

FACTUAL HISTORY

On March 21, 2014 appellant, then a 49-year-old bilingual contact representative, filed an occupational disease claim (Form CA-2) alleging that she developed bilateral wrist conditions due to prolonged typing, gripping, and grasping during the performance of her federal employment duties. She stopped work January 6, 2014. OWCP accepted the claim for bilateral carpal tunnel syndrome and paid compensation benefits on the supplemental rolls commencing August 7, 2014.

Appellant filed a claim for wage-loss compensation (Form CA-7) for the period February 4 to August 3, 2014.

By decision dated October 1, 2014, OWCP denied the claim for disability as the medical evidence of record indicated that appellant was released to work limited duty from January 8 to 29, 2014 and that the employing establishment was able to accommodate the work restrictions. It noted that appellant's scheduled carpal tunnel surgery of January 30, 2014 was postponed due to a nonindustrial cancer condition, for which she was off work from January 6 to July 23, 2014.

On August 4, 2014 Dr. Andrew Hsiao, a Board-certified orthopedic surgeon, performed appellant's authorized left carpal tunnel surgery. On February 2, 2015 appellant underwent authorized right carpal tunnel release, which Dr. Hsiao also performed.

On February 11, 2015 appellant requested reconsideration of OWCP's October 1, 2014 decision and submitted additional evidence. By decision dated February 27, 2015, OWCP denied appellant's request for reconsideration of the merits. It found that the evidence submitted was either repetitious and cumulative or irrelevant to the issue presented.

On April 1, 2015 Dr. Hsiao released appellant to full-time work with restrictions of no lifting over five pounds, no gripping more than five pounds, and no repetitive wrist motion 20 minutes a day.

In a May 13, 2015 report, Dr. Hsiao related that appellant would be unable to work for six weeks. He restricted her from tasks which required more than 20 minutes of repetitive motion.

On May 28, 2015 the employing establishment offered appellant a modified position consistent with Dr. Hsiao's work restrictions. Appellant returned to work shortly thereafter.

On June 3, 2015 Dr. Hsiao changed appellant's restrictions effective June 6, 2015 to indicate no lifting over one pound and fine manipulation including keyboarding limited to two hours a day. Appellant worked until July 22, 2015, when she stopped work.

On July 28, 2015 OWCP received appellant's claim for wage-loss compensation (Form CA-7) for the period July 22 through 24, 2015.

In a July 22, 2015 work slip, which was completed on behalf of Dr. Hsiao, a Cinthia Ayala reported that appellant was unable to return to work July 22 through 26, 2015. However, appellant

could return to modified work on July 27 through August 26, 2015 with restrictions of no lifting over one pound and fine manipulation, including keyboarding, limited to two hours per day.³

In a July 29, 2015 letter, OWCP requested that appellant provide a comprehensive narrative medical report, which included a history of the injury and a thorough explanation, with objective findings, as to how her work-related condition worsened such that she was no longer able to perform any duties of her position when she stopped work on July 22, 2015. Appellant was afforded 30 days to submit the requested evidence.

Medical reports from Dr. Hsiao describing appellant's progress dated July 15, August 26, and September 15, 2015 were received. In the August 26, 2015 report, he released her to full-duty work with no restrictions effective August 27, 2015. In an October 7, 2015 report, Dr. Hsiao related that appellant should not perform overtime work and no typing more than four hours per day. Appellant worked until October 29, 2015, when she stopped work.

On November 30, 2015 appellant filed an additional claim for compensation (Form CA-7) for the period October 29, 2015 and continuing. In a November 4, 2015 work slip, which was completed on behalf of Dr. Hsiao, Ms. Ayala indicated that appellant was unable to work from October 29 through December 16, 2015.

In a December 15, 2015 development letter, OWCP requested that appellant provide a comprehensive narrative medical report, within 30 days, which included a history of the injury and a thorough explanation with objective findings, as to how her work-related condition worsened such that she was no longer able to perform any duties of her position when she stopped work on October 29, 2015.

In a December 16, 2015 work slip, which was completed on behalf of Dr. Hsiao, Ms. Ayala indicated that appellant was unable to work from December 16, 2015 through January 27, 2016.

