

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

_____)	
W.W., Appellant)	
)	
and)	Docket No. 23-0008
)	Issued: November 22, 2023
DEPARTMENT OF THE NAVY, U.S. FLEET)	
FORCES COMMAND, COMMANDER, NAVY)	
INSTALLATIONS COMMAND, San Diego, CA,)	
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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On October 5, 2022 appellant filed a timely appeal from an August 10, 2022 nonmerit decision of the Office of Workers' Compensation Programs (OWCP).¹ As more than 180 days has elapsed from OWCP's last merit decision, dated March 30, 2022, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act² (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 his claim, pursuant to 5 U.S.C. § 8128(a).

¹ The Board notes that, following the August 10, 2022 decision, OWCP received additional evidence. However, 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.*

² 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On August 18, 2021 appellant, then a 53-year-old information technology management analyst, filed a traumatic injury claim (Form CA-1) alleging that on May 10, 2021 he sustained injuries to his back, neck, right arm, and right hand using two desktop computers in an office cubicle while in the performance of duty. He did not stop work.

In support of his claim, appellant submitted a report of magnetic resonance imaging (MRI) scan of the cervical spine dated May 25, 2021, which demonstrated degenerative disc changes at C3-4 through C6-7, osteophyte formation at C5-6, and straightened cervical curvature with preserved vertebral alignment.

In a report dated July 31, 2021, Dr. Luqman Dankalay³ noted that x-rays and an MRI scan revealed cervical disc degeneration disorder at C5 through C7, which resulted in pinched nerves and pain in the neck, back, arm, and hand. He diagnosed cervical degenerative disc disease, carpal tunnel syndrome (CTS), and degenerative joint disease of the right thumb. Dr. Dankalay noted that appellant was undergoing “Khan Kinetic Treatment (KKT)”, a therapeutic treatment involving sound waves, and recommended that he remain out of work for 90 days. He indicated that appellant’s work duties included high rates of repetitive movement of the wrist, working with bent wrists, forceful hand motions, and improper rests of the hands, neck, and wrists for eight hours per day, five days per week.

In an August 20, 2021 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence needed and provided a questionnaire for his completion. In a separate development letter of even date, OWCP requested additional information from the employing establishment. It afforded both parties 30 days to respond.

By decision dated September 20, 2021, OWCP denied appellant’s occupational disease claim, finding that he had not established the implicated factors of his federal employment. It advised that he had incorrectly filed a traumatic injury claim as he alleged degenerative orthopedic injuries from doing administrative work, and that it was adjudicating his claim as an occupational disease claim.⁴ OWCP determined that appellant had not submitted sufficient evidence to substantiate his employment-related activities. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

OWCP thereafter received a June 15, 2021 report by Dr. Abdul Kareem Al-Azzawi, an orthopedic surgeon, who diagnosed cervical disc disorder and deQuervain’s disorder of the right wrist.⁵ Dr. Al-Azzawi indicated that appellant was unfit for duty. He noted that appellant had a “deficiency in service” in his position as a cyber security analyst, and that there was a relationship between the service deficiency and the diagnosed medical conditions.

³ The note indicated that this provider was a “[physician]” under a specific license number with KKT Orthopedic Spine Center in Manama, Bahrain, but no professional specialty was listed.

⁴ A traumatic injury is defined as a “condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift.” 20 C.F.R. § 10.5(ee). An occupational disease is defined as a condition produced by the work environment over a period longer than a single workday or shift.” *Id.* at § 10.5(q).

⁵ A third diagnosis was illegible.

In a statement dated September 19, 2021, appellant indicated that he had worked in federal employment in the information technology profession for over 30 years. He noted that he experienced pain in his neck and back while sitting at his desk. Appellant further indicated that his job duties included repetitive typing, which he believed that caused strain to the nerves, muscles, and tendons in his right arm, hand, and wrist.

On September 30, 2021 appellant requested reconsideration of OWCP's September 20, 2021 decision.

