

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

M.C., Appellant)	
)	
and)	Docket No. 23-0517
)	Issued: October 5, 2023
U.S. POSTAL SERVICE, ROMEOVILLE POST)	
OFFICE, Romeoville, IL, 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
JANICE B. ASKIN, Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On March 3, 2023 appellant, through counsel, filed a timely appeal from a February 13, 2023 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). The most recent merit decision was a decision of the Board dated January 27, 2022 which became final after 30 days of issuance and is not subject to further review.² As there was no merit decision issued by OWCP within 180 days from the filing of this appeal, pursuant to the Federal Employees'

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 M.S.*, Docket No. 18-0222 (issued June 21, 2018); *J.P.*, Docket No. 17-0053 (issued May 23, 2017); *R.M.*, Docket No. 14-1213 (issued October 15, 2014).

Compensation Act (FECA)³ and 20 C.F.R. § § 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of this case.⁴

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

This case has previously been before the Board.⁵ The facts and circumstances of the case as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are set forth below.

On July 5, 2016 appellant, then a 37-year-old rural carrier, filed an occupational disease claim (Form CA-2) alleging that she developed carpal tunnel syndrome due to the repetitive duties of her federal employment. She noted that she first became aware of her condition and its relationship to her federal employment on April 27, 2016. Appellant stopped work on June 29, 2016. On September 9, 2015 OWCP accepted her claim for carpal tunnel syndrome of the left upper limb. It paid appellant wage-loss compensation on the supplemental rolls beginning September 17, 2016.

Appellant underwent OWCP-authorized left carpal tunnel release on October 17, 2016. She returned to full-duty work on March 4, 2017.

On August 28, 2017 appellant filed a claim for compensation (Form CA-7) a schedule award.

In a March 16, 2018 report, Dr. Neil Allen, a Board-certified internist and neurologist, reviewed appellant's medical history and provided findings on physical examination. He noted that she experienced numbness and tingling in her left hand, tenderness through the distal third of the forearm, and mild atrophy of the thenar eminence. Dr. Allen opined that appellant had reached maximum medical improvement (MMI). He found that she had full muscle strength in her left and right hands. Dr. Allen provided a permanent impairment rating for the left wrist utilizing Table 15-23 (Entrapment/Compression Neuropathy Impairment) on page 449 of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).⁶ He determined that appellant's condition fell under grade modifier 1 for test findings, grade modifier 3 for history, and grade modifier 2 for physical findings. Dr. Allen

³ 5 U.S.C. § 8101 *et seq.*

⁴ *B.D.*, Docket No. 20-1365 (issued December 21, 2022); *D.B.*, Docket No. 19-0648 (issued October 21, 2020).

⁵ Docket No. 20-1234 (issued January 27, 2022).

⁶ A.M.A., *Guides* (6th ed. 2009).

reported a *QuickDASH* score of 59 for the functional scale portion of Table 15-23 and concluded that she had a total of five percent permanent impairment of the left upper extremity.

After extensive development of the medical evidence, by decision dated July 30, 2019, OWCP denied appellant's schedule award claim, finding that the medical evidence of record was insufficient to establish permanent impairment of a scheduled member or function of the body. By decision dated December 12, 2019, a representative of OWCP's Branch of Hearings and Review affirmed the July 30, 2019 decision.

OWCP subsequently received a December 10, 2019 addendum from Dr. Allen, who noted that, after further review of appellant's electromyogram (EMG) findings, she did not qualify for impairment under the entrapment/compression neuropathy method of the A.M.A., *Guides*. Utilizing the diagnosis-based impairment (DBI) method of the A.M.A., *Guides*, Dr. Allen identified the Class of Diagnosis (CDX) as a class one impairment for the diagnosis of left wrist pain under Table 15-3, page 395. He found that grade modifier functional history (GMFH) was not applicable, in accordance with Table 15-7, page 406, as it varied by two or more from the grade modifier clinical studies (GMCS). Dr. Allen assigned a grade modifier physical examination (GMPE) of 2, in accordance with Table 15-8, page 408, as appellant had moderate palpatory findings and mild thenar atrophy. He reported a GMCS of zero in accordance with Table 15-9, page 410, as the EMG and nerve conduction velocity findings did not qualify for a diagnosis of carpal tunnel syndrome. Dr. Allen calculated that appellant had a net adjustment of zero, resulting in no movement from the default value of C and corresponding to a one percent left upper extremity impairment.