Progress reports from Dr. Hsiao were received. In November 4, December 16 and 30, 2015, and January 27, 2016 reports, he instructed appellant to remain off work for six weeks. Dr. Hsiao also recommended that she not work overtime and not type more than four hours per day. In the December 16, 2015 report, he indicated that appellant would like an additional six weeks off from work.

By decision dated March 2, 2016, OWCP denied appellant's claim for compensation for the period from July 22 to 24, 2015 as there was no medical evidence supporting that she was temporarily totally disabled during the period claimed.

In another March 2, 2016 decision, OWCP denied appellant's claim for compensation for the period October 29, 2015 to the present as the medical evidence failed to contain a well-rationalized medical opinion supported by objective findings as to why she was unable to perform her employment duties during the period claimed.

³ No credentials are listed for Ms. Ayala.

Appellant continued to file claims for compensation (Form CA-7).

On April 5 and May 12, 2016 appellant requested reconsideration of the two March 2, 2016 decisions. Following issuance of the March 2, 2016 decisions, OWCP received her February 22, 2016 statement, the employing establishment's challenge dated March 18, 2016, and Family and Medical Leave Act forms dated March 15, 2016

Medical reports dated December 16, 2015, and January 27, March 9, April 27, and June 8, 2016, CA-20 forms dated April 27, 2016, work status forms dated August 3, 2015 and January 27, 2016, and a CA-17 form dated June 8, 2016 from Dr. Hsiao were received. In these reports, Dr. Hsiao indicated that appellant had pain and no longer wished to type. He also noted that she had a pattern of working and not working. During the periods, appellant was not working, Dr. Hsiao indicated that she was at maximum medical improvement (MMI). He reported that appellant was back at work in March and June 2016 with restrictions of no typing.

A July 28, 2016 electromyogram (EMG) study was positive for mild bilateral median mononeuropathics at the wrists consistent with clinical diagnosis of bilateral carpal tunnel syndrome with no evidence of cervical radiculopathy or generalized polyneuropathy.

By decision dated August 4, 2016, OWCP denied modification of its March 2, 2016 decisions. It noted that July 22, 2015 work status form was the only evidence submitted which discussed the claimed period of disability from July 22 to 24, 2015. With regard to the claim for compensation for the dates October 29, 2015 and continuing, OWCP found that the new evidence contained no detailed medical explanation that indicated how appellant's condition had objectively worsened such that she could not perform any of her work duties during the period claimed.

On September 20, 2016 appellant requested reconsideration of OWCP's March 2, 2016 decisions denying her wage-loss compensation claims. A duplicative copy of the July 28, 2016 EMG/nerve conduction velocity (NCV) study, previously of record, was received.

OWCP also received an August 3, 2016 report that indicated that appellant was back to work with the restriction of no typing, which would continue. Dr. Hsiao indicated that the EMG/NCV study showed evidence of mild carpal condyle syndrome bilaterally, which he thought was baseline for her. He indicated that appellant reached MMI.

In a September 14, 2016 report, Dr. Hsiao indicated that appellant had the same findings on each evaluation. No improvement was expected since no treatment was being done. Dr. Hsiao indicated that MMI had been reached and appellant's restrictions of no typing would continue.

In an October 19, 2016 letter, the employing establishment indicated that they could no longer accommodate appellant's work restrictions. Appellant filed a claim for wage-loss compensation (Form CA-7) commencing October 20, 2016.

OWCP began paying compensation for a recurrence of temporary total disability on October 20, 2016, based on the employing establishment's October 19, 2016 letter that they could no longer accommodate appellant's work restrictions.

In November 2016, OWCP referred appellant, along with a statement of accepted facts, the medical record, and questions, to Dr. Jacob Rabinovich, a Board-certified orthopedic surgeon, for a second opinion examination for a determination on the nature and extent of her work-related condition and her work capacity. In a November 28, 2016 report, Dr. Rabinovich indicated that she had residuals of her work-related conditions and that she was considered at MMI. He indicated that appellant had physical limitations from repetitive movements and/or typing to four hours a day, intermittently with no more than 30 minutes per hour and lifting, pushing and pulling limitation of no more than 10 pounds for no more than 4 hours per day. Dr. Rabinovich also opined that appellant had three percent permanent impairment of the right upper extremity and three percent left upper extremity permanent impairment.

