



## ISSUE

The issue is whether OWCP properly denied appellant's request for reconsideration of the merits under 5 U.S.C. § 8128.

## FACTUAL HISTORY

On October 27, 2015 appellant, then a 58-year-old federal correctional officer, filed an occupational disease claim, (Form CA-2), alleging that while firing a nine millimeter shotgun and an R15 rifle he felt a sharp pain and lost strength in his right hand. He experienced difficulty pulling the trigger of the weapons needed for weapons qualification. Appellant advised that he thought he may have developed carpal tunnel syndrome. He first became aware of his condition on February 1, 2011 and realized it was causally related to his federal employment on September 21, 2015. Appellant retired on August 31, 2014.<sup>4</sup>

Appellant submitted an injury and illness incident report, dated February 1, 2011, which repeated the incidents surrounding his claim and indicated that constant and repetitive use of his right hand and wrist caused his condition.

In a November 3, 2015 letter, OWCP advised appellant of the type of evidence needed to establish his claim. It particularly requested that appellant submit a comprehensive medical report from his treating physician explaining how the specific work factors or incidents had contributed to his claimed injury.

On September 22, 2015 appellant was treated by Dr. Les Benson, an osteopath, for right hand pain. He reported working as a correctional officer and performing repetitive duties, including carrying and using heavy keys, constantly twisting his hand and wrist to open and lock doors, keyboarding, handcuffing inmates, using his hands to defend himself during inmate altercations and firearms training. Appellant noted performing these duties up to eight hours a day, five days a week. He acknowledged injuring his right hand years ago and his work duties recently aggravated this condition. Dr. Benson noted positive Phalen's and Tinel's sign and diminished reflexes. He diagnosed carpal tunnel syndrome. A September 23, 2015 magnetic resonance imaging (MRI) scan of the right wrist and hand noted findings that included degenerative changes. OWCP also received a position description for a correctional officer.

In a December 7, 2015 decision, OWCP accepted the employment activities as set forth by appellant but denied the claim because appellant had not submitted medical evidence establishing a diagnosis in connection with the employment factors.

On January 4, 2016 appellant requested a review of the written record by an OWCP hearing representative. In support of his request, he provided an August 19, 2015 report from Dr. Barry L. Cromer, a Board-certified orthopedist, who had treated appellant for right diffuse

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<sup>4</sup> Appellant filed a CA-2a, recurrence of disability claim, alleging that on February 1, 2011 he had a recurrence of disability causally related to a March 15, 1984 work injury. He stopped work on August 31, 2014. Appellant subsequently filed an occupational disease claim (Form CA-2) and noted the same date of injury and proceeded with his claim as a new occupational disease.

wrist pain, pain with motion, and weakness which had persisted for years. Dr. Cromer diagnosed cubital tunnel syndrome, wrist pain, sprains and strains of the wrist, and ulnar nerve injury. He ordered an electromyogram (EMG) and nerve conduction velocity (NCV) studies. On September 14, 2015 Dr. Comer referred appellant for occupational therapy. On August 31, 2015 Dr. Michael J. Mrochek, a Board-certified physiatrist, conducted an EMG/NCV study of the right upper extremity, which reflected mild chronic distal ulnar neuropathy, but no ulnar denervation, ulnar neuropathy at the elbow nor any median neuropathy at the wrist. Appellant also submitted evidence previously of record.

By decision dated May 13, 2016, an OWCP hearing representative affirmed the December 7, 2015 decision, finding the medical evidence failed to provide an accurate history of injury, a definitive diagnosis, and an unequivocal medical opinion on causal relationship.

In an appeal request form dated August 31, 2016, received by OWCP on September 12, 2016, appellant requested reconsideration.

In a September 27, 2016 decision, OWCP denied appellant's request for reconsideration as he neither raised substantive legal questions nor included relevant and pertinent new evidence and was insufficient to warrant a merit review.

### **LEGAL PRECEDENT**

Under section 8128(a) of FECA,<sup>5</sup> OWCP has the discretion to reopen a case for review on the merits. It must exercise this discretion in accordance with the guidelines set forth in section 10.606(b)(3) of the implementing federal regulations, which provides that a claimant may obtain review of the merits of his or her written application for reconsideration, including all supporting documents, sets forth arguments and contain evidence that:

“(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>6</sup>

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by OWCP without review of the merits of the claim.<sup>7</sup>

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<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).

### ANALYSIS

OWCP denied appellant's claim because he failed to submit medical evidence establishing that a medical condition was diagnosed in connection with the accepted work factors. On September 12, 2016 appellant requested reconsideration.

The Board finds that appellant did not show that OWCP erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by OWCP, or provide relevant and pertinent new evidence not previously considered by OWCP.

Appellant's August 31, 2016 reconsideration request consisted only of a checkmark on an appeal request form indicating that he wanted reconsideration. He did not offer any argument or submit any evidence in support of his request. Appellant suggested no reason for OWCP to reconsider the denial of his occupational disease claim. Such a bare request is insufficient to warrant a reopening of his case.<sup>8</sup>

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 asserts that he submitted a new electrodiagnostic study and reports from Dr. Benson and Dr. Boone to OWCP, prior to the September 27, 2016 decision, which were misplaced or lost. He asserted that he had postal receipts to show that the evidence was submitted. The Board notes that OWCP considered all the evidence received at the time of its September 27, 2016 decision and that the documents referenced by appellant were not of record at the time of that decision. The Board's jurisdiction is limited to the evidence that was before OWCP at the time it issued its final decision; therefore, the Board is unable to review this evidence on appeal.<sup>9</sup>

### CONCLUSION

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of his claim under 5 U.S.C. § 8128(a).

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<sup>8</sup> See *L.B.*, Docket No. 14-2064 (issued February 3, 2015); *J.A.*, Docket No. 14-1447 (issued October 21, 2014).

<sup>9</sup> See *supra* note 2.

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 27, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 4, 2017  
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