

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

A.M., Appellant

and

**U.S. POSTAL SERVICE, WYLIE POST
OFFICE, Wylie, TX, Employer**

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**Docket No. 21-0603
Issued: November 10, 2021**

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 March 8, 2021 appellant filed a timely appeal from a January 22, 2021 nonmerit decision of the Office of Workers' Compensation Programs (OWCP).¹ As more than 180 days has elapsed from OWCP's last merit decision, dated July 16, 2020, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction to review 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).

¹ Appellant also indicated that she was appealing from an April 10, 2020 OWCP decision. The Board notes that there is no April 10, 2020 decision of record.

² 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On April 3, 2015 appellant, then a 48-year-old rural carrier, filed an occupational disease claim (Form CA-2) alleging that she sustained carpal tunnel syndrome (CTS) caused by factors of her federal employment including casing, holding and delivering mail. She first became aware of the condition and its relationship to her federal employment on January 1, 2013. After initially denying the claim, OWCP accepted right CTS, radial styloid tenosynovitis, and bilateral other synovitis and tenosynovitis. It later expanded the acceptance of appellant's claim to include a lesion of the ulnar nerve of the left upper limb and olecranon bursitis of the right elbow.

Electromyography (EMG) diagnostic and motor nerve conduction velocity (NCV) test results dated March 17, 2016 demonstrated bilateral abnormalities in the median nerve/abductor pollicis brevis on the right and left distal to the wrists, bilateral neuropathy of the wrists involving the median nerve, prolonged distal latency and decreased amplitude of the bilateral median motor nerves, and prolonged latency in the left median sensory nerve with decreased amplitude in the right median and ulnar sensory nerves.

On October 13, 2016 appellant underwent OWCP-approved left ulnar nerve decompression and open carpal tunnel release.

In an attending physician's report (Form CA-20) dated April 4, 2017, Dr. Cynthia Goodman, Board-certified in physical medicine and rehabilitation, diagnosed right CTS, right radial styloid tenosynovitis, bilateral other synovitis and tenosynovitis, a left lesion of the ulnar nerve, and olecranon bursitis of the right elbow. In an accompanying duty status report (Form CA-17) of even date, she advised that appellant would be off work from April 4 through 20, 2017. OWCP received another Form CA-20 from Dr. Goodman dated June 15, 2017 containing the same diagnoses.

On June 8, 2017 appellant underwent OWCP-approved right open carpal tunnel release and right ulnar nerve decompression at the elbow.

OWCP continued to receive duty status reports (Forms CA-17) from Dr. Goodman wherein she related appellant's work status.

On September 10, 2018 appellant filed a claim for compensation (Form CA-7) for a schedule award.

In a report dated July 25, 2018, Dr. Rory L. Allen, an osteopath and family medicine specialist, found that appellant's date of maximum medical improvement (MMI) was July 25, 2018 and, referring to the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*)³, calculated a total left upper extremity impairment of 12 percent and a total right upper extremity impairment of 11 percent.

On April 10, 2019 OWCP referred the record, including a statement of accepted facts, to Dr. David J. Slutsky, a Board-certified orthopedic surgeon serving as a district medical adviser

³ A.M.A., *Guides* (6th ed. 2009).

(DMA), to review Dr. Allen's July 5, 2018 report and to determine appellant's percentage of permanent impairment and date of MMI. In a report received May 21, 2019, Dr. Slutsky reviewed the medical record, including Dr. Allen's July 25, 2018 report. Referring to the sixth edition of the A.M.A., *Guides*, he calculated appellant's total left upper extremity impairment as two percent and her total right upper extremity impairment as eight percent. Dr. Slutsky explained why his impairment ratings differed from the rating of Dr. Allen and found that appellant's date of MMI was July 25, 2018.

By report dated September 25, 2019, Dr. Allen replied to Dr. Slutsky's May 21, 2019 report, attaching an amended impairment rating report that maintained the earlier calculations of 11 percent total right upper extremity permanent impairment and 12 percent total left upper extremity permanent impairment.

