

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

R.T., Appellant

and

**DEPARTMENT OF VETERANS AFFAIRS,
WILLIAM JENNINGS BRYAN DORN VA
MEDICAL CENTER, Columbia, SC, Employer**

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**Docket No. 22-1305
Issued: April 5, 2023**

Appearances:

*Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On September 12, 2022 appellant, through counsel, filed a timely appeal from an August 16, 2022 nonmerit decision of the Office of Workers' Compensation Programs (OWCP).² Pursuant to the Federal Employees' Compensation Act³ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of this case.

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² Counsel did not appeal OWCP's March 29, 2022 merit decision. Therefore, that decision is not presently before the Board. *See* 20 C.F.R. § 501.3.

³ 5 U.S.C. § 8101 *et seq.*

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 December 29, 2021 appellant, then a 59-year-old medical clerk, filed an occupational disease claim (Form CA-2) alleging bilateral hand and arm conditions due to factors of her federal employment, including typing on a computer. She indicated that soreness developed over time, and she felt some numbness in fingers and soreness in an unspecified hand and arm. Appellant further indicated that she first became aware of the condition on September 23, 2021 and she subsequently became aware of the relationship to her federal employment on September 24, 2021.

OWCP received a narrative statement from appellant on December 29, 2021 indicating that on September 23, 2021 she woke up with pain in her left shoulder and numbness in both hands. Appellant felt weakness at work while using a computer or telephone and experienced symptoms during regular activities at home as well.

In a development letter dated January 6, 2022, OWCP informed appellant that additional factual and medical evidence was necessary to establish her claim. A questionnaire was provided to her to substantiate the factual elements of her claim. Further, OWCP asked appellant to provide a narrative report from a physician containing a detailed description of findings and a diagnosis, as well as a medical explanation of how the claimed work incident caused or aggravated a medical condition. It afforded her 30 days to respond.

In support of her claim, appellant submitted progress notes from Dr. Bruce R. Monaco, a Board-certified orthopedic surgeon. On October 21, 2022 Dr. Monaco related that she had a sore left thumb and "something" going up and down an unspecified arm that she indicated was due to her employment. Appellant further indicated that the initial pain in her hand began on June 18, 2019, and extended to her shoulder in September 2021. Past surgical history was noted for de Quervain's tendon release and right-hand ganglion cysts. Dr. Monaco assessed de Querevain's tenosynovitis, carpal tunnel syndrome, and bilateral cubital tunnel syndrome. On October 25, 2021 he reviewed x-rays of appellant's hand and elbow.

OWCP received an electromyography (EMG) report dated November 4, 2021 and signed by Dr. Nasir Waheed, a neurologist. The report indicated electrophysiological evidence of moderate severity right and mild-to-moderate left median neuropathy at the wrist, as in carpal tunnel syndrome.

On December 3, 2021 appellant was seen for a follow up with Dr. Monaco. Dr. Monaco assessed pseudocholinesterase deficiency, left-hand de Quervain's tenosynovitis, and carpal tunnel syndrome.

Appellant also submitted a progress note dated December 21, 2021 by Dr. John R. Chu, a Board-certified orthopedic surgeon. She related that she was waiting for clearance to proceed with surgery. Appellant also requested a hand brace and a work restriction note.

In a completed questionnaire dated January 26, 2022, appellant replied that both her left- and right-hand conditions resulted from her employment activities, specifically computer typing, mouse clicking, and phone use. She also noted a previous right-hand surgery for de Quervain's tenosynovitis.

By decision dated March 29, 2022, OWCP denied appellant's occupational disease claim, finding that she had not established that her diagnosed bilateral hand and arm conditions were causally related to the accepted factors of her federal employment.

On August 4, 2022 appellant, through counsel, requested reconsideration. In support of the request for reconsideration, counsel submitted a medical report from Dr. John F. Mattei, a Board-certified family practice physician, dated July 8, 2022. Dr. Mattei diagnosed bilateral carpal tunnel syndrome and de Quervain's tenosynovitis. He indicated that both diagnoses resulted from repetitive use and repetitive trauma. Dr. Mattei noted that appellant worked as a medical scheduler and worked on a computer all day using a mouse and a keyboard. He further opined that both conditions were causally related to her employment. Dr. Mattei also reviewed appellant's EMG and indicated that it showed moderate carpal tunnel syndrome in the right wrist, mild-to-moderate carpal tunnel syndrome in the left wrist, and bilateral de Quervain's tenosynovitis.

By decision dated August 16, 2022, OWCP denied appellant's request for reconsideration of the merits of her claim.

LEGAL PRECEDENT

Section 8128 of FECA vests OWCP with a discretionary authority to determine whether it will review an award for or against compensation, either under its own authority or on application by a claimant.⁴

Section 10.608(b) of OWCP's regulations provide that a timely request for reconsideration may be granted if OWCP determines that the claimant has presented evidence and/or argument that meet at least one of the standards described in section 10.606(b)(3).⁵ This section provides that the request for reconsideration must be submitted in writing and set forth arguments and contain evidence that (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.⁶ Section 10.608(b) provides that, when a request for reconsideration is timely, but fails to meet at least one of these three requirements, OWCP will deny the request for reconsideration without reopening the case for a review on the merits.⁷

⁴ *Id.* at § 8128(a).

⁵ 20 C.F.R. § 10.608(a).

⁶ *Id.* at § 10.606(b)(3); *see L.D.*, Docket No. 18-1468 (issued February 11, 2019).

⁷ *Id.* at § 10.608(b); *J.B.*, Docket No. 20-0145 (issued September 8, 2020); *Y.K.*, Docket No. 18-1167 (issued April 2, 2020).

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.⁸ If it chooses to grant reconsideration, it reopens and reviews the case on its merits.⁹ 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.¹⁰

ANALYSIS

The Board finds that OWCP improperly denied appellant's request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a).

In support of her request for reconsideration, appellant submitted a medical report from Dr. Mattei dated July 8, 2022. Dr. Mattei noted her factors of federal employment, specifically her typing duties. He diagnosed bilateral carpal tunnel syndrome and de Quervain's tenosynovitis. Dr. Mattei related that both diagnoses come from repetitive use and repetitive trauma. He also reviewed appellant's EMG and indicated that it showed moderate carpal tunnel syndrome in the right wrist, mild-to-moderate carpal tunnel syndrome in the left wrist, and bilateral de Quervain's tenosynovitis. Dr. Mattei opined that both conditions were causally related to her employment.

The Board finds that the July 8, 2022 medical note from Dr. Mattei constitutes relevant and pertinent new evidence, because it specifically addresses the underlying medical issue in this case, *i.e.*, whether appellant has established that factors of her federal employment caused or aggravated her diagnosed bilateral hand and arm conditions. Therefore, the submission of this evidence requires reopening of her claim for merit review pursuant to the third requirement of 20 C.F.R. § 10.606(b)(3).¹¹ Accordingly, the Board will set aside OWCP's August 16, 2022 decision, and remand the case for an appropriate merit decision on appellant's claim.¹²

CONCLUSION

The Board finds that OWCP improperly denied appellant's request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a).

⁸ *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.

⁹ *Id.* at § 10.608(a); *see also M.S.*, 59 ECAB 231 (2007).

¹⁰ *Id.* at § 10.608(b); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

¹¹ *M.P.*, Docket No. 20-0948 (issued August 11, 2022); *M.R.*, Docket No. 19-1449 (issued March 11, 2020); *D.C.*, Docket No. 18-0082 (issued July 12, 2018).

¹² *Id.*

ORDER

IT IS HEREBY ORDERED THAT the August 16, 2022 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: April 5, 2023
Washington, DC

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

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

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board