

FACTUAL HISTORY

On June 18, 2013 appellant, then a 55-year-old mail processing clerk, filed an occupational disease claim (Form CA-2) alleging that she developed trigger fingers, hand nodules, a ganglion cyst, and elbow tendinitis due to factors of her federal employment, including repetitive use of her upper extremities over a prolonged period of time. She indicated that she first realized her condition and its relation to her federal employment on January 14, 2005. Appellant stopped work on October 20, 2012. OWCP assigned the claim File No. xxxxxx227 and accepted the claim for right middle, index, and ring trigger fingers and left middle trigger finger.²

On August 10, 2017 appellant filed a claim for compensation (Form CA-7) for disability from work for the period January 26, 2010 through March 21, 2011.

In an October 23, 2017 development letter, OWCP notified appellant of the deficiencies of her claim for compensation. It requested that she submit a report from her attending physician, with medical rationale and objective findings, explaining how and why the accepted conditions had disabled her from work for the claimed period. OWCP afforded appellant 30 days to submit the requested evidence.

Dr. Leonard S. Bodell, a Board-certified orthopedic surgeon, completed a report on November 17, 2017 and opined that appellant was not capable of working in her light-duty date-of-injury position from January 26, 2010 through March 21, 2011 due to her previously accepted conditions of bilateral carpal tunnel syndrome, bilateral shoulder conditions, and trigger fingers. He noted that she underwent trigger finger surgeries in September 2014 and September 2015.

By decision dated September 20, 2018, OWCP denied appellant's claim for disability for the period January 26, 2010 through March 21, 2011.

On September 20, 2019 appellant requested reconsideration. She resubmitted Dr. Bodell's November 17, 2017 report. Appellant also provided depositions dated January 17, 2013 of J.B., an employing establishment supervisor, dated January 18, 2013 of L.H., an employing establishment Human Resources (HR) manager, and dated January 25, 2013 of L.W., acting employing establishment HR manager.

By decision dated December 19, 2019, OWCP denied modification of its prior decision.

² Appellant has previously accepted claims under OWCP File Nos. xxxxxx753 and xxxxxx247. These claims, as well as the present claim, have been administratively combined by OWCP with File No. xxxxxx753 serving as the master file. OWCP accepted under xxxxxx753 bilateral carpal tunnel syndrome and resulting surgical releases. It subsequently expanded acceptance of this claim to include bilateral arm tendinitis. Appellant stopped work on January 26, 2010 and claimed wage-loss compensation through April 3, 2010, which OWCP denied by decisions dated July 16, 2010 and March 16, 2011. By decision dated January 21, 2020, OWCP terminated appellant's entitlement to wage-loss and schedule a ward compensation effective that date as she refused an offer of suitable work, pursuant to 5 U.S.C. § 8106(c)(2). It vacated this decision on May 6, 2021. There are no final decisions in this file properly before the Board on appeal. In OWCP File No. xxxxxx247, OWCP accepted appellant's occupational disease claim for left shoulder tendinitis, bilateral adhesive capsulitis, and right shoulder impingement syndrome with resulting surgery. There are no timely decisions before the Board in this file. See 20 C.F.R. §§ 501.2(c) and 501.3.

OWCP continued to receive medical evidence. In notes dated January 8 through June 17, 2020, Dr. John Vanderhoof, a Board-certified orthopedic surgeon, examined appellant due to bilateral hand numbness and tingling and trigger fingers on both hands. He noted her medical history and diagnosed bilateral carpal tunnel syndrome. Dr. Vanderhoof opined that if appellant returned to work using the telephones and pushing buttons her symptoms would increase. He recommended that she retire.

On December 15, 2020 appellant requested reconsideration. She provided a note dated June 2, 2010 from a medical provider whose signature is illegible, indicating the position of distribution clerk exceeded appellant's medical limitations. In a witness statement dated September 18, 2012, appellant's coworker, J.C., asserted that the position offered to her by the employing establishment in December 2009 exceeded her work restrictions.

By decision dated March 5, 2021, OWCP denied modification.

On November 30, 2021 appellant requested reconsideration. She provided a November 20, 2021 narrative statement asserting that the reports from her physicians established that she was disabled from January 26, 2010 through March 17, 2011. Appellant also provided a copy of a November 13, 2002 OWCP decision accepting her claim for left shoulder tendinitis and an August 10, 2004 OWCP decision accepting her claim for right shoulder impingement syndrome in OWCP File No. xxxxxx247.

