed to job-related repetitive hand stress. Dr. Googe also continued to diagnose carpal tunnel syndrome in his June 23, August 4, 2014, and January 30, 2015 progress reports.

In an April 6, 2015 decision, OWCP denied modification of the January 22, 2015 decision, finding that appellant failed to establish the factual component of fact of injury. It explained that the latest evidence submitted was insufficient to warrant modification because it was still unclear what appellant claimed to have caused her bilateral hand condition. The senior claims examiner noted that appellant's November 26, 2014 Form CA-2 indicated that the condition was the result of doing chest compressions, but in her subsequent statement, she

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<sup>7</sup> Appellant would later claim wage-loss compensation (Form CA-7) for the period January 2 through October 15, 2012.

attributed her bilateral hand condition to cleaning telemetry equipment and typing 12 hours a day as a health technician (telemetry). She further found that appellant's statement was too vague and general with respect to work factors she believed were responsible for her bilateral hand condition.

On April 14, 2015 appellant again requested reconsideration. She argued that her bilateral hand symptoms dated back to 2008, which reportedly had already been documented in the medical records submitted. Appellant also resubmitted her July 11, 2012 EMG/NCV study and several reports from Dr. Cooper (September 9, 2012, May 24, 2013, August 4, 2014, and February 2 and June 9, 2015).

By decision dated July 22, 2015, OWCP again denied modification. It noted that appellant did not submit a detailed statement clarifying whether her claimed condition was caused or aggravated by performing chest compressions or due to typing 12 hours a day in the position she most recently held prior to resigning in January 2012.

On August 17, 2015 appellant again requested reconsideration, using the appeal request form that accompanied OWCP's July 22, 2015 decision. She noted on the form that Dr. Cooper would resubmit a narrative report. However, there is no record of OWCP having received any additional factual or medical evidence following its July 22, 2015 decision.

In a nonmerit decision dated January 20, 2016, OWCP denied appellant's request for reconsideration. It noted, *inter alia*, that it received her request for reconsideration on August 31, 2015. However, appellant did not submit any evidence in support of her request. OWCP further noted that she failed to describe the specific work factors she believed to have caused her claimed condition. Consequently, it found there was insufficient evidence or argument to warrant merit review of its July 22, 2015 decision.

### **LEGAL PRECEDENT**

Section 8128(a) of FECA does not entitle a claimant to review of an OWCP decision as a matter of right.<sup>8</sup> OWCP has discretionary authority in this regard and has imposed certain limitations in exercising its authority.<sup>9</sup> One such limitation is that the request for reconsideration must be received by OWCP within one year of the date of the decision for which review is sought.<sup>10</sup> A timely application for reconsideration, including all supporting documents, must set forth arguments and contain evidence that either: (i) shows that OWCP erroneously applied or

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<sup>8</sup> This section provides in pertinent part: "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on [his/her] own motion or on application." 5 U.S.C. § 8128(a).

<sup>9</sup> 20 C.F.R. § 10.607.

<sup>10</sup> *Id.* at § 10.607(a). The one-year period begins on the next day after the date of the original contested decision. For merit decisions issued on or after August 29, 2011, a request for reconsideration must be "received" by OWCP within one year of OWCP's decision for which review is sought. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (February 2016). Timeliness is determined by the document receipt date of the request for reconsideration as indicated by the "received date" in the Integrated Federal Employees' Compensation System (iFECS). *Id.* at Chapter 2.1602.4b.

interpreted a specific point of law; (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>11</sup> When a timely application for reconsideration does not meet at least one of the above-noted requirements, OWCP will deny the request for reconsideration without reopening the case for a review on the merits.<sup>12</sup>

### **ANALYSIS**

Although appellant timely requested reconsideration, her August 17, 2015 request did not elaborate on the basis for reconsideration. She merely noted that Dr. Cooper would resubmit a narrative report, evidence which OWCP never received. Appellant neither alleged, nor demonstrated that OWCP erroneously applied or interpreted a specific point of law. Additionally, she did not advance any relevant legal arguments not previously considered by OWCP. Accordingly, appellant is not entitled to a review of the merits based on the first and second requirements under section 10.606(b)(3).<sup>13</sup>

Appellant also failed to submit any relevant and pertinent new evidence with her latest request for reconsideration. Although she indicated Dr. Cooper would resubmit a narrative report, OWCP noted that appellant had not submitted any evidence in support of her request for reconsideration. Because she did not provide OWCP with any relevant and pertinent new evidence, appellant is not entitled to a review of the merits based on the third requirement under section 10.606(b)(3).<sup>14</sup> Accordingly, OWCP properly declined to reopen appellant's case under 5 U.S.C. § 8128(a).

### **CONCLUSION**

The Board finds that OWCP properly denied appellant's August 17, 2015 request for reconsideration of the merits pursuant to 5 U.S.C. § 8128(a).

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<sup>11</sup> *Id.* § 10.606(b)(3).

<sup>12</sup> *Id.* § 10.608(a), (b).

<sup>13</sup> *Id.* at § 10.606(b)(3)(i) and (ii).

<sup>14</sup> *Id.* at § 10.606(b)(3)(iii).

**ORDER**

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

Issued: October 20, 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