

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

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<b>C.M., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 23-1198</b>
	)	<b>Issued: February 12, 2024</b>
<b>U.S. POSTAL SERVICE, CROWN POINT POST</b>	)	
<b>OFFICE, Indianapolis, IN, Employer</b>	)	
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*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 September 28, 2023 appellant filed a timely appeal from an August 15, 2023 merit decision and a September 1, 2023 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

**ISSUES**

The issues are: (1) whether appellant has met her burden of proof to establish bilateral carpal tunnel syndrome (CTS) causally related to the accepted factors of her federal employment;

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

<sup>2</sup> The Board notes that, following the September 1, 2023 decision and on appeal, appellant submitted additional evidence. However, the Board's *Rules of Procedures* 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.*

and (2) 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 May 31, 2023 appellant, then a 46-year-old rural carrier associate, filed an occupational disease claim (Form CA-2) alleging that she sustained CTS due to factors of her federal employment, including working many consecutive days and many hours. She noted that she had worked 14 days straight and 10 to 12 hours a day in 2022. Appellant related that she sometimes dropped packages she was delivering, and when she cased mail and scanned packages her hands and fingers would fall asleep. She noted that she first became aware of her claimed condition on March 1, 2022, and realized its relation to her federal employment on May 9, 2023.

In a development letter dated June 9, 2023, OWCP advised appellant of the type of factual and medical evidence necessary to establish her claim and provided a questionnaire for her completion. It afforded her 60 days to submit the requested evidence. In a separate development letter also dated June 9, 2023, OWCP requested that the employing establishment provide additional information addressing appellant's allegations.

OWCP received an April 13, 2023 neurodiagnostic report from Dr. Cheng Du, Board-certified in neurology and neuromuscular medicine, which revealed mild-to-moderate CTS in the right and left hand, and no electrophysical evidence for cubital tunnel syndrome in the left or right medial elbow.

In a May 9, 2023 report, Dr. Ryan J. Plank, Board-certified in orthopedic sports medicine, diagnosed pain in the right wrist and CTS; and pain in left wrist and CTS. He related that appellant had bilateral CTS and "feels this is work related because [appellant] never had these symptoms prior to her job."

In a July 10, 2023 follow-up development letter, OWCP informed appellant that the evidence remained insufficient to support her claim and advised her of the type of factual and medical evidence necessary to establish her claim. It afforded her 60 days from the date of the June 9, 2023 letter to submit the requested evidence.

In a July 12, 2023 letter, L.N., an occupational health processing specialist from the employing establishment, controverted the claim and contended that appellant did not work the hours and duration as alleged, but rather worked 5 to 6 days per week, 40 hours per week, and performed repetitive movements with her hands and wrists when delivering mail approximately 5 to 6 days per week.

In a July 18, 2023 report, Dr. James Carlson, a family medicine specialist, noted that appellant was seen on March 22, May 16, and July 18, 2023, for symptoms related to CTS. He related that an electromyography (EMG) scan revealed moderate CTS on the right wrist/hand and that CTS was found on the left wrist/hand as well. Dr. Carlson also noted that a magnetic resonance imaging scan and/or computerized tomography (CT) scan of the hand and wrist was not needed to definitively diagnose CTS. He advised that the clinical course was one of worsening symptoms of the wrists/hands with repetitive use. Dr. Carlson referenced that surgery would be a

considered option and recommended that appellant decrease repetitive movements of both hands throughout the day.

In a July 26, 2023 statement, appellant reiterated her work activities.

By decision dated August 15, 2023, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish causal relationship between her diagnosed medical condition and the accepted factors of her federal employment.

On August 28, 2023 appellant requested reconsideration. She did not advance any legal argument or submit additional evidence.

By decision dated September 1, 2023, OWCP denied appellant's request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a).

### **LEGAL PRECEDENT -- ISSUE 1**

An employee seeking benefits under FECA<sup>3</sup> has the burden of proof to establish the essential elements of his or her claim, including that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation of FECA,<sup>4</sup> that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.<sup>5</sup> These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>6</sup>

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the identified employment factors.<sup>7</sup>

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<sup>3</sup> *Supra* note 1.

<sup>4</sup> *See S.F.*, Docket No. 23-0264 (July 5, 2023); *F.H.*, Docket No. 18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>5</sup> *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>6</sup> *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

<sup>7</sup> *T.W.*, Docket No. 20-0767 (issued January 13, 2021); *L.D.*, Docket No. 19-1301 (issued January 29, 2020); *S.C.*, Docket No. 18-1242 (issued March 13, 2019).

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.<sup>8</sup> The opinion of the physician must be based on a complete factual and medical background, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment incident.<sup>9</sup>

### **ANALYSIS -- ISSUE 1**

The Board finds that appellant has not met her burden of proof to establish bilateral CTS causally related to the accepted factors of her federal employment.

In a May 9, 2023 report, Dr. Plank, diagnosed bilateral CTS and related that appellant “feels this is work related because [appellant] never had these symptoms prior to her job.” He did not, however, provide an opinion on causal relationship between her claimed disability and the accepted employment injury. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee’s condition is of no probative value on the issue of causal relationship.<sup>10</sup> Therefore, Dr. Plank’s report is insufficient to establish appellant’s claim.

