

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

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M.R., Appellant)	
)	
and)	Docket No. 23-0875
)	Issued: January 4, 2024
U.S. POSTAL SERVICE, TAMPA POST)	
OFFICE, Tampa, FL, Employer)	
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Appearances:
Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On June 15, 2023 appellant, through counsel, filed a timely appeal from a May 22, 2023 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the

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.

Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.³

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.⁴ The facts and circumstances of the case as set forth in the Board's prior decisions are incorporated herein by reference. The relevant facts are as follows.

On July 9, 2015 appellant, then a 50-year-old retired letter sorting machine (LSM) operator, manual clerk, and automation operator, filed an occupational disease claim (Form CA-2) alleging that she developed bilateral carpal tunnel syndrome due to factors of her federal employment. She noted that she first became aware of her claimed condition on July 25, 2013, and realized its relationship to her federal employment on April 15, 2015. On the reverse side of the claim form, an employing establishment personnel official advised that appellant retired on disability effective March 26, 2001. The official reported that appellant first notified a supervisor about her claimed injury on August 11, 2015.

In a June 16, 2015 statement, appellant asserted that her claimed bilateral upper extremity condition developed over years of working at the employing establishment. She reported that she first began having problems with her hands on July 25, 2013, but was not conclusively diagnosed with bilateral carpal tunnel syndrome until April 15, 2015. Appellant advised that her work duties as an LSM operator involved pushing/pulling heavy containers weighing approximately 600 pounds, removing trays from letter cages, dropping mail on a ledge, pulling mail down by reaching overhead, and bending down to place sleeves on mail trays. She also described her other work duties, which involved casing mail, moving containers, grasping handfuls of mail/magazines, bundling mail, filling mail trays, pushing/pulling cages, throwing bundles of magazines weighing 15 to 25 pounds into bins, and picking up and throwing sacks weighing in excess of 120 pounds.

Appellant submitted an April 16, 2015 electromyogram and nerve conduction velocity (EMG/NCV) study, which was deemed to be suggestive of bilateral carpal tunnel syndrome. In

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that, following the May 22, 2023 decision, appellant submitted additional evidence to OWCP and on appeal to the Board. 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.*

⁴ Docket No. 18-0164 (issued May 23, 2018); Docket No. 19-1954 (issued March 1, 2021); Docket No. 22-0038 (issued June 6, 2022).

an August 27, 2015 statement, appellant's former supervisor provided a description of appellant's work duties, which was similar to that provided by appellant in her June 16, 2015 statement.

By decisions dated September 24, 2015 and July 1, 2016, OWCP denied appellant's claim, finding that it was untimely filed.

Appellant subsequently requested reconsideration. By decision dated August 18, 2017, OWCP denied her June 23, 2017 request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a).

Appellant appealed to the Board. By decision dated May 23, 2018, the Board set aside the August 18, 2017 decision, finding that she had presented a new and relevant legal argument on reconsideration. The Board remanded the case to OWCP for a merit review to be followed by the issuance of an appropriate decision.⁵

By decision dated August 14, 2018, OWCP modified its prior decision, finding that appellant had filed a timely occupational disease claim alleging a bilateral upper extremity injury and had established employment factors in the form of the repetitive motion required by her work duties. However, appellant's claim remained denied because the medical evidence of record was insufficient to establish a diagnosed medical condition in connection with the accepted employment factors.

Appellant subsequently submitted a November 27, 2018 report from Dr. Robert R. Reppy, an osteopath Board-certified in family medicine, who noted that she reported sustaining bilateral carpal tunnel syndrome due to years of repetitive keying on a mail sorting machine, casing mail, and pushing/pulling heavy equipment while working for the employing establishment. Dr. Reppy indicated that appellant had a positive Tinel's sign and negative Phalen's sign bilaterally and diagnosed bilateral carpal tunnel syndrome.

On July 29, 2019 appellant, through counsel, requested reconsideration of the August 14, 2018 decision.

In support thereof, appellant submitted a July 11, 2019 report, wherein Dr. Reppy noted her claim that years of repetitive motion keying on an LSM, casing mail, and pushing/pulling heavy equipment had damaged her wrists and hands. Dr. Reppy discussed her upper extremity symptoms and indicated that she had no prior history of similar symptoms. He noted that a July 1, 2016 EMG/NCV study of appellant's upper extremities, which demonstrated conduction latency in both median nerves, was pathognomonic for bilateral carpal tunnel syndrome. Dr. Reppy advised that, upon physical examination, she had a positive Tinel's sign and Phalen's test findings, which were correlates of carpal tunnel syndrome. He opined that, "[t]he patient's injury was caused by her [workplace] while she was in performance of her duties at the [employing establishment]." Dr. Reppy explained that the repetitive nature of appellant's lifting, keying, and sorting tasks at work caused the damage to her median nerves over time. He maintained that these tasks were a common and well-understood cause of carpal tunnel syndrome, noting that the medical literature was replete with similar cases. Dr. Reppy indicated that the medical literature

⁵ Docket No. 18-0164 (issued May 23, 2018).

found high prevalence rates and relative risks for carpal tunnel syndrome in a number of jobs involving repetitive gripping. He noted, “[r]epetitive gripping is precisely the action required of [appellant] in her employment as an LSM operator, and she did it for *years*.” (Emphasis in the original.) Dr. Reppy further advised that carpal tunnel syndrome was comprised of sensory and motor features in the median nerve distribution of the hand, including delayed nerve conduction and gradual onset of numbness/tingling and pain in that distribution. He indicated, “[t]his exactly matches the symptomatology reported by this patient.” Dr. Reppy noted that conditions that decreased the carpal tunnel’s size, or swelled the structures in the tunnel, served to compress the median nerve against the transverse ligament bounding the tunnel’s roof. He maintained that such circumstances could arise traumatically, as was the case for appellant. Dr. Reppy advised that carpal tunnel syndrome was caused by extreme flexion/extension of the wrist, which increased the pressure in the carpal tunnel sufficiently to impair blood perfusion of the median nerve. He found that the same mechanism applied in appellant’s case. