

federal employment. She noted that she had numbness and tingling in her hands, especially in her fingertips. Appellant indicated that she first became aware of her claimed condition on May 1, 2017 and first realized its relation to her federal employment on February 19, 2018. She did not stop work.

On a form dated February 19, 2018, Dr. Amar A. Patel, a Board-certified orthopedic hand surgeon, diagnosed bilateral CTS.

In an undated narrative statement, appellant indicated that she had been employed at the employing establishment since December 1993 and her duties required using a letter sorting machine until she became qualified for casing mail at work.

In a February 19, 2018 activity status report, Dr. Patel advised that appellant was capable of returning to work that same day with no restrictions.

A narrative statement from appellant, dated March 2, 2018, indicated that for some time she had had problems with her hands, the right worse than the left, and reiterated that she had been diagnosed with CTS. She further indicated that she had different kinds of splints and they were not working as well as they used to and requested an electromyogram (EMG).

In an April 23, 2018 developmental letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence necessary to establish her claim and attached a questionnaire for her completion. OWCP afforded appellant 30 days to submit the requested factual and medical evidence. No additional evidence was received.

By decision dated June 5, 2018, OWCP denied the claim finding that the factual evidence of record was insufficient to establish that the claimed injury and/or event(s) had occurred as alleged. It found that appellant's brief statement on her CA-2 form failed to describe how often she had performed the implicated work activities and for how long on each occasion. Thus, OWCP found that the requirements had not been met to establish an injury as defined by FECA.

Appellant subsequently submitted additional medical evidence in support of her claim, including a progress report from Dr. Patel dated February 19, 2018 and an EMG report dated May 23, 2018.

In a June 6, 2018 report, Dr. Patel continued to diagnose bilateral CTS and opined that appellant's symptoms were a result of repetitive activity that she performed on a daily basis while at work. He noted that although CTS was multifactorial, repetitive activity could definitely lead to worsening of symptoms.

On August 6, 2018 appellant requested reconsideration. A memorandum of telephone call (Form CA-110) reveals that on December 11, 2018 appellant called OWCP to inquire about the status of her petition for reconsideration.

By decision dated February 14, 2019, OWCP denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a), finding that she neither raised substantive legal questions nor submitted new and relevant evidence and, thus, the submitted evidence was insufficient to warrant a review of its prior June 5, 2018 merit decision.

LEGAL PRECEDENT

Section 8128(a) of FECA does not entitle a claimant to review of an OWCP decision as a matter of right.² OWCP has discretionary authority in this regard and has imposed certain limitations in exercising its authority.³ 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.⁴

A timely application for reconsideration, including all supporting documents, must set forth arguments and contain evidence that either: (i) shows that OWCP erroneously applied or interpreted a specific point of law; (ii) advances a relevant legal argument not previously considered by OWCP; or (iii) constitutes relevant and pertinent new evidence not previously considered by OWCP.⁵ 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.⁶

ANALYSIS

The Board finds that this case is not in posture for decision.

On August 6, 2018 appellant filed a request for reconsideration of OWCP's June 5, 2018 merit decision. However, it was not until February 14, 2019, 192 days after she filed her request for reconsideration, that OWCP issued a decision finding that the evidence submitted in support of her August 6, 2018 request for reconsideration was insufficient to warrant a merit review.

OWCP's procedures provide a timeliness goal for issuing reconsideration decisions within 90 days from the receipt of the request.⁷ As OWCP's February 14, 2019 nonmerit decision was issued more than 90 days after it received appellant's request for reconsideration on August 6, 2018, the question becomes whether the delay has impacted appellant's ability to file a timely request for reconsideration of the merits of her case under 5 U.S.C. § 8128(a).⁸ Had OWCP issued

² 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] own motion or on application." 5 U.S.C. § 8128(a).

³ 20 C.F.R. § 10.607.

⁴ *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 OWCP's 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.

⁵ *Id.* at § 10.606(b)(3).

⁶ *Id.* at § 10.608(a), (b).

⁷ Federal (FECA) Procedure Manual, *supra* note 4 at Chapter 2.1602.2(c) (October 2011).

⁸ *See G.D.*, Docket No. 19-0815 (issued January 16, 2020); *E.I.*, Docket No. 18-0634 (issued January 23, 2019) (the Board ordered a merit review where OWCP delayed its reconsideration decision more than 90 days from the receipt of the request).

the reconsideration decision within its 90-day timeliness goal, appellant would have had additional time to appeal the June 5, 2018 merit decision to the Board and/or request reconsideration of the merits of the claim under the criteria set forth for a timely request for reconsideration with OWCP.

Therefore, the Board finds that this case is not in posture for decision.⁹ To preserve appellant's right to file a timely appeal to the Board or request reconsideration with OWCP, the case will be remanded to OWCP for a merit review of the evidence of record followed by an appropriate decision.

CONCLUSION

The Board finds that this case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the February 14, 2019 decision of the Office of Workers' Compensation Programs is set aside and this case is remanded for further proceedings consistent with this decision of the Board.

Issued: June 23, 2020
Washington, DC

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

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

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

⁹ See *G.D.*, *id.*