

**United States Department of Labor  
Employees' Compensation Appeals Board**

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H.F., Appellant )  
and ) Docket No. 17-1669  
U.S. POSTAL SERVICE, CITRUS HEIGHTS ) Issued: December 7, 2017  
POST OFFICE, Citrus Heights, CA, Employer )  
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)

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

CHRISTOPHER J. GODFREY, Chief Judge  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On July 28, 2017 appellant filed a timely appeal from a July 6, 2017 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days elapsed from the last merit decision, dated June 29, 2016, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3 the Board lacks jurisdiction to review the merits of the claim.

**ISSUE**

The issue is whether OWCP properly denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

This case has previously been before the Board.<sup>2</sup> The facts set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On May 4, 2006 appellant, a 48-year-old city carrier, filed a recurrence of disability claim (Form CA-2a), under OWCP File No. xxxxxx087, alleging right hand pain, causally related to a March 25, 2003 employment injury.<sup>3</sup> He reported that this pain began on March 26, 2005 after he had begun performing the duties of a supervisor. Appellant submitted medical evidence indicating that he was diagnosed with tendinitis on July 7, 2004.

In a letter dated August 10, 2006, OWCP notified appellant that his recurrence claim would be developed as an occupational disease claim, assigned File No. xxxxxx200, which is the claim presently before the Board. By decision dated September 22, 2006, it denied the claim in File No. xxxxxx200, finding that the evidence of record was insufficient to establish an employment injury under FECA.

On October 3, 2006 appellant requested reconsideration. In a January 5, 2007 decision, OWCP declined to reopen his claim for further consideration of the merits. Appellant again requested reconsideration on May 23, 2007 and submitted additional medical evidence from his treating physician, Dr. James T. Lin, a Board-certified plastic surgeon. Dr. Lin completed a report on March 9, 2007 and described appellant's history of injury in 2003 as lifting a heavy box and hearing a pop in his right wrist. He diagnosed right forearm pain and numbness, right wrist pain, and upper extremity overuse syndrome. Dr. Lin restricted appellant to keyboarding no more than 15 minutes a day.

In a July 13, 2007 merit decision, OWCP denied modification of the September 22, 2006 decision, finding that the evidence of record did not contain a diagnosed condition causally related to factors of his federal employment.

Appellant submitted letters dated November 28, 2007 and June 13, 2008, which provided: "Please, let me know if further information is required to open this claim" and noted that he was submitting additional medical evidence. This medical evidence included a report dated July 10, 2007 from Dr. Lin which provided a history of injury indicating that appellant had hurt his right hand at work on March 25, 2003. Dr. Lin diagnosed right upper extremity overuse syndrome and provided work restrictions. In a December 3, 2007 report, he reviewed an electromyogram and diagnosed chronic mild irritation of the C6-7 region and cervical radiculopathy. Dr. Lin found no carpal tunnel syndrome, but opined that appellant's hand paresthesia was possibly secondary to neck problems.

On July 28, 2008 appellant submitted a letter requesting reconsideration, together with an appeal request form and supporting documentation. He noted that he had submitted the enclosed reports from his treating physician on June 13, 2008, but upon telephoning OWCP, was told that

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<sup>2</sup> Docket No. 08-2352 (issued May 4, 2009).

<sup>3</sup> OWCP had previously accepted File No. xxxxxx087 for right wrist strain.

the additional evidence was rejected because he did not identify an appeal. Appellant submitted reports from Dr. Lin dated January 14 and May 13, 2008 addressing his right hand condition. He repeated appellant's history of injury on March 25, 2003 and diagnosed right upper extremity overuse syndrome and chronic mild irritation of the cervical spine. Dr. Lin provided work restrictions and noted that appellant's medical findings were consistent with his March 25, 2003 employment injury.

By decision dated August 11, 2008, OWCP denied appellant's July 23, 2008 request for reconsideration as it was untimely filed and failed to demonstrate clear evidence of error. Appellant appealed this decision to the Board.

In its May 4, 2009 decision,<sup>4</sup> the Board found that appellant's request for reconsideration was timely filed, but OWCP had improperly applied the standard for untimely requests. The Board also noted that OWCP's delay in issuing its decision deprived appellant of the opportunity to obtain merit review before the Board. The Board set aside the August 11, 2008 OWCP decision and remanded the case for OWCP to issue an appropriate decision.

Following the Board's May 4, 2009 decision, OWCP issued a merit decision on appellant's claim on October 13, 2011. It found that he had established a diagnosed condition of cervical radiculopathy, but had not provided the medical opinion evidence to establish causal relationship between his diagnosed condition and his implicated employment factors.

Appellant requested reconsideration of the October 13, 2011 decision on March 26 and July 17, 2012, alleging that the diagnosed condition was due to performing the nightly supervisory duties prior to ending his shift. These duties included working up to 10 hours a day six days a week, typing, and writing constantly. Appellant was also required to check by pulling the door handles to ensure that every mail vehicle was secured, pulling and pushing a security gate, and moving equipment out of the aisle by pushing and pulling.

