

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

D.M., Appellant)	
)	
and)	Docket Nos. 18-0757 & 18-1705
)	
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Harrisburg, PA, Employer)	Issued: November 14, 2018
)	
)	

Appearances:
Aaron B. Aumiller, Esq., for the appellant¹
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
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On February 21, 2018 appellant, through counsel, filed a timely appeal from an August 25, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP).² The Board assigned the appeal Docket No. 18-0757. On August 21, 2018 appellant filed a timely appeal from a March 8, 2018 nonmerit decision of OWCP, which the Board assigned Docket No. 18-1705.

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; see also 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² Under the Board's *Rules of Procedure*, an appeal must be filed within 180 days from the date of issuance of an OWCP decision. An appeal is considered filed upon receipt by the Clerk of the Appellate Boards. See 20 C.F.R. § 501.3(e)-(f). One hundred and eighty days from OWCP's August 25, 2017 merit decision was Wednesday, February 21, 2018. Because using February 26, 2018, the date the appeal was received by the Clerk of the Appellate Boards would result in the loss of appeal rights, the date of mailing is considered the date of filing. The U.S. Postal Service tracking history reveals that the appeal was mailed February 21, 2018, rendering the appeal timely filed. See 20 C.F.R. § 501.3(f)(1).

Pursuant to the Federal Employees' Compensation Act³ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant has met her burden of proof to establish that she was totally disabled for the period April 2 through August 28, 2016, causally related to her accepted April 14, 2015 right elbow injury; and (2) whether OWCP properly denied appellant's December 12, 2017 request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On April 30, 2015 appellant, then a 47-year-old laborer custodian, filed a traumatic injury claim (Form CA-1) alleging that, on April 14, 2015, she sustained right tennis elbow after cutting and breaking down cardboard boxes. She stopped work on April 14, 2015, and returned to modified employment on April 30, 2015. OWCP accepted the claim for right synovitis and tenosynovitis.

On August 31, 2015 Dr. Matthew J. Espenshade, an osteopath, performed a partial lateral epicondylectomy at the right elbow, a debridement and release of the extensor carpi radialis brevis, and a repair of the collateral ligament.⁴ OWCP paid appellant wage-loss compensation for temporary total disability beginning July 20, 2015.

On November 23, 2015 Dr. Espenshade noted that appellant continued to complain of burning and pain on the right side. On examination he found mild swelling on the right with no effusion. In a work restriction form, Dr. Espenshade determined that appellant could return to modified employment on November 30, 2015 with no use of the affected arm.

The employing establishment offered appellant the position of modified custodian on November 30, 2015. The position required cleaning horizontal and vertical surfaces and rails. The physical requirements included no use of the right arm or cleaning overhead. Appellant accepted the offered position.

On December 21, 2015 appellant filed a claim for compensation (Form CA-7) requesting wage-loss compensation from November 28 to December 11, 2015. The employing establishment advised that she had refused a November 30, 2015 job offer.

In a January 5, 2016 progress report, Dr. Espenshade noted that appellant advised that her right elbow pain had not improved with surgery. He related, "[Appellant] is also complaining of left elbow pain since she went back to work on light duty and she states [that] they made her use her left elbow more." Dr. Espenshade diagnosed status after a right elbow partial lateral

³ 5 U.S.C. § 8101 *et seq.*

⁴ OWCP, on August 13, 2015, referred appellant to Dr. Robert R. Draper, Jr., a Board-certified orthopedic surgeon, for a second opinion examination. In a report dated September 21, 2015, Dr. Draper noted that she had recently undergone right elbow surgery and was unable to return to work. He estimated that appellant could perform light-duty employment in approximately six weeks.

epicondylectomy, debridement, and collateral repair and recommended diagnostic testing. He opined that appellant's subjective complaints outweighed the objective findings.

On January 25, 2016 Dr. Michael Darowish, a Board-certified orthopedic surgeon, evaluated appellant for right lateral elbow pain due to a "work-related claim." He diagnosed persistent pain in the right lateral elbow after a lateral epicondylectomy and opined that she might have a "latrogenic injury to the lateral ulnar collateral ligament...." Dr. Darowish also diagnosed carpal and radial tunnel syndrome and internal impingement of the shoulder.

A magnetic resonance imaging (MRI) scan study of the right elbow, obtained on January 27, 2017, revealed an "[a]bnormal appearance of the common extensor tendon origin upon the lateral epicondyle with abnormal fluid signal interposed between the tendon and the adjacent epicondyle and some proximal thickening."

