

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

_____)	
J.H., Appellant)	
)	
and)	Docket No. 23-0485
)	Issued: November 13, 2023
U.S. POSTAL SERVICE, POST OFFICE, Omaha, NE, Employer)	
_____)	

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 February 23, 2023 appellant filed a timely appeal from a January 31, 2023 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). The most recent merit decision was a Board decision dated April 21, 2022, which became final after 30 days of issuance and is not subject to further review.² As there was no merit decision by OWCP issued within 180 days of the filing of this appeal, 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 20 C.F.R. § 501.6(d). *See D.C.*, Docket No. 23-0728 (issued October 4, 2023); *M.D.*, Docket No. 22-0542 (issued August 17, 2022); *G.G.*, Docket No. 18-1074 (issued January 7, 2019).

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

FACTUAL HISTORY

This case has previously been before the Board. The facts and circumstances as set forth in the Board's prior decisions are incorporated herein by reference.⁴ The relevant facts are set forth below.

On April 30, 2021 appellant, then a 52-year-old retired letter carrier, filed an occupational disease claim (Form CA-2) alleging that he developed bilateral carpal tunnel syndrome (CTS) due to factors of his federal employment, including tightly gripping mail with his left hand and fingering single pieces of mail with his right hand, 8 to 10 hours per day for 27 years. He noted that he first became aware of his condition and realized its relationship to his federal employment on December 9, 2020. On the reverse side of the claim form, the employing establishment indicated that appellant retired on November 25, 2019.

In a statement dated February 15, 2021, appellant noted that he began working for the employing establishment in 1992 as a casual carrier and eventually secured a permanent appointment. He related that he held his hands in the same position for 8 to 10 hours per day while performing his job duties, including cupping his left hand and using the first two fingers of his right hand to finger through the mail and pick mail pieces from the bundle. Prior to resigning, appellant noticed that he was dropping things with his right hand and experiencing numbness and pain in his right hand and arm at night. He further explained that he had been diagnosed with arthritis in his left thumb.

In a development letter dated May 3, 2021, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence required and attached a questionnaire for his completion. In a separate development letter of even date, OWCP requested that the employing establishment provide additional information regarding appellant's alleged injury, including comments from a knowledgeable supervisor regarding the accuracy of his allegations and an explanation of any areas of disagreement. It afforded both parties 30 days to submit the requested evidence.

In a May 3, 2021 response, an employing establishment supervisor, indicated that appellant did not work at a desk or with a computer, and that his job duties as a city carrier required that he case and pull down mail from a standard delivery case. He denied any knowledge of appellant's alleged injuries prior to receiving OWCP's May 3, 2021 development questionnaire. The supervisor also attached a job description and a functional requirements list for appellant's city carrier position.

By decision dated June 7, 2021, OWCP denied appellant's occupational disease claim, finding that the evidence of record was insufficient to establish that the alleged work factors

⁴ *Order Remanding Case*, Docket No. 22-1202 (issued November 30, 2022); Docket No. 22-0062 (issued April 21, 2022).

occurred as described. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On October 21, 2021 appellant, through counsel, filed a timely appeal with the Board. By decision dated April 21, 2022,⁵ the Board affirmed the June 7, 2021 decision.

OWCP continued to receive additional evidence following the June 7, 2021 decision, including a statement by appellant dated September 7, 2021, which indicated that before he resigned from his federal employment, he experienced numbness in, and reduced function of his right hand. Appellant also noted progressively worsening symptoms and visible atrophy in his right wrist area. He further related that, while working as a carrier, he held his hands in the same position for 8 to 10 hours per day, including the first two fingers of his right hand, which he used continuously to flip through pieces of mail were the most symptomatic.

OWCP also received a notification of personnel action (PS Form 50) dated November 25, 2019, which indicated that appellant's last day in pay status was November 12, 2019.

On June 6, 2022 appellant, through counsel, requested reconsideration. In support of the request, he submitted additional medical evidence including a November 23, 2020 medical report by Dr. Carleigh B. Golden, a Board-certified internist, who noted that appellant complained of numbness and tingling in his second and third finger at night and weakness in his right hand during the day. Dr. Golden performed a physical examination and diagnosed essential hypertension, tobacco abuse, likely CTS in the right hand, and restless syndrome.

In a December 9, 2020 report, Dr. Karen L. Bremer, a Board-certified neurologist, noted that appellant underwent electromyography and nerve conduction velocity studies (EMG/NCV), which revealed bilateral CTS, severe on the right. She referred him for carpal tunnel decompression surgery.

In a December 22, 2020 report, Dr. Gangadasu S. Reddy, a Board-certified hand, plastic, and reconstructive surgery specialist, diagnosed bilateral CTS and recommended right endoscopic carpal tunnel release.

In a January 27, 2021 postoperative follow-up note, Kathy Heurter, a nurse practitioner, noted that appellant related improvement of numbness and tingling in the right hand and ongoing numbness in the left hand.

By decision dated July 11, 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 substantial legal questions, nor included new or relevant evidence. It noted that the evidence on reconsideration included the November 23, 2020 and December 9 and 22, 2020 medical reports from Drs. Golden, Bremer, and Reddy, respectively. OWCP further noted that "while [appellant] submitted medical evidence indicating diagnosis of carpal tunnel, [he] still did not provide a statement describing in detail the job task [he performed] which have caused and/or aggravated this condition."

⁵ Docket No. 22-0062 (issued April 21, 2022).

On August 16, 2022 appellant, through counsel, filed a timely appeal with the Board. By order dated November 30, 2022,⁶ the Board found that the case was not in posture for decision. The Board found that OWCP improperly denied appellant's request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a), as the underlying issue was factual in nature and appellant had submitted an updated statement, which provided a factual description of his employment activities. Accordingly, the Board remanded the case to OWCP to review the evidence of record and, following any further development deemed necessary, issue an appropriate decision.

By decision dated January 31, 2023, 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 substantial legal questions, nor included new or relevant evidence. It noted that his September 7, 2021 statement was cumulative and that he had not explained his job duties that contributed to his condition.

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 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

⁶ *Order Remanding Case*, Docket No. 22-1202 (issued November 30, 2022).

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.

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.

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. Consequently, appellant 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).¹²

The evidence submitted with appellant's reconsideration request did not provide any new information pertaining to the underlying issue of how the claimed injury occurred. While he submitted a factual statement describing his work duties, the statement was substantially similar to and duplicative of evidence previously of record. The Board has held that evidence or argument that repeats or duplicates evidence previously of record has no evidentiary value and does not constitute a basis for reopening a case.¹³ The Board also notes that, as the underlying issue is factual in nature, the additional medical evidence submitted from Dr. Golden, Dr. Bremer, Dr. Reddy, and Ms. Heurter is irrelevant, as the factual component of appellant's claim has not been established. The Board has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.¹⁴ 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).¹⁵

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.¹⁶

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).

¹² *C.B.*, Docket No. 18-1108 (issued January 22, 2019).

¹³ *G.M.*, Docket No. 17-0345 (issued May 1, 2017); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

¹⁴ *G.M.*, *id.*; *B.T.*, Docket No. 16-0785 (issued September 21, 2016); *Ronald A. Eldridge*, 53 ECAB 218 (2001); *Alan G. Williams*, 52 ECAB 180 (2000); *Edward Matthew Diekemper*, 31 ECAB 224-25 (1979).

¹⁵ *G.M.*, *id.*; *B.T.*, *id.*

¹⁶ *See supra* notes 9 and 10.

ORDER

IT IS HEREBY ORDERED THAT the January 31, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 13, 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