

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

---

A.N., Appellant )

and )

DEPARTMENT OF VETERANS AFFAIRS, )  
EUGENE VA CLINIC, Eugene, OR, Employer )

---

**Docket No. 23-1057  
Issued: December 21, 2023**

*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 August 4, 2023 appellant filed a timely appeal from an August 3, 2023 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from the last merit decision dated July 6, 2022 to the filing of this appeal, pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over 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).

**FACTUAL HISTORY**

On August 13, 2021 appellant, then a 46-year-old medical instrument technician, filed an occupational disease claim (Form CA-2) alleging that she had developed pain and swelling in her

---

<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

right hand due to factors of her federal employment including repetitive movements of gripping ultrasound cameras and applying downward force to perform examinations. She noted that she first became aware of her condition and realized its relation to her federal employment on August 13, 2021. Appellant did not stop work.

In an August 20, 2021 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed to establish her claim and provided a questionnaire for her completion. OWCP afforded appellant 30 days to respond.

On August 22, 2021 appellant completed OWCP's development questionnaire. In a September 20, 2021 report, Dr. Justin Hudson, an orthopedic surgeon, examined her due to diffuse right wrist pain with a radiating component. He diagnosed right cubital tunnel and ulnar abutment syndrome.

By decision dated October 18, 2021, OWCP denied appellant's occupational disease claim, finding that a medical diagnosis had been established but the medical evidence of record was insufficient to establish a right wrist condition causally related to the accepted factors of her federal employment.

On April 13, 2022 appellant requested reconsideration and submitted additional evidence. On September 28, 2021 she underwent electromyogram and nerve conduction velocity (EMG/NCV) testing which demonstrated mild right median nerve slowing at the wrist and mild right ulnar nerve slowing at the elbow.

In a November 19, 2021 note, Dr. Jenna M. Godfrey, a Board-certified orthopedic surgeon, diagnosed right carpal and cubital tunnel syndrome. She completed a report on December 21, 2021 and related appellant's federal employment as a medical instrument technician which required repetitive use of her upper extremity while performing ultrasound likely significantly contributed to her carpal and cubital tunnel syndromes as inflammation around the nerves caused compression which ultimately resulted in nerve damage. Dr. Godfrey opined, "I do think that the primary contributor to her diagnosis of carpal and cubital tunnel syndrome is the repetitive nature of her work that she has been doing for over 13 years." She concluded that appellant's job had caused her diagnosed conditions.

Appellant also provided three articles from medical publications describing work-related injuries in sonography and resubmitted Dr. Hudson's September 20, 2021 report.

By decision dated July 6, 2022, OWCP denied modification.

On May 19, 2023 appellant requested reconsideration. She contended that she had previously provided sufficient medical evidence to establish causal relationship between her diagnosed right upper extremity conditions and her accepted employment activities. No additional evidence was received.

By decision dated August 3, 2023, 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 or her own motion or on application.<sup>2</sup>

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.<sup>3</sup>

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.<sup>4</sup> If it chooses to grant reconsideration, it reopens and reviews the case on its merits.<sup>5</sup> 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.<sup>6</sup>

## 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).

In support of her timely reconsideration request, appellant submitted a statement asserting that she had previously provided sufficient medical evidence to establish causal relationship between her diagnosed right upper extremity conditions and her accepted employment activities. Appellant did not show that OWCP erroneously applied or interpreted a specific point of law and did not advance a relevant legal argument not previously considered by OWCP. Consequently, she 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).

---

<sup>2</sup> 5 U.S.C. § 8128(a); *see R.C.*, Docket No. 22-0612 (issued October 24, 2022); *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).

<sup>3</sup> 20 C.F.R. § 10.606(b)(3); *see R.C.*, *id.*; *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).

<sup>4</sup> *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 (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.

<sup>5</sup> *Id.* at § 10.608(a); *see also M.S.*, 59 ECAB 231 (2007).

<sup>6</sup> *Id.* at § 10.608(b); *R.C.*, *supra* note 2; *M.S.*, Docket No. 19-0291 (issued June 21, 2019); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

Further, appellant did not submit any additional evidence with her May 19, 2023 request for reconsideration. Because she did not provide any relevant and pertinent new evidence not previously considered by OWCP, she is not entitled to a review of the merits based on the third requirement under 20 C.F.R. § 10.606(b)(3).<sup>7</sup>

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.<sup>8</sup>

**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 August 3, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 21, 2023  
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

---

<sup>7</sup> 20 C.F.R. § 10.606(b)(3)(iii); *see also* *K.R.*, Docket No. 23-0010 (issued June 5, 2023); *S.H.*, Docket No. 19-1897 (issued April 21, 2020); *M.K.*, Docket No. 18-1623 (issued April 10, 2019); *Edward Matthew Diekemper*, 31 ECAB 224-25 (1979).

<sup>8</sup> *See D.M.*, Docket No. 18-1003 (issued July 16, 2020); *D.S.*, Docket No. 18-0353 (issued February 18, 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).