



## 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

This case has previously been before the Board.<sup>3</sup> The facts and circumstances of the case as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On June 24, 2016 appellant, then a 58-year-old nurse, filed an occupational disease claim (Form CA-2) alleging that she sustained bilateral finger, hand, and wrist conditions due to typing on a computer keyboard and using a mouse for 8 to 12 hours per day as part of her job duties. She indicated that she first became aware of her claimed condition on February 28, 2014 and first realized its relationship to her federal employment on November 10, 2014. Appellant did not stop work.

After OWCP requested additional factual and medical evidence in a July 7, 2016 development letter, appellant submitted a factual statement and several reports dated between September 2015 and June 2016 from Dr. Benton A. Emblom, a Board-certified orthopedic surgeon. Dr. Emblom diagnosed several medical conditions, including bilateral carpal tunnel syndrome, and recommended work restrictions.<sup>4</sup> Appellant also submitted the findings of July 26, 2011 electromyogram and nerve conduction velocity (EMG/NCV) testing of her upper extremities.

By decision dated September 23, 2016, OWCP accepted that appellant had established employment factors in the form of typing on a computer keyboard and using a mouse. However, it denied her claim, finding that she had not submitted medical evidence sufficient to establish a medical condition causally related to the accepted factors of her federal employment. OWCP concluded that appellant had not met the requirements to establish "an injury and/or medical condition causally related to the accepted work event(s)."

On October 19, 2016 appellant, through counsel, requested a telephonic hearing with a representative of OWCP's Branch of Hearings and Review, which was held on May 8, 2017. After the hearing, appellant submitted a May 9, 2017 report from Dr. Emblom who opined that her work activities partially caused her bilateral carpal tunnel syndrome.

By decision dated July 11, 2017, OWCP's hearing representative affirmed the September 23, 2016 decision. She found that appellant had not submitted a rationalized medical report sufficient to establish an employment-related medical condition.

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<sup>3</sup> Docket No. 18-0051 (issued March 23, 2018).

<sup>4</sup> On October 28, 2015 appellant underwent bilateral carpal tunnel syndrome release surgery which was not authorized by OWCP.

Appellant appealed to the Board and, by decision dated March 23, 2018,<sup>5</sup> the Board affirmed the July 11, 2017 decision.

On August 15, 2018 appellant, through counsel, requested reconsideration of her claim. She submitted April 24, 2018 EMG/NCV testing results and a report of the same date from Dr. Michael Ellerbusch, a Board-certified orthopedic surgeon, who diagnosed cervical spondylosis/left radiculopathy and bilateral hand weakness/numbness.

By decision dated September 26, 2018, OWCP denied modification of its prior decision finding that she had not submitted a rationalized medical report sufficient to establish her claim.<sup>6</sup>

On November 7, 2018 appellant, through counsel, requested reconsideration of the September 26, 2018 decision. She submitted a June 18, 2018 report from Dr. Kathleen McKeon, a Board-certified orthopedic surgeon, who reported physical examination findings and diagnosed carpal boss at the base of the second metacarpal bone of the right wrist.<sup>7</sup>

By decision dated April 23, 2019, OWCP denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

### **LEGAL PRECEDENT**

Section 8128(a) of FECA vests OWCP with discretionary authority to determine whether to review an award for or against compensation. OWCP may review an award for or against payment of compensation at any time based on its own motion or on application.<sup>8</sup>

A claimant seeking reconsideration of a final decision must present arguments or provide evidence that: (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.<sup>9</sup>

A request for reconsideration must also be received by OWCP within one year of the date of OWCP's decision for which review is sought.<sup>10</sup> If OWCP chooses to grant reconsideration, it

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<sup>5</sup> *Supra* note 3.

<sup>6</sup> The Board notes that OWCP indicated that it was denying modification of the Board's March 23, 2018 decision. However, OWCP is not authorized to review Board decisions as Board decisions are not subject to review except by the Board and they become final after 30 days. Although the March 23, 2018 Board decision was the last merit decision of record, OWCP's initial denial of July 11, 2017 was the appropriate subject of possible modification by OWCP. *See* 20 C.F.R. § 501.6(d).

<sup>7</sup> Dr. McKeon noted that appellant reported having undergone carpal tunnel surgery in 2015. She also indicated that appellant reporting having left hand numbness and she recommended treatment for her right wrist problems.

<sup>8</sup> 5 U.S.C. § 8128(a).

<sup>9</sup> 20 C.F.R. § 10.606(b)(3); *see also M.S.*, Docket No. 18-1041 (issued October 25, 2018); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

<sup>10</sup> 20 C.F.R. § 10.607(a).

reopens and reviews the case on its merits.<sup>11</sup> If the request is timely, but fails to meet at least one of the requirements for reconsideration, OWCP will deny the request for reconsideration without reopening the case for review on the merits.<sup>12</sup>

The Board has held that the submission of evidence or argument which repeats or duplicates evidence or argument already in the case record<sup>13</sup> and the submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.<sup>14</sup>

### 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).

Appellant filed a timely request for reconsideration,<sup>15</sup> but she did not establish that OWCP erroneously applied or interpreted a specific point of law, or advance a relevant legal argument not previously considered by OWCP. Accordingly, the Board finds that appellant is not entitled to a review of the merits based on either the first or second requirement under 20 C.F.R. § 10.606(b)(3).<sup>16</sup>

In support of her request for reconsideration, appellant submitted a June 18, 2018 report from Dr. McKeon who noted her symptoms upon physical examination and diagnosed carpal boss of the right wrist. The report did not contain an opinion on the cause of this medical condition and the Board finds that its submission would not require reopening of appellant's case for review on the merits. While the medical evidence submitted by appellant was new, it was not relevant because it did not address the underlying issue of the present case, *i.e.*, whether she submitted medical evidence sufficient to establish a medical condition causally related to the accepted employment factors. The Board has held that the submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.<sup>17</sup> Therefore, appellant also failed to satisfy the third requirement under 20 C.F.R. § 10.606(b)(3).<sup>18</sup>

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<sup>11</sup> *Id.* at § 10.608(a); *see also C.K.*, Docket No. 18-1019 (issued October 24, 2018).

<sup>12</sup> 20 C.F.R. § 10.608(b); *see also L.C.*, Docket No. 18-0787 (issued September 26, 2019); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

<sup>13</sup> *N.L.*, Docket No. 18-1575 (issued April 3, 2019); *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

<sup>14</sup> *M.K.*, Docket No. 18-1623 (issued April 10, 2019); *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

<sup>15</sup> *See supra* note 10; *J.F.*, Docket No. 16-1233 (issued November 23, 2016).

<sup>16</sup> *See supra* note 9.

<sup>17</sup> *See supra* note 14.

<sup>18</sup> *See supra* note 9.

The Board accordingly finds that appellant has not met 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.<sup>19</sup>

**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 April 23, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 4, 2019  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>19</sup> See *supra* note 12.