

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

R.G., Appellant)	
)	
and)	Docket No. 23-0835
)	Issued: December 19, 2023
U.S. POSTAL SERVICE, CONCORD ANNEX)	
POST OFFICE, Concord, NH, 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
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On May 28, 2023 appellant filed a timely appeal from a November 29, 2022 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from OWCP's last merit decision, dated September 1, 2021, 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 November 29, 2022 decision, appellant submitted additional evidence to OWCP. However, the Board's Rules of Procedures 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.

ISSUE

The issue is whether OWCP properly denied appellant's request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On May 28, 2021 appellant, then a 64-year-old city carrier, filed an occupational disease claim (Form CA-2) alleging that he developed arthritis in his right hand due to factors of his federal employment, including repetitive grasping and squeezing mail. He noted that he first became aware of his condition, and first realized its relation to his federal employment on August 3, 2020. Appellant stopped work on January 6, 2021 and retired on February 1, 2021.

In a report dated April 30, 2021, Dr. John J. Walsh, Jr., a Board-certified orthopedic surgeon, indicated that appellant was evaluated for complaints of pain and difficulty pinching or grasping with the right hand. He reported right hand physical examination findings of prominent subluxation of the base of the thumb metacarpal, with grinding and localizing pain over the trapeziometacarpal joint. Dr. Walsh also noted early Heberden's nodes involving the distal interphalangeal joints of all fingers, and tenderness and first form swelling of the proximal interphalangeal joints. He diagnosed bilateral trapeziometacarpal degenerative joint disease. Dr. Walsh explained that evidence supported the role of occupational factors involving repetitive thumb use as putting repetitive stress on the metacarpal joint of the thumb. He reported that appellant had no history or hobbies, which could have contributed to right hand arthritis. Dr. Walsh opined that "the repetitive occupational injuries[,] which occurred in the workplace as the direct result of [appellant's] employment activities, contributed to the development and progression of the ... trapeziometacarpal joint degenerative arthritis in appellant's right [t]humb."

In a statement dated May 28, 2021, appellant described that he had worked as a letter carrier, casing, and delivering routes, since 1984. He estimated that he cased between 10 and 24 feet of mail every day, about 3 to 4 trays of delivery point sequence mail daily, and 6 tubs of magazines and newspapers. Appellant explained that, in summer 2020, he began to feel persistent soreness in his right hand while casing and delivering his route, and he could tell that it was from grasping and squeezing mail.

In a June 25, 2021 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of medical and factual evidence necessary to establish his claim and provided a questionnaire for his completion. In a separate letter of the same date, OWCP also requested additional information from the employing establishment. It afforded both parties 30 days to submit the necessary information.

In a correspondence dated July 6, 2021, appellant responded to OWCP's development letter. He noted that he received medical treatment on March 29, 2021. Appellant explained that he tested negative for carpal tunnel syndrome, but x-ray scans revealed degenerative arthritis in the joint at the base of the thumb near the wrist. He indicated that he frequently wore a soft wrist brace. Appellant noted that he was enclosing pages from Dr. Walsh's report regarding a statement in support of causal relationship. He provided quotations from Dr. Walsh's report and alleged that the causation statement seemed to have answered OWCP's questions. Appellant explained that

he liked to play tennis, walk, ride his bicycle, take short hikes, and do some cardio and aerobics. He indicated that his hobbies and activities were performed occasionally, but work and overtime dominated his life.

OWCP received a city carrier position description along with an unsigned and undated statement responding to questions in OWCP's development letter from the employing establishment. The employing establishment indicated that it was first aware of appellant's symptoms on May 28, 2021 and that he never mentioned soreness in his hand. It described his employment duties and his work environment.

Appellant submitted additional medical evidence. In a report dated March 29, 2021, Dr. Lance Klingler, a Board-certified orthopedic surgeon, recounted that appellant had recently retired after working as a letter carrier for many years. On physical examination of appellant's right hand, he observed mild dorsal subluxation to his right thumb and tenderness with palpation to the right thumb carpometacarpal (CMC) with mild crepitus. Dr. Klingler diagnosed right thumb CMC degenerative joint disease.