By decision dated January 17, 2017, OWCP denied appellant's request for reconsideration of the merits. The issue for consideration was whether appellant had established disability for the period July 22 to 24, 2015 and from October 29, 2015 to October 19, 2016. OWCP found that the evidence did not require reconsideration of the merits of the claim as some reports were duplicative or substantially similar to evidence previously of record and reviewed, and the newly submitted evidence was "irrelevant or immaterial and thus has no bearing on the issue."

LEGAL PRECEDENT

Section 8128(a) of FECA does not entitle a claimant to review of an OWCP decision as a matter of right.⁴ OWCP has discretionary authority in this regard and has imposed certain limitations in exercising its authority.⁵ 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.⁶ A timely application for reconsideration, including all supporting documents, must set forth arguments and contain evidence that either: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.⁷ 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.⁸

⁴ 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).

⁵ 20 C.F.R. § 10.607.

⁶ *Id.* at § 10.607(a). 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.

⁷ 20 C.F.R. § 10.606(b)(3).

⁸ *Id.* at § 10.608(a), (b).

ANALYSIS

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of her claim. The underlying issue before OWCP was whether she has established total disability for the period July 22 to 24, 2015 and from October 29, 2015 to October 19, 2016, when she claimed wage-loss compensation benefits for total disability as work within her restrictions was no longer available.

Appellant neither showed that OWCP erroneously applied or interpreted a specific point of law nor advanced a relevant legal argument not previously considered by OWCP. Consequently, she is not entitled to further review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(3).

Appellant also failed to submit any relevant and pertinent new evidence in support of her reconsideration request. Establishing her claim for total disability during the alleged periods is a medical issue.⁹

The July 28, 2016 EMG/NCV study was previously of record and was considered in the last merit decision. The submission of evidence or argument that repeats or duplicates evidence or argument already in the case record¹⁰ and the submission of evidence or argument that does not address the particular issue involved does not constitute a basis for reopening a case.¹¹

In his August 3, 2016 medical report, Dr. Hsiao indicated that appellant was back to work with restrictions of no typing, which would continue. In his a September 14, 2016 report, he indicated that no improvement was expected in her condition, that MMI had been reached, and that her restrictions of no typing would continue. Dr. Rabinovich indicated that appellant had continued residuals of her work-related condition, that MMI had been reached, that she had restrictions and permanent impairment to her bilateral upper extremities. This evidence while new, it is not relevant and pertinent new evidence as it does not address why appellant was temporarily totally disabled during the alleged period of disability. The submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.¹²

The employing establishment's October 19, 2016 letter, which indicated that it could not accommodate appellant's work restrictions, is irrelevant to the issue at hand as OWCP commenced payment of wage-loss benefits based upon this letter on October 20, 2016.

⁹ See *M.N.*, Docket No. 16-1410 (issued June 28, 2017).

¹⁰ *T.H.*, Docket Nos. 17-1578 & 17-1651 (issued April 26, 2018); *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

¹¹ *T.H.*, *id.*; *Edward Matthew Diekemper*, 31 ECAB 224-25 (1979).

¹² See *supra* note 9; *M.D.*, Docket No. 16-0745 (issued February 8, 2017); *Edward Matthew Diekemper*, *id.*

Because appellant failed to meet any of the standards enumerated under section 8128(a) of FECA, she was not entitled to further merit review of her claim.¹³

On appeal appellant argues that the denial of her wage-loss claims was based on the fact the employing establishment stated that she was out of work due to stress. She asserts that her physician's reports showed that she was out of work due to her work-related injury. As noted, the Board does not have jurisdiction over the merits of this claim. Appellant failed to provide any evidence to meet any of the criteria to warrant a merit review of her claim.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the January 17, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 14, 2018
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

¹³ See *A.M.*, Docket No. 16-0499 (issued June 28, 2016); *A.K.*, Docket No. 09-2032 (issued August 3, 2010) (when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), OWCP will deny the application for reconsideration without reopening the case for a review on the merits); *M.E.*, 58 ECAB 694 (2007); *Susan A. Filkins*, 57 ECAB 630 (2006).