

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

K.R., Appellant)	
)	
and)	Docket No. 23-0010
)	Issued: June 5, 2023
U.S. POSTAL SERVICE, POST OFFICE,)	
Madison, MS, 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
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On October 3, 2022 appellant filed a timely appeal from an April 6, 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 December 14, 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 therefore lacks jurisdiction over the merits of the case.²

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the April 6, 2022 decision, OWCP received additional evidence. The Board's *Rules of Procedure* 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. *Id.*

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 September 27, 2021 appellant, then a 57-year-old rural carrier associate, filed an occupational disease claim (Form CA-2) alleging that she developed carpal tunnel syndrome (CTS) due to factors of her federal employment, including daily work duties of pulling a cart, lifting and pulling cases, trays, and bins of mail, and repetitively sorting mail into small slots. She further related that she experienced tingling in her fingers and pain and numbness in her hands due to her ligaments becoming irritated and compressing the nerve. Appellant noted that she first became aware of her condition on September 17, 2021, and realized its relation to her federal employment on September 21, 2021. She stopped work on September 17, 2021.

Appellant submitted an undated pain assessment form indicating that she experienced pain and tingling in her right and left hands and rated her pain a 10 out of 10.

In a January 31, 2019 electrodiagnostic consultation, Dr. Alan Moore, a Board-certified neurologist, related that appellant presented with upper extremity pain and numbness and reported experiencing wrist pain while working. He diagnosed symptomatic advanced right worse than left CTS and noted an impression of advanced right worse than left median neuropathies at the wrists, absent bilateral median digital sensory responses, markedly delayed right worse than left median responses, slightly reduced on the left, very mild bilateral ulnar neuropathies at the elbows, and very mild bilateral ulnar motor conduction slowing at the elbows.

In a September 23, 2021 visit note, Dr. Menarvia Nixon-Gaddis, a neurosurgeon, noted that appellant presented with complaints of bilateral hand pain that wakes her in the night. She performed a physical examination and diagnosed bilateral CTS.

In a September 27, 2021 statement, appellant related that she began experiencing pain on September 17, 2021 and reported the condition to her supervisor on September 21, 2021, after consulting with her primary doctor. She noted that her daily work duties included repetitively sorting and casing mail, twisting her wrists, and walking back and forth while pulling letters and flats. Appellant indicated that she experienced intense pain when casing mail.

In an October 4, 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. In a separate development letter of even date, OWCP requested that the employing establishment provide additional information, including comments from a knowledgeable supervisor. It afforded both parties 30 days to respond.

Thereafter, OWCP received an undated rural carrier position description.

In an October 27, 2021 response to OWCP's development letter, an employing establishment supervisor, T.W., indicated that she was advised that appellant was having issues with her hand which could be CTS. She noted that appellant cased and sorted mail at a casing

station approximately 40 inches high for one to two hours per day, five days a week. T.W. related that appellant's duties did not vary from the official position description and that carriers are given 30-minute breaks daily and are encouraged to take mail to the street instead of sorting at the case.

By decision dated December 14, 2021, OWCP denied appellant's claim, finding that the evidence of record was insufficient to establish that the employment events occurred as alleged. It noted that she had not responded to the development questionnaire. Consequently, OWCP found that appellant had not met the requirements to establish an injury as defined by FECA.

On March 30, 2022 appellant requested reconsideration of the December 14, 2021 decision. No additional evidence was received.

By decision dated April 6, 2022, 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 does not entitle a claimant to review of an OWCP decision as a matter of right.³ OWCP has discretionary authority in this regard and has imposed certain limitations in exercising its authority.⁴ One such limitation is that the request for reconsideration must be received by OWCP within one year of the date of the decision for which review is sought.⁵ A timely application for reconsideration, including all supporting documents, must set forth arguments and contain evidence that either: (i) shows that OWCP erroneously applied or interpreted a specific point of law; (ii) advances a relevant legal argument not previously considered by OWCP; or (iii) constitutes relevant and pertinent new evidence not previously considered by OWCP.⁶ When a timely application for reconsideration does not meet at least one of the above-noted requirements, OWCP will deny the request for reconsideration without reopening the case for a review on the merits.⁷

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).

³ This section provides in pertinent part: "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on [his/her] own motion or on application." 5 U.S.C. § 8128(a).

⁴ 20 C.F.R. § 10.607.

⁵ *Id.* § 10.607(a). 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 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 20 C.F.R. § 10.606(b)(3).

⁷ *Id.* § 10.608(a), (b).

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).

Further, appellant did not submit any additional evidence with her March 30, 2022 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).⁸

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.⁹

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).

⁸ 20 C.F.R. § 10.606(b)(3)(iii); *see also 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).

⁹ *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).

ORDER

IT IS HEREBY ORDERED THAT the April 6, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 5, 2023
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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