In a letter dated July 27, 2021, appellant indicated that he was uploading a short concise statement from Dr. Walsh reiterating what he had stated in his 9-page causation report. In an undated statement, Dr. Walsh opined that "'casing' mail is the direct cause of the 'end stage' degeneration of the trapeziometacarpal joint at the base of his thumbs."

By decision dated September 1, 2021, OWCP denied appellant's occupational disease claim, finding that the medical evidence of record was insufficient to establish that his diagnosed right-hand condition was causally related to the accepted factors of employment. Therefore, the requirements had not been met to establish an injury or condition due to the accepted employment factors.

On August 31, 2022 appellant requested reconsideration. He asserted that OWCP erroneously dismissed Dr. Walsh's report and cited to his credentials. Appellant also reported that Dr. Walsh's statement about him having no history or hobbies, which could have contributed to his condition did not conflict with his factual history. He alleged that OWCP should not have relied on the employing establishment's statement and noted specific disagreements with postal management. Appellant explained that he performed more pincer grasp motions in a single morning at work than he did while playing softball. He also indicated that he waited to report his injury because he thought that the pain would subside after retirement and, it was difficult to obtain a medical appointment. Appellant reiterated that his right-hand arthritis was causally related to his employment duties. He also submitted a compact disc (CD) containing x-ray films.

By decision dated November 29, 2022, OWCP denied appellant's request for reconsideration of the merits of the 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 or her 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

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 his claim, pursuant to 5 U.S.C. § 8128(a).

In his reconsideration request, appellant did not show that OWCP erroneously applied or interpreted a specific point of law, nor did he advance a new and relevant legal argument not previously considered. He provided points of disagreement with the employing establishment's statement and reiterated that Dr. Walsh provided a well-rationalized opinion establishing causal relationship. None of these assertions, however, offer a new and relevant legal argument nor show that OWCP erroneously applied or interpreted a specific point of law. Consequently, appellant

³ 5 U.S.C. § 8128(a); *see A.N.*, Docket No. 20-1487 (issued March 19, 2021); *L.D.*, Docket No. 18-1468 (issued February 11, 2019); *see also D.L.*, Docket No. 09-1549 (issued February 23, 2010); *W.C.*, 59 ECAB 372 (2008).

⁴ 20 C.F.R. § 10.606(b)(3); *see S.K.*, Docket No. 22-0248 (issued June 27, 2022); *see also L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

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 also M.S.*, 59 ECAB 231 (2007).

⁷ *Id.* at § 10.608(b); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

was 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).⁸

Appellant submitted a CD containing x-rays. Diagnostic tests, standing alone, lack probative value as they do not provide a physician's opinion on whether there is a causal relationship between appellant's accepted employment incident/exposure and a diagnosed condition.⁹ Consequently, this evidence is insufficient to establish appellant's claim.

Therefore, appellant was not entitled to a review of the merits based on the third above-noted requirement under 20 C.F.R. § 10.606(b)(3).¹⁰

Accordingly, the Board finds that appellant has not met any of the requirements enumerated under 20 C.F.R. § 10.606(b)(3). Pursuant to 20 C.F.R. § 10.608, OWCP properly denied his request for reconsideration without reopening the case for review on the merits.¹¹

CONCLUSION

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

⁸ *Supra* note 4; *see K.F.*, Docket No. 19-1846 (issued November 3, 2020).

⁹ *See P.A.*, Docket No. 18-0559 (issued January 29, 2020); *A.P.*, Docket No. 18-1690 (issued December 12, 2019); *R.M.*, Docket No. 18-0976 (issued January 3, 2019).

¹⁰ *Supra* note 4; *P.W.*, Docket No. 20-0380 (issued November 23, 2020); *M.O.*, Docket No. 19-1677 (issued February 25, 2020); *C.B.*, Docket No. 18-1108 (issued January 22, 2019).

¹¹ *See D.R.*, Docket No. 18-0357 (issued July 2, 2018); *A.K.*, Docket No. 09-2032 (issued August 3, 2010); *M.E.*, 58 ECAB 694 (2007); *Susan A. Filkins*, 57 ECAB 630 (2006).

ORDER

IT IS HEREBY ORDERED THAT the November 29, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 19, 2023
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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