On January 8, 2020 appellant, through counsel, requested reconsideration. After appropriate development of the medical evidence, by decision dated April 20, 2020, OWCP again denied appellant's schedule award claim, finding that the medical evidence of record was insufficient to establish permanent impairment of a scheduled member or function of the body. Appellant appealed to the Board and in its January 27, 2022 decision,⁷ the Board affirmed the April 20, 2020 decision.

On November 16, 2022 appellant, through counsel, requested reconsideration. Dr. Allen provided an additional addendum dated October 13, 2022 in reliance on his March 16, 2018 physical examination and again found that she had one percent permanent impairment of the left upper extremity in accordance with the DBI of wrist pain, Table 15-3, page 395 of the A.M.A., *Guides*. He contended that this impairment rating was appropriate based on her 2018 palpatory findings. Dr. Allen resubmitted his December 10, 2019 impairment rating.

By decision dated February 13, 2023, OWCP denied appellant's request for reconsideration without reviewing the merits of her claim.

⁷ *Supra* note 5.

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 own motion or on application.⁸

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or 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.⁹

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.¹⁰ If it chooses to grant reconsideration, it reopens and reviews the case on its merits. 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.¹¹

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).

Appellant's November 16, 2022 timely request for reconsideration neither alleged nor demonstrated that OWCP erroneously applied or interpreted a specific point of law. Additionally, the Board finds that it did not advance a relevant legal argument not previously considered by OWCP. Consequently, appellant did not allege a relevant new legal argument and she is not entitled to further review of the merits of her claim based on either the first or second above-noted requirements under 20 C.F.R. § 10.606(b)(3).¹²

The Board further finds that appellant has new and relevant evidence not previously considered. Appellant submitted an October 13, 2022 addendum report from Dr. Allen repeating his March 16, 2018 physical findings and his December 10, 2019 impairment rating. While this

⁸ 5 U.S.C. § 8128(a); *see D.K.*, Docket No. 22-0111 (issued February 8, 2023); *T.K.*, Docket No. 19-1700 (issued April 30, 2020); *L.D.*, Docket No. 18-1468 (issued February 11, 2019); *W.C.*, 59 ECAB 372 (2008).

⁹ 20 C.F.R. § 10.606(b)(3); *see D.K.*, *id.*; *see also L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

¹⁰ *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 (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.

¹¹ *Id.* at § 10.608(a); *J.L.*, Docket No. 21-0726 (issued January 19, 2023); *F.V.*, Docket No. 18-0230 (issued May 8, 2020); *see also M.S.*, 59 ECAB 231 (2007).

¹² *Id.*

evidence is new and relevant, is substantially similar to prior evidence of record. Providing additional medical evidence that either duplicates or is substantially similar to evidence of record does not constitute a basis for reopening a case.¹³ Accordingly, appellant is not entitled to a merit review based on the third requirement under 20 C.F.R. § 10.606(b)(3).¹⁴

The Board accordingly finds that appellant has not met any of the three requirements under 20 C.F.R. § 10.606(b)(3). Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

Appellant may request a schedule award or increased schedule award at any time based on evidence of a new exposure or medical evidence showing progression of an employment-related condition resulting in permanent impairment or increased permanent impairment.¹⁵

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 February 13, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 5, 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

¹³ *J.L.*, *supra* note 11; *G.J.*, Docket No. 20-0071 (issued July 1, 2020); *M.O.*, Docket No. 19-1677 (issued February 25, 2020).

¹⁴ *Id.*

¹⁵ *M.M.*, Docket No. 22-0780 (issued November 16, 2022).