By decision dated December 16, 2021, 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 T.K.*, Docket No. 19-1700 (issued April 30, 2020); *L.D.*, Docket No. 18-1468 (issued February 11, 2019); *W.C.*, 59 ECAB 372 (2008).

⁴ 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).

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

In support of a request for reconsideration, an appellant is not required to submit all evidence which may be necessary to discharge his or her burden of proof.⁸ He or she needs only to submit relevant, pertinent evidence not previously considered by OWCP.⁹ When reviewing an OWCP decision denying merit review, the function of the Board is to determine whether OWCP properly applied the standards set for at section 10.606(b)(3) to the claimant's request for reconsideration and any evidence submitted in support thereof.¹⁰

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

In support of her request for reconsideration, appellant submitted a November 20, 2021 narrative statement asserting that the reports from her physicians established that she was disabled from January 26, 2010 through March 17, 2011 as well as copies of OWCP decisions accepting that she developed left shoulder tendinitis and right shoulder impingement syndrome due to her employment. However, her own opinion on the cause of disability is not relevant to the underlying issue in this case, *i.e.*, whether she was disabled for the period January 26, 2010 through March 21, 2011 due to her accepted employment injuries. This is a medical issue which must be addressed

⁵ *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 (September 2020). 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 F.V.*, Docket No. 18-0230 (issued May 8, 2020); *M.S.*, 59 ECAB 231 (2007).

⁷ *Id.* at § 10.608(b); *see B.S.*, Docket No. 20-0761 (issued January 29, 2021); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

⁸ *F.E.*, Docket No. 20-0070 (issued August 4, 2020); *J.F.*, Docket No. 17-1508 (issued March 28, 2018).

⁹ *F.E.*, *id.*; *Mark H. Dever*, 53 ECAB 710 (2002).

¹⁰ *F.E.*, *id.*; *Annette Louise*, 54 ECAB 783 (2003).

by relevant medical evidence.¹¹ 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.¹² Consequently, appellant is not entitled to a review of the merits based on the first and second above-noted requirements under 20 C.F.R. § 10.606(b)(3).

The Board further finds that appellant did not submit relevant and pertinent new evidence not previously considered by OWCP in support of her reconsideration request under 20 C.F.R. § 10.606(b)(3). As noted, OWCP previously denied her claim for disability for the period January 26, 2010 through March 21, 2011. In support of her reconsideration request, appellant resubmitted OWCP decisions accepting her claim for left shoulder tendinitis and right shoulder impingement syndrome. The Board has held that 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.¹³ As appellant did not 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).¹⁴

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.¹⁵

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).

¹¹ See *L.W.*, Docket No. 22-0141 (issued May 16, 2022); *A.P.*, Docket No. 20-0089 (issued June 17, 2020); *A.M.*, Docket No. 18-1033 (issued January 8, 2019); *A.D.*, Docket No. 18-0497 (issued July 25, 2018); *Bobbie F. Cowart*, 55 ECAB 746 (2004); *Edward Matthew Diekemper*, 31 ECAB 224-25 (1979).

¹² *G.K.*, Docket No. 20-1026 (issued December 11, 2020); *M.K.*, Docket No. 18-1623 (issued April 10, 2019); *Edward Matthew Diekemper, id.*

¹³ *R.G.*, Docket No. 21-0098 (issued May 19, 2021); *J.V.*, Docket No. 19-0990 (issued August 26, 2020); *D.M.*, Docket No. 18-1003 (issued July 16, 2020); *L.C.*, Docket No. 19-0503 (issued February 7, 2020); *A.A.*, Docket No. 18-0031 (issued April 5, 2018); *Eugene F. Butler*, 36 ECAB 393 (1984).

¹⁴ See *S.V.*, Docket No. 20-1309 (issued December 22, 2020); *C.C.*, Docket No. 20-0950 (issued October 29, 2020).

¹⁵ *L.W.*, *supra* note 11; *D.G.*, Docket No. 19-1348 (issued December 2, 2019).

ORDER

IT IS HEREBY ORDERED THAT the December 16, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 13, 2022
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