In a request for personnel action (Standard Form (SF) 52) dated May 10, 2021, appellant resigned from his federal employment in order to undergo medical care for service-connected disabilities and nonservice-connected illnesses.

In an undated letter, an employing establishment supervisor, indicated that appellant had submitted a resignation letter on May 11, 2021.

In an e-mail dated May 23, 2021, and a letter dated November 16, 2021, appellant advised that he no longer wished to resign.

In a discharge summary dated November 11, 2021, Dr. Mohamed Alkoheji, an orthopedic surgeon, indicated that appellant had undergone right CTS release surgery. He noted clinical findings of median neuropathy of the right hand and concomitant cervical spine root impingement. Dr. Alkoheji diagnosed right CTS.

In a form report dated November 16, 2021, Dr. Alkoheji diagnosed right CTS and recommended restricted keyboard use for long durations, indefinitely.

In form report dated December 7, 2021, Dr. Mohammad Naeem⁶ diagnosed multilevel cervical degenerative disease and CTS. He opined that appellant was unfit for duty.

By decision dated December 22, 2021, OWCP modified its September 20, 2021 decision to find that appellant had established the identified factors of federal employment and medical diagnoses in connection with the identified factors. It denied the claim, however, as the evidence of record was insufficient to establish causal relationship between his diagnosed conditions and the accepted factors of his federal employment.

OWCP continued to receive evidence, including a report dated October 11, 2021 by Nurarmee Waekeji, a physiotherapist, who diagnosed right CTS, a C5-6 disc herniation, and thenar muscle weakness. Ms. Waekeji indicated that appellant's complaints were aggravated by "working on a desk" and recommended various physical therapy modalities.

On January 3, 2022 appellant requested reconsideration of OWCP's December 22, 2021 decision and enclosed a statement of even date.

OWCP thereafter received a hospital report dated November 7, 2021 by Dr. Alkoheji, who noted that appellant related a history of longstanding right-hand pain, which had worsened over the last five months, that appellant attributed to working at a desk with multiple computers typing

⁶ The report indicated Dr. Naeem was a "medical director" under a license with KKT Rehabilitation, but no professional specialty was indicated.

all day long. Dr. Alkoheji performed a physical examination, diagnosed right CTS, and recommended release surgery.

In a narrative report dated March 1, 2022, Ms. Waekeji indicated that an analysis of current research revealed that occupational exposure to repetition, increased hand force, and wrist posture increased the risk for CTS. She noted that appellant had worked for three decades in a job which required repetitive forceful motions of the hand and wrist. Ms. Waekeji opined that his work likely played a role in the development of CTS and that computer keyboarding compressed his median nerve by direct force to the wrist area.

By decision dated March 30, 2022, OWCP denied modification of its December 22, 2021 decision.

On July 16, 2022 appellant requested reconsideration of OWCP's March 30, 2022 decision and submitted a statement dated July 15, 2022 and an undated note by Dr. Quinn Kennedy, a chiropractor. Dr. Kennedy opined that appellant's prolonged use of a keyboard directly correlated with his carpal tunnel injury.

In his July 15, 2022 statement, appellant related that he had retired on disability as his medical conditions affected his ability to perform the duties of his position. He advised that he had received treatment for his condition from a chiropractic facility and enclosed a report from his physician relating his condition to extensive use of a keyboard and mouse at work. Appellant related that he was back in the United States with physicians who had explained how his occupational caused CTS, degenerative thumb disease, and a possible aggravation of neck, back, and shoulder pain as a result of his employment. He advised that working on ships that had constant movement and vibration for over a decade contributed to his condition.

By decision dated August 10, 2022, OWCP denied appellant's request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a), finding that his request for reconsideration neither raised legal contentions not previously considered, nor included relevant new evidence.