In support of his requests, he provided a report from Dr. Lin dated February 21, 2012 which noted appellant's restrictions in 2005 included lifting, pushing, and pulling less than 10 pounds and less than one hour of right hand usage from his March 25, 2003 employment-related hand injury. Dr. Lin related appellant's nightly duties as a supervisor including pulling heavy gates and packages as well as typing for three to five hours. He also noted that he had provided additional restrictions on April 4, 2006.

By decision dated September 20, 2012, OWCP reviewed the merits of appellant's claim, but denied modification of its prior decision.<sup>5</sup>

Appellant requested reconsideration of the September 20, 2012 decision on August 7, 2013. He asserted that his claim was for a right upper extremity impairment, not only cervical radiculopathy.

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<sup>4</sup> Docket No. 08-2352 (issued May 4, 2009).

<sup>5</sup> On April 15, 2014 appellant appealed the September 20, 2012 OWCP decision to the Board. In an order dated June 12, 2014, the Board dismissed this appeal as untimely filed. *Order Dismissing Appeal*, Docket No. 14-1107 (issued June 12, 2014), *petition for recon. denied* (issued January 2, 2015).

By decision dated June 29, 2016, OWCP denied modification of its prior decisions.

Appellant requested reconsideration on April 19, 2017. In support of his request he submitted a report dated September 9, 2013 from Dr. Lin. Dr. Lin noted that appellant initially sustained a right upper extremity injury on April 17, 2003 when he heard his right wrist pop while lifting a heavy box. He described appellant's work restrictions after 2003 and noted in 2005 he was required to exceed his restrictions by using both hands to pull heavy gates and heavy packages. Appellant was also required to type constantly for three to five hours. Dr. Lin noted appellant's additional restrictions. He opined that appellant sustained acute as well as cumulative injury to his right upper extremity due to work duties.

By decision dated July 6, 2017, OWCP denied appellant's request for reconsideration of the merits of his claim.

### **LEGAL PRECEDENT**

FECA provides in section 8128(a) that OWCP may review an award for or against payment of compensation at any time on its own motion or on application by the claimant.<sup>6</sup> Section 10.606(b)(3) of the Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by submitting in writing an application for reconsideration which sets forth arguments or evidence and shows that OWCP erroneously applied or interpreted a specific point of law; or advances a relevant legal argument not previously considered by OWCP; or includes relevant and pertinent new evidence not previously considered by OWCP.<sup>7</sup> Section 10.608 of OWCP's regulations provides that when a request for reconsideration is timely, but does meet at least one of these three requirements, OWCP will deny the application for review without reopening the case for a review on the merits.<sup>8</sup> Section 10.607(a) of OWCP's regulations provides that to be considered timely an application for reconsideration must be received by OWCP within one year of the date of OWCP's merit decision for which review is sought.<sup>9</sup>

The Board has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.<sup>10</sup>

### **ANALYSIS**

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

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<sup>6</sup> 5 U.S.C. § 8128(a).

<sup>7</sup> 20 C.F.R. § 10.606(b)(3).

<sup>8</sup> *Id.* at § 10.608.

<sup>9</sup> *Id.* at § 10.607(a). Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (February 2016).

<sup>10</sup> *B.T.*, Docket No. 16-0785 (issued September 21, 2016); *Ronald A. Eldridge*, 53 ECAB 218 (2001); *Alan G. Williams*, 52 ECAB 180 (2000).

Appellant filed a timely request for reconsideration of the June 29, 2016 merit decision on April 19, 2017. In support of that request he submitted a note from Dr. Lin dated September 9, 2013. In this note, Dr. Lin again described appellant's March 25, 2003 employment injury, under OWCP File No. xxxxxx087, of lifting a heavy box. He relisted appellant's employment duties after 2005 of lifting a heavy gate and packages as well as typing for three to five hours.

The underlying issue in appellant's occupational disease claim is the necessity to establish a causal relationship between his diagnosed conditions and his implicated employment factors. OWCP denied his occupational disease claim as there was no medical evidence establishing causal relationship between any diagnosed medical condition and his employment factors. Therefore, in order to require OWCP to reopen appellant's claim for consideration of the merits, appellant must provide medical evidence supporting causal relationship between the diagnosed condition of cervical radiculopathy or some other diagnosed condition and his implicated employment factors.

The Board finds that Dr. Lin's September 9, 2013 report does not constitute relevant and pertinent new evidence not previously considered by OWCP. This report does not address the central issue in appellant's claim and merely provides cumulative information already present in the case record.<sup>11</sup>

Furthermore, appellant did not provide arguments or evidence that shows that OWCP erroneously applied or interpreted a specific point of law, nor did he advance a relevant legal argument not previously considered by OWCP.

Accordingly, as appellant has not met any of the criteria warranting reopening his claim for further merit review, pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

### **CONCLUSION**

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

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<sup>11</sup> See *id.* Furthermore, to the extent that Dr. Lin's recounting of appellant's injury history may be considered an opinion on causal relationship, the history provided is repetitive of that provided in his prior reports such as his February 21, 2012 report. See C.N., Docket No. 08-1569 (issued December 9, 2008) (evidence or argument that repeats or duplicates evidence previously of record has no evidentiary value and does not constitute a basis for reopening a case).

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 6, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 7, 2017  
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