

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

_____)	
C.T., Appellant)	
)	
and)	Docket No. 19-0058
)	Issued: June 14, 2019
U.S. POSTAL SERVICE, POST OFFICE,)	
Jacksonville, AL, Employer)	
_____)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On October 9, 2018 appellant filed a timely appeal from a May 4, 2018 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from the last merit decision, dated April 3, 2018, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of this case.

ISSUES

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 2, 2018 appellant, then a 56-year-old city carrier, filed an occupational disease claim (Form CA-2) alleging that she sustained bilateral carpal tunnel syndrome and bilateral wrist

¹ 5 U.S.C. § 8101 *et seq.*

sprains due to factors of her federal employment. She noted that she first became aware of her claimed conditions on December 21, 2017 and realized their relation to her federal employment on December 27, 2017. Appellant did not stop work.

By development letter dated January 16, 2018, OWCP informed appellant that the evidence submitted was insufficient to establish the claim. It advised her of the type of medical and factual evidence needed and provided a questionnaire for her completion. OWCP afforded appellant 30 days to respond.

In response, appellant provided an undated statement describing repetitive upper extremity activities while sorting, casing, and delivering mail over a 17-year period. She attached an official position description and her hand-drawn diagrams of postal equipment.

Appellant also submitted medical evidence consisting of a report dated December 27, 2017 in which Dr. William C. Ferguson, a treating physician Board-certified in emergency medicine, noted her history of bilateral wrist pain for approximately one month, worsened that day when she felt sharp pain in both wrists when she attempted to lift a tray while at work. She denied acute trauma. On examination Dr. Ferguson observed bilaterally positive Tinel's signs at the wrist. He diagnosed bilateral wrist strains and bilateral carpal tunnel syndrome, "aggravated by repetitive use of wrist then attempting to lift reported heavy tray." Dr. Ferguson prescribed medication and bilateral wrist splints.

In a statement dated January 17, 2018, A.M., an employing establishment health and resource management specialist, contended that appellant's conflicting histories of injury cast doubt on the validity of her claim. Appellant had advised Dr. Ferguson that she injured her wrist lifting a heavy tray, but described a repetitive overuse condition in her statement to management.

By decision dated April 3, 2018, OWCP accepted that the implicated employment events had occurred as alleged. It denied the claim, however, finding that the medical evidence of record did not explain how and why the accepted employment duties would have caused or contributed to the development of bilateral carpal tunnel syndrome or bilateral wrist sprains.²

On May 1, 2018 appellant requested reconsideration. She contended, in her letter dated April 27, 2018, that she had performed repetitive hand motions at work for 17 years. Appellant noted that she had "enclosed medical information." However, no additional medical evidence of record accompanied her request for reconsideration.

By decision dated May 4, 2018, OWCP denied appellant's request for reconsideration of the merits of her claim, finding that the evidence submitted was insufficient to warrant a merit review of its April 3, 2018 decision.

² OWCP noted that, if appellant attributed the claimed conditions to lifting a tray of mail on December 21, 2017, she should file a traumatic injury claim (Form CA-1).

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under FECA section 8128(a), 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 relevant legal argument not previously considered by OWCP; or (3) constitute relevant and pertinent new evidence not previously considered by OWCP.³

A request for reconsideration must be received by OWCP within one year of the date of its decision for which review is sought.⁴ If it chooses to grant reconsideration, it reopens and reviews the case on its merits.⁵ 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.⁶

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 reconsideration request, appellant did not show that OWCP erroneously applied or interpreted a specific point of law, and she did not advance a new and relevant legal argument not previously considered.

Accordingly, appellant 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).

With her reconsideration request, appellant submitted her supplemental statement in which she asserted that repetitive hand motions at work had caused the claimed bilateral wrist conditions. This evidence, while new, is not relevant to the underlying medical issue of causal relationship.⁷ Evidence which does not address the particular issue under consideration does not constitute a basis for reopening a case.⁸ Appellant's supplemental statement cannot qualify as medical evidence establishing a causal relationship between her diagnosed conditions and the employment factors as lay opinions have no probative value on medical issues.⁹ She also noted that she had

³ 20 C.F.R. § 10.608(b)(3); *see also* *H.H.*, Docket No. 18-1660 (issued March 14, 2019); *L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

⁴ *Id.* at § 10.607(a).

⁵ *Id.* at § 10.608(a); *see also* *M.S.*, 59 ECAB 231 (2007).

⁶ *Id.* at § 10.608(b); *H.H.*, *supra* note 3; *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

⁷ *B.E.*, Docket No. 18-0849 (issued January 7, 2019); *W.C.*, Docket No. 15-1878 (issued January 6, 2016); *see James A. Long*, 40 ECAB 538 (1989).

⁸ *See F.B.*, Docket No. 18-1039 (issued December 6, 2018).

⁹ *See Don A. Bergau*, Docket No. 05-944 (issued July 7, 2005); *Susan M. Biles*, 40 ECAB 420 (1988) (where the Board held that the statement of a layperson is not competent evidence on the issue of causal relationship).

“enclosed medical information” with her request for reconsideration. However, no additional medical evidence was received. Thus, appellant is also not entitled to a review of the merits of her claim based on the third above-noted requirement under section 10.606(b)(3).

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.

On appeal appellant contends that her work duties must have caused the claimed bilateral wrist conditions as she only performed repetitive upper extremity movements while at work. However, as explained above, the Board lacks jurisdiction over the merits of the 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 May 4, 2018 decision of the Office of Workers’ Compensation Programs is affirmed.

Issued: June 14, 2019
Washington, DC

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

Janice B. Askin, Judge
Employees’ Compensation Appeals Board

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