LEGAL PRECEDENT

Section 8128(a) of FECA does not entitle a claimant the review of an OWCP decision as a matter of right.⁷ OWCP has discretionary authority in this regard and has imposed certain limitations in exercising its authority.⁸ 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.⁹

A timely request for reconsideration, including all supporting documents, must set forth arguments, and contain evidence that either: (1) shows that OWCP erroneously applied or

⁷ 5 U.S.C. § 8128(a).

⁸ 20 C.F.R. § 10.607.

⁹ *Id.* at § 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 (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.

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.¹⁰ When a timely request 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.¹¹

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).

Appellant has not alleged or demonstrated that OWCP erroneously applied or interpreted a specific point of law. Moreover, he has not advanced a relevant legal argument not previously considered. Appellant maintained that his physicians had explained how his conditions of CTS, degenerative thumb disease, and a possible aggravation of neck, back, and shoulder pain resulted from his work duties, including extensive use of a keyboard and mouse, and working on a ship with vibration and constant movement. However, causal relationship is a medical issue and must be resolved by rationalized medical evidence.¹² Appellant's lay opinion is not relevant regarding the issue in this case, which is whether the medical evidence established that he sustained an employment-related condition.¹³ Consequently, he is not entitled to a review of the merits of his claim based on the first and second above-noted requirements under 20 C.F.R. § 10.606(b)(3).¹⁴

Appellant also did not submit any pertinent new and relevant medical evidence in support of his request for reconsideration. As noted, the underlying issue on reconsideration is whether he has met his burden of proof to establish a medical condition causally related to the accepted factors of his federal employment. This is a medical issue which can only be addressed by submission of rationalized medical evidence not previously considered.¹⁵ Appellant submitted an undated letter by Dr. Kennedy, a chiropractor, which did not contain a diagnosis of subluxation. Section 8101(2) of FECA provides that the term physician, as used therein, includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation, as demonstrated by x-ray to exist and subject to regulations by the Secretary.¹⁶ The letter by Dr. Kennedy is of no probative value on the relevant issue of causal relationship as she did not diagnose a subluxation by the use of x-rays and thus is

¹⁰ *Id.* at § 10.606(b)(3); *see L.F.*, Docket No. 20-1371 (issued March 12, 2021); *B.R.*, Docket No. 19-0372 (issued February 20, 2020).

¹¹ *Id.* at § 10.608.

¹² *See C.G.*, Docket No. 21-0444 (issued November 5, 2021); *J.B.*, Docket No. 20-0145 (issued September 8, 2020); *E.D.*, Docket No. 18-0138 (issued May 14, 2018); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

¹³ *See S.A.*, Docket No. 21-0813 (issued December 27, 2021); *Gloria J. McPherson*, 51 ECAB 441, 448 (2000).

¹⁴ *C.B.*, Docket No. 18-1108 (issued January 22, 2019).

¹⁵ *Y.L.*, Docket No. 20-1025 (issued November 25, 2020); *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Edward Matthew Diekemper*, 31 ECAB 224-25 (1979).

¹⁶ *See* 5 U.S.C. § 8101(2); 20 C.F.R. § 10.311; *J.B.*, Docket No. 22-1166 (issued April 3, 2023); *L.C.*, Docket No. 18-1707 (issued April 3, 2019); *M.B.*, Docket No. 17-1378 (issued December 13, 2018).

not considered a physician under FECA.¹⁷ Thus, appellant is not entitled to further review of the merits of his claim based on the third requirement under 20 C.F.R. § 10.606(b)(3).¹⁸

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.

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).

ORDER

IT IS HEREBY ORDERED THAT the August 10, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 22, 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

¹⁷ See *id.* at § 8101(2) of FECA provides as follows: (2) physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. The term physician includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist and subject to regulations by the secretary. See *M.T.*, Docket No. 23-0281 (issued April 17, 2023); *M.B., id.*; *Merton J. Sills*, 39 ECAB 572, 575 (1988).

¹⁸ *Supra* note 11.