On January 29, 2016 the employing establishment advised that appellant had not returned to work.

OWCP, on February 1, 2016, notified appellant of its proposed termination of her wage-loss compensation under 20 C.F.R. § 10.500(a) as she declined to accept an offered position within her work restrictions. It provided her 30 days to report to the assigned position or show that her refusal was justified.

In a February 8, 2016 progress report, Dr. Darowish advised that the MRI scan study showed detachment of the lateral ulnar collateral ligament from the humeral insertion. He recommended a radial nerve compression and lateral ulnar collateral ligament repair, noting that it was a "relatively extensive surgery" with a long recovery. Dr. Darowish opined that appellant could work with restrictions of lifting, pushing, and pulling up to one pound with her right hand and performing no repetitive activities pending surgery.

Dr. Espenshade, on February 9, 2016, indicated that the MRI scan study showed a questionable re-tear that he did not believe was significant. He advised that he had released appellant to resume work using only her left hand, but she did not return, noting that she "states she still would not be able to do that type of job just using her left hand." Dr. Espenshade diagnosed right elbow pain, right elbow radial neuritis, and status post right lateral debridement and release. He found that appellant could continue working with limited-duty restrictions.

By decision dated March 28, 2016, OWCP denied appellant's claim for wage-loss compensation beginning November 30, 2015 under section 10.500(a) as she failed to accept a November 30, 2015 modified-duty assignment within her restrictions. It noted that the offered position was within the work restrictions set forth by Dr. Espenshade. OWCP informed appellant that if the employing establishment withdrew the limited-duty position or if her condition worsened such that she was unable to perform the assignment, she could file a notice of recurrence of disability.

On March 30, 2016 appellant, through counsel, requested an oral hearing before an OWCP hearing representative.⁵

Dr. Darowish, on March 16, 2016, performed a right radial tunnel decompression and right lateral ulnar collateral ligament repair. OWCP paid appellant wage-loss compensation for temporary total disability from March 16 to April 1, 2016.

In return to work forms dated May 3 and June 28, 2016, Dr. Darowish found that appellant was unable to work.

Dr. Darowish, in an August 23, 2016 report, noted that appellant was doing well after a right radial tunnel decompression and right elbow lateral collateral repair, but had some continued numbness and tingling in the radial nerve and right hand, and bilateral wrist pain. He diagnosed status post right radial tunnel decompression, right hand numbness at night that he believed was carpal tunnel syndrome, and bilateral wrist pain that he believed was de Quervain's tenosynovitis. In an August 23, 2016 return to work form, Dr. Darowish opined that appellant could resume sedentary work lifting, pushing, and pulling not more than one pound with the right hand, and performing no repetitive activities with the right upper extremity.

Appellant, on August 29, 2016, accepted a modified laborer custodial position with the employing establishment.

On September 21, 2016 appellant filed a notice of recurrence of disability (Form CA-2a) on November 30, 2015 causally related to her April 14, 2015 employment injury. She advised that she had stopped work on November 30, 2015 and returned to work on August 29, 2016. The employing establishment indicated that appellant went home on November 30, 2015 stating that she could not perform an offered light-duty position.

OWCP, on September 28, 2016, notified appellant of the definition of a recurrence of disability and requested that she submit a reasoned report from her physician explaining the causal relationship between any disability and the accepted work injury.

Following an October 25, 2016 telephone hearing, by decision dated December 12, 2016, an OWCP hearing representative affirmed the March 28, 2016 decision terminating appellant's compensation under section 10.500(a). He noted that she stopped work on November 30, 2015 after for less than two hours. The hearing representative further indicated that OWCP paid appellant wage-loss compensation from March 16 to April 1, 2016. He found that the March 28, 2016 sanction decision pertained only to disability compensation from November 30, 2015 to March 15, 2016, and that compensation for wage loss subsequent to that date should be separately adjudicated.

In a report dated October 25, 2016, Dr. Darowish diagnosed bilateral de Quervain's tenosynovitis and possible cubital tunnel syndrome. He indicated that appellant could work lifting,

⁵ In a March 8, 2016 progress report, Dr. Darowish noted that he had scheduled appellant for surgery on March 16, 2016.

pushing, and pulling no more than two pounds with the right hand and performing no repetitive work duties with her right hand.

