

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

_____)	
T.P. (f/k/a T.S.), Appellant)	
)	
and)	Docket No. 18-0774
)	Issued: November 7, 2018
U.S. POSTAL SERVICE, POST OFFICE,)	
St. Paul, MN, Employer)	
_____)	

Appearances:
Alan J. Shapiro, 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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On February 28, 2018 appellant, through counsel, filed a timely appeal from a November 24, 2017 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from the last merit decision, dated January 30, 2017, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3 the Board lacks jurisdiction over the merits of the case.

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 5 U.S.C. § 8101 *et seq.*

ISSUE

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

FACTUAL HISTORY

On August 24, 2016 appellant, then a 57-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that she developed osteoarthritis in her right thumb and index finger due to her federal employment duties. She did not stop work. Appellant's supervisor reported that appellant was performing light-duty work four hours a day.

In a development letter dated November 29, 2016, OWCP requested additional factual and medical information from appellant in support of her occupational disease claim. It also provided a questionnaire for her to complete regarding the factual elements of her claim. OWCP afforded appellant 30 days for a response.

Appellant provided a report dated June 21, 2015 from Dr. Edward T. Su, a Board-certified orthopedic surgeon, noting that he first examined her on June 24, 2011 and describing her medical treatment. She underwent left thumb arthroplasty on March 30, 2012. Appellant reported a worsening of her right thumb condition on February 4, 2013 and on May 29, 2014 she underwent right trigger thumb surgery. She sought treatment for her right index finger on September 24, 2015 and Dr. Su diagnosed osteoarthritis of that digit. Appellant's right thumb pain increased and on February 17, 2016 he performed a steroid injection. On March 30, 2016 Dr. Su diagnosed possible right index trigger finger. He examined appellant on June 20, 2016 and diagnosed right thumb carpometacarpal osteoarthritis, right index finger proximal interphalangeal joint osteoarthritis, and right index finger distal interphalangeal joint osteoarthritis.

By decision dated January 30, 2017, OWCP denied appellant's occupational disease claim finding that she had not submitted a written statement explaining what work factors caused or contributed to her condition. It therefore determined that the factual component of fact of injury had not been established.

On November 2, 2017 counsel requested reconsideration on behalf of appellant and resubmitted Dr. Su's June 21, 2016 report.

By decision dated November 24, 2017, OWCP denied appellant's request for reconsideration of the merits of the claim pursuant to 5 U.S.C. § 8128(a).

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,³ OWCP's regulations provide that the evidence or argument submitted by a claimant must: (1) show that OWCP erroneously applied or interpreted a specific point of law; (2) advance a

³ 5 U.S.C. § 8128(a). Under section 8128 of FECA, the Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application.

relevant legal argument not previously considered by OWCP; or (3) constitute relevant and pertinent new evidence not previously considered by OWCP.⁴ To be entitled to a merit review of an OWCP decision denying or terminating a benefit, a claimant's application for review must be received within one year of the date of that decision for which review is sought.⁵ If the request is timely, but fails to meet at least one of the above standards, OWCP will deny the application for review without reopening the case for a review on the merits.⁶

In support of a request for reconsideration, an appellant is not required to submit all evidence which may be necessary to discharge his or her burden of proof.⁷ He or she needs only to submit relevant, pertinent evidence not previously considered by OWCP.⁸ When reviewing an OWCP decision denying merit review, the function of the Board is to determine whether OWCP properly applied the standards set for at section 10.606(b)(3) to the claimant's application for reconsideration and any evidence submitted in support thereof.⁹

The Board has held that the submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.¹⁰

ANALYSIS

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).

In her November 2, 2017 request for reconsideration, appellant did not make any argument that OWCP erroneously applied or interpreted a specific point of law or advance a relevant legal argument not previously considered by OWCP. Thus, she was not entitled to a review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(3).¹¹

Appellant resubmitted the June 21, 2016 report from Dr. Su. The Board has held that evidence which repeats or duplicates evidence already of record does not constitute a basis for reopening a case.¹² Consequently, the evidence submitted by appellant on reconsideration does not satisfy the third criterion, noted above, for reopening a claim for merit review.

⁴ 20 C.F.R. § 10.606(b)(3).

⁵ *Id.* at § 10.607(a).

⁶ *Id.* at § 10.608(b); *see also E.R.*, Docket No. 09-1655 (issued March 18, 2010).

⁷ *J.F.*, Docket No. 17-1508 (issued March 28, 2018).

⁸ *Id.*; *see also Mark H. Dever*, 53 ECAB 710 (2002).

⁹ *Supra* note 7; *see also Annette Louise*, 54 ECAB 783 (2003).

¹⁰ *M.E.*, 58 ECAB 694 (2007).

¹¹ *M.M.*, Docket No. 18-0292 (issued July 9, 2018).

¹² *Id.*; *D.K.*, 59 ECAB 141 (2007).

The Board accordingly finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(3) and thus OWCP properly denied merit review.¹³

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the November 24, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 7, 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 *Supra* note 11; *B.R.*, Docket No. 17-1213 (issued January 18, 2018).