

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.

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 January 22, 2012 appellant, then a 55-year-old laborer custodian, filed a traumatic injury claim (Form CA-1) for a right thumb (trigger finger) condition she allegedly sustained in the performance of duty on July 6, 2011. She explained that she attended therapy three days a week and that her injury was due to constant use of therapeutic exercise machines while in therapy. On the reverse side of the Form CA-1, the employing establishment controverted appellant's claim noting that the injury did not occur on premises and she had not submitted medical evidence to support the claimed injury. It further noted that appellant last worked on April 22, 2009.⁴

In a report dated March 8, 2012, Dr. Mary K. Morrell, a Board-certified orthopedic surgeon, diagnosed right thumb trigger finger "which occurred at work on [July 6, 2011]." She further explained that the injury "[occurred] over time at work and then was aggravated while [appellant] was in [p]hysical [t]herapy."

By decision dated April 9, 2012, OWCP accepted appellant's July 6, 2011 traumatic injury claim for an aggravation of right trigger finger (acquired).⁵

On January 9, 2013 OWCP noted that it had accepted an aggravation of acquired right trigger finger due to the use of exercise machines in therapy. It advised that appellant was in therapy for her accepted back condition under File No. xxxxxx262.

On June 27, 2016 appellant filed a claim for a schedule award (Form CA-7). In support of her claim she submitted an August 17, 2016 report of permanent impairment from Dr. Neil Allen, a physician Board-certified in neurology and internal medicine. Dr. Allen found that pursuant to the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, appellant had two percent permanent impairment of her right upper extremity.

³ 5 U.S.C. § 8101 *et seq.*

⁴ Appellant has an accepted claim for a June 7, 2004 traumatic injury involving the thoracic and lumbar spines, adjudicated under OWCP File No. xxxxxx262. She also has an accepted occupational disease claim, also involving the thoracic and lumbar spines, which injury arose on or about February 6, 2007, adjudicated under OWCP File No. xxxxxx618.

⁵ OWCP also retroactively authorized appellant's March 9, 2012 surgery.

By decision dated October 21, 2016, OWCP denied appellant's schedule award claim as she had not submitted medical evidence sufficient to establish permanent impairment of a scheduled member or function of the body.

On October 24, 2016 appellant, through counsel, requested a telephonic hearing before an OWCP hearing representative and submitted additional medical evidence.

Following a preliminary review, by decision dated March 8, 2017, an OWCP hearing representative vacated the October 21, 2016 decision. She noted that OWCP had accepted appellant's claim based on the March 8, 2012 report from Dr. Morrell. The hearing representative found that the record failed to establish that she had attended physical therapy. She noted that appellant had not responded to a March 5, 2012 OWCP development letter which inquired into the factual allegations of the claim. The hearing representative advised that a review of the case records for appellant's other accepted employment injuries, under OWCP File Nos. xxxxxx262 and xxxxxx618, did not support that she was in physical therapy in 2011. She found that as appellant had not worked since July 23, 2010, she had not experienced a traumatic injury on July 6, 2011. The hearing representative remanded the case for OWCP to determine, prior to adjudicating the schedule award issue, whether appellant was claiming a traumatic injury on June 6, 2011, an occupational disease, or a consequential injury under a separate file number. She further instructed OWCP to obtain a detailed statement from appellant regarding her activities in physical therapy, why she selected June 6, 2011 as the date of injury, and whether she had received physical therapy for a nonemployment-related condition. The hearing representative also advised OWCP to request that appellant submit copies of physical therapy reports.

OWCP, in an April 10, 2017 development letter, requested additional information from appellant in order to determine whether she had factually established her claim.

By decision dated July 18, 2017, OWCP denied appellant's schedule award claim. It found that it could not adjudicate the issue of whether she sustained an employment-related permanent impairment as she had not responded to its request for additional information regarding whether she sustained an employment injury, as alleged.

Appellant, through counsel, on August 7, 2017 requested a telephonic hearing before an OWCP hearing representative.

During the telephonic hearing, held on January 12, 2018, counsel questioned why OWCP denied her schedule award claim before issuing a formal adjudication of her claim. Appellant advised that she was in therapy on July 6, 2011 and was not working. She explained that she had used machines in therapy for a month before experiencing right hand pain.

By decision dated March 29, 2018, OWCP's hearing representative affirmed the July 18, 2017 decision denying a schedule award. She determined that appellant had not demonstrated that the condition for which she claimed a schedule award was causally related to employment factors, noting that she was not working at the time of the alleged incident and did not support her allegation that she was using exercise equipment while undergoing physical therapy for another claim.

On April 25, 2018 appellant, through counsel, requested reconsideration and submitted an August 17, 2016 impairment evaluation.

By decision dated May 7, 2018, OWCP denied appellant's request for reconsideration because she had not raised a relevant legal argument or submitted new and relevant evidence sufficient to warrant reopening her case for further merit review under section 8128(a).

LEGAL PRECEDENT

Section 8128 of FECA vests OWCP with a discretionary authority to determine whether it will review an award for or against compensation, either under its own authority or on application by a claimant.⁶ Section 10.608(b) of OWCP's regulations provide that a timely request for reconsideration may be granted if OWCP determines that the claimant has presented evidence and/or argument that meet at least one of the standards described in section 10.606(b)(3).⁷ This section provides that the application for reconsideration must be submitted in writing and 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.⁸ Section 10.608(b) provides that when a request for reconsideration is timely, but fails to meet at least one of these three requirements, OWCP will deny the application for reconsideration without reopening the case for a review on the merits.⁹

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).

Appellant disagreed with OWCP's denial of her claim for a schedule award. On April 25, 2018 appellant, through counsel, requested reconsideration. Appellant did not allege that OWCP erroneously applied or interpreted a specific point of law or advance a legal argument not previously considered by OWCP. Thus, the Board finds that she is 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).

The Board further finds that appellant has not submitted relevant or pertinent new evidence not previously considered with her April 25, 2018 request for reconsideration. The underlying issue in this case involves whether appellant has an accepted condition to her right upper extremity due to an employment injury upon which she can claim a schedule award. On reconsideration appellant resubmitted a copy of Dr. Allen's August 17, 2016 report of permanent impairment. The Board notes that this medical report was previously of record. The Board has held that the

⁶ 5 U.S.C. § 8128(a).

⁷ 20 C.F.R. § 10.608(a).

⁸ *Id.* at § 10.606(b)(3).

⁹ *Id.* at § 10.608(b).

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

The Board accordingly finds that appellant did not meet 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.¹¹

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 May 7, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 7, 2019
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

¹⁰ See *L.R.*, Docket No. 18-0400 (issued August 24, 2018).

¹¹ See *A.R.*, Docket No. 16-1416 (issued April 10, 2017); *A.M.*, Docket No. 16-0499 (issued June 28, 2016); *A.K.*, Docket No. 09-2032 (issued August 3, 2010); *M.E.*, 58 ECAB 694 (2007); *Susan A. Filkins*, 57 ECAB 630 (2006); (when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b), OWCP will deny the application for reconsideration without reopening the case for a review on the merits).