By decision dated December 16, 2016, OWCP found that appellant had not established a recurrence of disability beginning November 30, 2015 causally related to her accepted employment injury. It noted that it had previously found that she stopped work after refusing a suitable, limited-duty position. OWCP determined that appellant sought treatment from Dr. Darowish without prior authorization.

Appellant, through counsel, on December 27, 2016 requested an oral hearing on the December 16, 2016 decision before an OWCP hearing representative. At the telephone hearing, held on June 12, 2017, he asserted that her initial surgery by Dr. Espenshade was unsuccessful, but that Dr. Darowish subsequently operated on her right elbow on March 16, 2016 and confirmed that she had a torn ligament. Counsel noted that following the repair appellant improved and returned to work. Appellant related that she had returned to modified work on August 29, 2016 and to her usual employment in March 2017.

OWCP thereafter received a December 8, 2016 report from Dr. Darowish. Dr. Darowish discussed his treatment of appellant beginning January 2016. He related that a January 27, 2016 MRI scan study showed that the lateral ulnar collateral ligament was detached from the humeral insertion and that surgery performed March 16, 2016 confirmed “obvious detachment” and compression of the radial nerve showing radial tunnel syndrome. Dr. Darowish advised that reviewing the MRI scan study obtained prior to Dr. Espenshade’s surgery showed similar findings to the January 27, 2016 MRI scan study. He related that appellant currently had de Quervain’s tenosynovitis, which was “a separate issue from her initial elbow complaints.” Dr. Darowish indicated that the relevant diagnoses were right lateral epicondylitis, right lateral ulnar collateral ligament detachment, and right radial tunnel syndrome. He advised that the detachment of the lateral ulnar collateral ligament could be the result of a traumatic event, but found that appellant had not experienced such an event. Dr. Darowish attributed the condition to degeneration of the lateral epicondyle from the lateral epicondylitis. He explained the process of micro tears causing degeneration and advised, “This degenerative material is not as strong as usual tendon, and so the [individual] continues to perform activities where the wrist is extended, as would be part of [appellant’s] job activities as a postal carrier, the degenerative material is more likely to re-micro tear.” Dr. Darowish opined that as the degeneration grew it affected the insertion of the lateral ulnar collateral ligament and extensor carpi radialis brevis.

By decision dated August 25, 2017, OWCP’s hearing representative affirmed the December 16, 2016 decision. She noted that OWCP had previously denied appellant’s request for wage-loss compensation through March 15, 2016. The hearing representative noted that appellant underwent additional surgery on March 16, 2016, but found that she had not submitted sufficient medical evidence showing that she was unable to perform the limited-duty assignment due to her employment injury.

On December 12, 2017 appellant, through counsel, requested reconsideration of the December 12, 2016 decision finding that she was not entitled to wage-loss compensation beginning November 30, 2015 pursuant to section 10.500(a).

On February 21, 2018 appellant appealed the August 25, 2017 decision to the Board.

By decision dated March 8, 2018, OWCP denied appellant's request for reconsideration under section 8128(a) after finding that she had not raised a legal argument or submitted evidence sufficient to warrant reopening her case for further merit review. It determined that she had requested reconsideration of its August 25, 2017 decision rather than the December 12, 2016 decision.

On appeal, counsel argues that appellant's condition worsened after the August 31, 2015 surgery by Dr. Espenshade and that a January 27, 2016 MRI scan study revealed detachment of the lateral ulnar collateral ligament from the humeral insertion. He maintains that Dr. Darowish explained the relationship of appellant's condition to her work injury and that his opinion constitutes the weight of the evidence. Counsel also asserts that OWCP erred in failing to properly consider his December 12, 2017 request for reconsideration of the December 12, 2016 decision.

LEGAL PRECEDENT -- ISSUE 1

Where an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that the employee can perform the light-duty position, the employee has the burden of proof to establish by the weight of the reliable, probative, and substantial evidence, a recurrence of total disability and to show that he or she cannot perform such light duty. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.⁶

OWCP regulations provide that a recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.⁷ This term also means an inability to work that takes place when a light-duty assignment made specifically to accommodate an employee's physical limitations due to his or her work-related injury or illness is withdrawn, (except when such withdrawal occurs for reasons of misconduct, nonperformance of job duties or a reduction-in-force) or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.⁸

ANALYSIS -- ISSUE 1

OWCP accepted that appellant sustained right synovitis and tenosynovitis due to an April 14, 2015 employment injury. It paid her wage-loss compensation for total disability beginning July 20, 2015. On August 31, 2015 Dr. Espenshade performed surgery on appellant's right elbow. Subsequent to the surgery, he found that she could return to limited-duty employment on November 30, 2015 without use of her right upper extremity. The employing establishment offered appellant a modified position effective November 30, 2015 within the restrictions set forth by Dr. Espenshade, but she did not return to work. By decision dated March 28, 2016, OWCP

⁶ *Richard A. Neidert*, 57 ECAB 474 (2006); *Jackie D. West*, 54 ECAB 158 (2002); *Terry R. Hedman*, 38 ECAB 222 (1986).