On February 26, 2020 OWCP requested an addendum report from Dr. Slutsky to respond to Dr. Allen's September 25, 2019 report. On April 10, 2020 Dr. Slutsky rendered an addendum report, noting that his reliance on postoperative electrodiagnostic studies to calculating an impairment rating for nerve entrapment was not in conformance with the sixth edition A.M.A., *Guides*. He corrected *QuickDASH* scores from his earlier report and calculated total right upper extremity permanent impairment of eight percent and total left upper extremity permanent impairment of two percent. The date of MMI remained July 25, 2018.

By decision dated July 16, 2020, OWCP granted appellant a schedule award for eight percent permanent impairment of the right upper extremity and two percent permanent impairment of the left upper extremity. The award ran from July 25, 2018 through February 28, 2019.

On August 7, 2020 appellant requested a change of address.

Appellant resubmitted the March 17, 2016 EMG/NCV diagnostic study. She resubmitted CA-17 forms dated April 4 and June 15, 2017, October 1 and 29 and November 26, 2018, and January 23 and February 25, 2019. Appellant also resubmitted CA-20 forms from Dr. Goodman dated April 4 and June 15, 2017.

On October 25, 2020 appellant requested reconsideration of OWCP's July 16, 2020 schedule award decision.

On November 20, 2020 appellant informed OWCP of her address change and her correct date of birth.

By decision dated January 22, 2021, OWCP denied appellant's request for reconsideration. It found that the medical evidence received since the July 16, 2020 decision were repetitious and that her notes about her address change and birthdate were irrelevant to the underlying issue of permanent impairment.

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.⁴

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.⁵

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.⁶ If it chooses to grant reconsideration, it reopens and reviews the case on its merits.⁷ 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.⁸

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's October 25, 2020 request for reconsideration neither alleged nor demonstrated that OWCP erroneously applied or interpreted a specific point of law. Additionally, the Board finds that it did not advance a relevant legal argument not previously considered by OWCP. Consequently, appellant is not entitled to further review of the merits of her claim based on either the first or second above-noted requirements under 20 C.F.R. § 10.606(b)(3).

In support of her reconsideration request, appellant resubmitted a March 17, 2021 EMG/NCV diagnostic study. She also resubmitted CA-17 forms dated April 4 and June 15, 2017, October 1 and 29 and November 26, 2018, and January 23 and February 25, 2019. Additionally, appellant resubmitted CA-20 forms from Dr. Goodman dated April 4 and June 15, 2017. The

⁴ 5 U.S.C. § 8128(a); *see L.D.*, Docket No. 18-1468 (issued February 11, 2019); *see also V.P.*, Docket No. 17-1287 (issued October 10, 2017); *D.L.*, Docket No. 09-1549 (issued February 23, 2010); *W.C.*, 59 ECAB 372 (2008).

⁵ 20 C.F.R. § 10.606(b)(3); *see L.D., id.*; *see also L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

⁶ *Id.* at § 10.607(a). The one-year period begins on the next day after the date of the original contested decision. 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.

⁷ *Id.* at § 10.608(a); *see also M.S.*, 59 ECAB 231 (2007).

⁸ *Id.* at § 10.608(b); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

Board finds that, as these reports were duplicative of evidence of record and previously considered by OWCP, they did not constitute relevant and pertinent new evidence.⁹ As such, they do not constitute a basis for merit review of appellant's claim based on the third requirement under 20 C.F.R. § 10.606(b)(3).

Appellant also submitted a request for a change of address and noted her correct birth date. The underlying issue in this case is whether she has met her burden of proof to establish entitlement to an increased schedule award for the right and left upper extremities. That is a medical issue which must be addressed by relevant and pertinent new medical evidence.¹⁰ While the request for a change of address and the note that appellant's birth date was incorrect, were not previously of record, they are irrelevant to the underlying issue in this case. 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.¹¹ As appellant failed to provide relevant and pertinent new evidence, she is not entitled to a merit review based on the third requirement under 20 C.F.R. § 10.606(b)(3).

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.

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).

⁹ Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case. *See T.W.*, Docket No. 18-1088 (issued February 14, 2019); *A.R.*, Docket No. 17-1504 (issued May 25, 2018); *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

¹⁰ *See Bobbie F. Cowart*, 55 ECAB 746 (2004).

¹¹ *A.J.*, Docket No. 20-0926 (issued January 26, 2021); *Jimmy O. Gilmore*, 37 ECAB 257 (1985); *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

ORDER

IT IS HEREBY ORDERED THAT the January 22, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 10, 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