

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

F.L., Appellant)	
)	
and)	Docket No. 20-1288
)	Issued: July 13, 2021
DEPARTMENT OF THE TREASURY,)	
INTERNAL REVENUE SERVICE,)	
Farmers Branch, TX, Employer)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On June 8, 2020 appellant filed a timely appeal from a January 30, 2020 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days have elapsed from OWCP's last merit decision, dated October 21, 2019, 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.²

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the January 30, 2020 decision, appellant submitted additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

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 March 13, 2019 appellant, then a 49-year-old financial specialist, filed an occupational disease claim (Form CA-2) alleging that she developed a bilateral hand condition due to factors of her federal employment, including prolonged typing and the positioning of her hands when sitting while typing. She noted that she experienced bilateral chronic numbness and tingling in her ring and little fingers as she typed on the computer, nine hours a day, five days a week. Appellant indicated that she first became aware of her condition and its relationship to her federal employment on March 5, 2019. She did not stop working.

In an undated statement, appellant described her work duties as continuous sitting for nine hours per day for five days a week, which she alleged caused and persistently aggravated her injuries. She noted that her fingers frequently fell asleep at work as her arms would bend in the typing position, weakening her grip and causing difficulty with hand coordination when typing throughout the day for long periods of time. Appellant indicated that she had been taking medications and using a splint to relieve the pain in her hands. She noted that she became aware of the severity of her condition when she began experiencing severe swelling and difficulty sleeping. Appellant eventually sought medical treatment on March 5, 2019.

In a March 5, 2019 medical report, Dr. Robert Ippolito, a Board-certified plastic surgeon, noted that appellant was evaluated for her bilateral wrist condition and observed that she had decreased sensation of the palmar radial and palmar ulnar aspect of the left small finger, palmar ulnar aspect of the right small finger, and palmar ulnar aspect of the right ring finger. He diagnosed bilateral carpal tunnel syndrome (CTS).

In a March 20, 2019 development letter, OWCP informed appellant that the evidence of record was insufficient to establish her claim. It advised her of the type of medical evidence needed, including a physician's opinion as to how employment activities caused, contributed to, or aggravated a diagnosed condition. In a separate development letter of even date, OWCP requested that the employing establishment provide additional information regarding appellant's occupational disease claim, including comments from a knowledgeable supervisor regarding the accuracy of appellant's statements. It afforded both parties 30 days to respond. No response was received.

By decision dated April 23, 2019, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish that her diagnosed condition was causally related to the accepted factors of her federal employment.

In an April 16, 2019 medical report, Dr. Ippolito again noted that appellant had decreased sensation in both hands. He diagnosed bilateral chronic median neuropathy status post carpal tunnel decompression.

In a September 18, 2019 medical report, Dr. Ippolito conducted a physical examination and diagnosed bilateral cubital tunnel syndrome. He explained that appellant had been and continues to be exposed to repetitive activities. Dr. Ippolito opined that continued pressure on her bilateral cubital tunnel at work was the cause of her current ulnar nerve compression at bilateral elbow.

On May 13, 2019 appellant had an electromyography and a nerve conduction velocity (EMG/NCV) test, which revealed right ulnar sensory mononeuropathy and left median mononeuropathy across the wrist.

On September 30, 2019 appellant requested reconsideration and submitted additional evidence.

In an undated statement, appellant reiterated that her repetitive work duties, such as sitting for nine hours a day for five days a week, caused and persistently aggravated her injuries. She noted that she had been experiencing extreme back pain, weakness in her back, shoulders, and hands, and frequent numbness in bilateral wrist/hand due to her repetitive duties.

By decision dated October 21, 2019, OWCP denied modification of its April 23, 2019 decision. On December 20, 2019 appellant again requested reconsideration and submitted additional evidence.

In an undated statement, appellant specified that she experienced constant pain starting in her neck that travelled down both arms to her wrists and fingers. She noted that her pain made it hard to manipulate objects such as the telephone and stapler. Appellant also indicated that she had been experiencing a burning sensation and swelling, as well as all other previously stated symptoms in her bilateral wrist, hand, and forearm.

By decision dated January 30, 2020, 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. The Secretary of Labor may review an award for or against compensation at any time on his own motion or on application.³

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or an argument which: (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.⁴

³ 5 U.S.C. § 8128(a); *see M.S.*, Docket No. 19-1001 (issued December 9, 2019); *L.D.*, Docket No. 18-1468 (issued February 11, 2019); *see also V.P.*, Docket No. 17-1287 (issued October 10, 2017); *W.C.*, 59 ECAB 372 (2008).

⁴ 20 C.F.R. § 10.606(b)(3); *see L.D., id.*; *see also K.L.*, Docket No. 17-1479 (issued December 20, 2017); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.⁵ If it chooses to grant reconsideration, it reopens and reviews the case on its merits.⁶ 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.⁷

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 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).⁸

Appellant also did not submit relevant and pertinent new evidence in support of her December 20, 2019 request for reconsideration. In support of her request, OWCP received an undated statement wherein she described the symptoms related to her diagnosed condition. However, the underlying issue on reconsideration was whether appellant had met her burden of proof to establish that her diagnosed conditions were causally related to the accepted factors of her federal employment. This is a medical question that requires rationalized medical opinion evidence to resolve the issue.⁹ Because appellant did not provide any "relevant and pertinent new evidence," in support of her December 20, 2019 request for reconsideration she is not entitled to a review of the merits based on the third requirement under 20 C.F.R. § 10.606(b)(3).¹⁰

The Board, therefore, 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.¹¹

⁵ *Id.* at § 10.607(a). The one-year period begins on the next day after the date of the original contested decision. 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.

⁶ *Id.* at § 10.608(a); *see also M.S.*, 59 ECAB 231 (2007).

⁷ *Id.* at § 10.608(b); *M.S.*, Docket No. 19-0291 (issued June 21, 2019); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

⁸ *Y.L.*, Docket No. 20-1025 (issued November 25, 2020).

⁹ *D.P.*, Docket No. 20-1225 (issued January 8, 2021); *R.S.*, Docket No. 19-0312 (issued June 18, 2019); *T.B.*, Docket No. 18-1214 (issued January 29, 2019).

¹⁰ *Supra* note 5.

¹¹ *D.M.*, Docket No. 18-1003 (July 16, 2020); *Susan A. Filkins*, 57 ECAB 630 (2006) (when a request for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b), OWCP will deny the request for reconsideration without reopening the case for a review on the merits).

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 January 30, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 13, 2021
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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