In a July 18, 2023 report, Dr. Carlson noted that an EMG scan revealed moderate CTS on the right and that CTS was also found on the left. While he noted worsening symptoms of the wrists/hands with repetitive use, he did not explain with medical rationale, physiologically how appellant’s employment duties caused her diagnosed medical conditions.<sup>11</sup> As such, Dr. Carlson’s opinion is conclusory and is insufficient to establish her claim.<sup>12</sup>

OWCP also received an April 13, 2023 neurodiagnostic report from Dr. Du, which revealed mild-to-moderate bilateral CTS and no electrophysical evidence for cubital tunnel syndrome. However, the Board has held that diagnostic reports, standing alone, lack probative value on the issue of causal relationship as they do not provide an opinion as to whether the accepted factors of employment caused a diagnosed condition.<sup>13</sup> Consequently, this evidence is insufficient to establish appellant’s claim.

As the medical evidence of record is insufficient to establish causal relationship between appellant’s diagnosed bilateral CTS and the accepted employment factors, the Board finds that she has not met her burden of proof.

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<sup>8</sup> *I.J.*, Docket No. 19-1343 (issued February 26, 2020); *T.H.*, 59 ECAB 388 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

<sup>9</sup> *D.C.*, Docket No. 19-1093 (issued June 25, 2020); see *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>10</sup> See *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

<sup>11</sup> *Id.*

<sup>12</sup> *A.K.*, Docket No. 21-0278 (issued July 12, 2021); *J.A.*, Docket No. 20-1195 (issued February 3, 2021).

<sup>13</sup> *W.L.*, Docket No. 20-1589 (issued August 26, 2021); *A.P.*, Docket No. 18-1690 (issued December 12, 2019).

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128 and 20 C.F.R. §§ 10.605 through 10.607.

### **LEGAL PRECEDENT -- ISSUE 2**

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>14</sup>

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.<sup>15</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>16</sup> If it chooses to grant reconsideration, it reopens and reviews the case on its merits.<sup>17</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.<sup>18</sup>

### **ANALYSIS -- ISSUE 2**

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 request for reconsideration does not demonstrate that OWCP erroneously applied or interpreted a specific point of law. Moreover, she has not advanced a relevant legal argument not previously considered by OWCP. Consequently, the Board finds that appellant is

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<sup>14</sup> 5 U.S.C. § 8128(a); *see L.J.*, Docket No. 22-0348 (issued April 28, 2023); *T.K.*, Docket No. 19-1700 (issued April 30, 2020); *L.D.*, Docket No. 18-1468 (issued February 11, 2019).

<sup>15</sup> 20 C.F.R. § 10.606(b)(3); *see P.M.*, Docket No. 20-0780 (issued November 24, 2020); *L.D., id.*; *see also L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

<sup>16</sup> *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 (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>17</sup> *Id.* at § 10.608(a); *F.V.*, Docket No. 18-0230 (issued May 8, 2020); *see also M.S.*, 59 ECAB 231 (2007).

<sup>18</sup> *Id.* at § 10.608(b); *S.K.*, Docket No. 22-0248 (issued June 27, 2022); *B.S.*, Docket No. 20-0927 (issued January 29, 2021); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

not entitled to a review of the merits based on the first and second requirements under 20 C.F.R. § 10.606(b)(3).<sup>19</sup>

Further, the record indicates that appellant did not provide any new evidence with her reconsideration request. As she did not provide relevant and pertinent new evidence not previously considered by OWCP, she is not entitled to review of the merits of her claim based on the third requirement under 20 C.F.R. § 10.606(b)(3).<sup>20</sup>

The Board, accordingly, finds that appellant's reconsideration request 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>21</sup>

### **CONCLUSION**

The Board finds that appellant has not met her burden of proof to establish bilateral CTS causally related to the accepted factors of her federal employment. The Board further finds that OWCP properly denied her request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a).

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<sup>19</sup> *Id.* at § 10.606(b)(3); *see N.K.*, Docket No. 23-0435 (issued September 28, 2023); *K.D.*, Docket No. 22-0756 (issued November 29, 2022); *see also C.N.*, *supra* note 15.

<sup>20</sup> *See S.A.*, Docket No. 21-0813 (issued December 27, 2021); *E.V.*, Docket No. 16-0080 (issued June 21, 2016).

<sup>21</sup> *See D.M.*, Docket No. 21-1224 (issued March 15, 2023); *Y.M.*, Docket No. 22-0327 (issued August 29, 2022); *J.C.*, Docket No. 21-0453 (issued December 8, 2021); *M.E.*, 58 ECAB 694 (2007); *Susan A. Filkins*, 57 ECAB 630 (2006) (when a request for reconsideration does not meet at least one of the three requirements enumerated under 20 C.F.R. § 10.606(b), OWCP will deny the request without reopening the case for a review on the merits).

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 1 and August 15, 2023 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: February 12, 2024  
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