⁷ 20 C.F.R. § 10.5(x).

⁸ *Id.*

found that she was not entitled to compensation beginning November 30, 2015 under section 10.500(a) as she refused to accept modified employment within her restrictions. In a decision dated December 12, 2016, an OWCP hearing representative affirmed the March 28, 2016 decision. He specified that the issue was appellant's entitlement to wage-loss compensation from November 30, 2015 to March 15, 2016, noting that OWCP had paid her compensation from March 16 to April 1, 2016 following a second elbow surgery.

In September 2016, appellant filed a notice of recurrence of disability beginning November 30, 2015 causally related to her April 14, 2015 employment injury. As noted, however, OWCP previously adjudicated the issue of whether she was entitled to wage-loss compensation from November 30 to March 15, 2016 and found that she was not entitled to wage-loss compensation as she had refused an offer of suitable modified employment under section 10.500(a). It paid appellant wage-loss compensation from March 16 to April 1, 2016. Appellant returned to work effective August 29, 2016. The issue, consequently, is whether she has established that she was disabled from employment for the period April 2 through August 28, 2016, causally related to her accepted April 14, 2015 right elbow injury.

Appellant has not alleged that the employing establishment withdrew the offered limited-duty position. Instead, she attributed her recurrence of disability to a change in the nature and extent of her employment-related conditions. Appellant must provide medical evidence to establish that she was disabled due to a worsening of her accepted work-related conditions of right synovitis and tenosynovitis.⁹

On February 8, 2016 Dr. Darowish advised that the MRI scan study he reviewed showed detachment of the lateral ulnar collateral ligament from the humeral insertion and recommended surgery. He determined that appellant could work with restrictions of lifting, pushing, and pulling with her right hand up to one pound pending surgery. Dr. Darowish noted that after surgery she would have an extended recovery period. He did not, however, specifically address causation or attribute the need for surgery to the accepted work injury. Consequently, Dr. Darowish's report is of diminished probative value.¹⁰

In a report dated February 9, 2016, Dr. Espenshade advised that the MRI scan study showed a possible retear that he did not believe was significant and found that appellant could continue working with restrictions.

On March 16, 2016 Dr. Darowish performed a right radial tunnel decompression and repair of the lateral ulnar collateral ligament. In May 3 and June 28, 2016 return to work forms, he indicated that appellant was unable to work. Dr. Darowish, however, did not address the cause of her disability. Medical evidence that does not offer an opinion regarding the cause of an employee's condition lacks probative value on the issue of causal relationship.¹¹

Dr. Darowish, in an August 23, 2016 report, diagnosed status right radial tunnel decompression and possible carpal tunnel syndrome and de Quervain's tenosynovitis. He found

⁹ See *Jackie D. West*, *supra* note 6.

¹⁰ See *J.S.*, Docket No. 18-0020 (issued August 8, 2018).

¹¹ See *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

that appellant was doing well following her right elbow lateral collateral repair and radial tunnel decompression and could resume sedentary work on August 29, 2016 lifting, pushing, and pulling no more than one pound with the right side and performing no repetitive activities with the right upper extremity. Appellant resumed work on August 29, 2016 within Dr. Darowish's work restrictions. Again, Dr. Darowish did not relate her need for surgery and resulting disability to the April 14, 2015 employment injury and thus his opinion is of diminished probative value.¹²

On October 25, 2016 Dr. Darowish diagnosed bilateral de Quervain's tenosynovitis and possible cubital tunnel syndrome. He provided work restrictions. As Dr. Darowish did not address the relevant issue of disability from April 2 to August 28, 2016, his report is insufficient to meet appellant's burden of proof.¹³

In a December 8, 2016 report, Dr. Darowish advised that the January 27, 2016 MRI scan study showed detachment of the lateral ulnar collateral ligament from the humeral insertion and that this finding was confirmed by the March 16, 2016 surgery. He diagnosed right lateral epicondylitis, right lateral ulnar collateral ligament detachment, and right radial tunnel syndrome. Dr. Darowish indicated that appellant had not experienced a traumatic event that would cause the detachment of the lateral ulnar collateral ligament. He attributed the condition to degeneration result from micro tears which he attributed to her work duties as a mail carrier. Appellant, however, worked as a laborer/custodian and attributed her condition to cutting and breaking down cardboard boxes. Dr. Darowish, consequently, relied upon an inaccurate history of injury. Medical opinions based on an incomplete or inaccurate history of injury are of little probative value.¹⁴ Further, OWCP has not accepted the detachment of the lateral ulnar collateral ligament as employment related. Where appellant claims that, a condition not accepted or approved by OWCP was due to her employment injury, she bears the burden of proof to establish that the condition is causally related to the employment injury through the submission of rationalized medical evidence.¹⁵ Dr. Darowish did not explain how the diagnosed condition resulted from the identified work factor of breaking down cardboard boxes. Medical conclusions unsupported by rationale are of little probative value.¹⁶

On appeal, counsel contends that reports from Dr. Darowish are rationalized and constitute the weight of the evidence. As noted, however, he did not provide a reasoned opinion on causation supported by a complete and accurate factual history and thus his opinion is of diminished probative value.

¹² *Id.*

¹³ See *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *C.H.*, Docket No. 17-1239 (issued November 20, 2017) (the Board will not require OWCP to pay compensation for disability in the absence of any medical evidence directly addressing the specific date of disability for which compensation is claimed).

¹⁴ See *T.F.*, Docket No. 17-0645 (issued August 15, 2018).

¹⁵ *JaJa K. Asaramo*, 55 ECAB 200, 204 (2004).

¹⁶ *Willa M. Frazier*, 55 ECAB 379 (2004); *Jimmy H. Duckett*, 52 ECAB 332 (2001).

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

LEGAL PRECEDENT -- ISSUE 2

Section 8128(a) of FECA does not entitle a claimant to review of an OWCP decision as a matter of right.¹⁷ OWCP has discretionary authority in this regard and has imposed certain limitations in exercising its authority.¹⁸ 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.¹⁹ 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.²⁰ 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.²¹

The Board and OWCP may not simultaneously exercise jurisdiction over the same issue(s).²²

ANALYSIS -- ISSUE 2

The Board finds that OWCP improperly issued its March 8, 2018 nonmerit decision. On December 12, 2017 counsel timely requested reconsideration of OWCP's December 12, 2016 merit decision.²³ However, OWCP mistakenly considered it as a request for reconsideration of its August 25, 2017 merit decision. The two decisions address separate and distinct periods of entitlement to wage-loss compensation. Because OWCP did not properly consider appellant's request for reconsideration of the December 12, 2016 decision, the Board finds that the March 8, 2018 nonmerit decision was improperly issued. Moreover, it lacked jurisdiction over the August 25, 2017 decision because counsel requested review of that decision by the Board. As

¹⁷ 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).

¹⁸ 20 C.F.R. § 10.607.

¹⁹ *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 the OWCP 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.

²⁰ 20 C.F.R. § 10.606(b)(3).

²¹ *Id.* at § 10.608(a), (b).

²² 20 C.F.R. §§ 501.2(c)(3), 10.626; *see, e.g., Lawrence Sherman*, 55 ECAB 359, 360 n.4 (2004).

²³ *See supra* note 19.

noted, the Board and OWCP may not simultaneously exercise jurisdiction over the same issue.²⁴ Consequently, OWCP's March 8, 2018 decision denying further merit review of the August 25, 2017 decision shall be set aside as null and void.²⁵

CONCLUSION

The Board finds that appellant has not established that she was totally disabled for the period April 2 through August 28, 2016 due to her accepted April 14, 2015 right elbow injury. The Board further finds that OWCP's March 8, 2018 nonmerit decision is null and void.²⁶

ORDER

IT IS HEREBY ORDERED THAT the August 25, 2017 decision of the Office of Workers' Compensation Programs is affirmed. The Board further finds that OWCP's March 8, 2018 decision is set aside as null and void.

Issued: November 14, 2018
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

²⁴ See *supra* note 22.

²⁵ See *J.D.*, Docket No. 17-0143 (issued July 20, 2017); *Douglas E. Billings*, 41 ECAB 880 (1990).

²⁶ As such, counsel's December 12, 2017 request for reconsideration of OWCP's December 12, 2016 merit decision is still pending before OWCP.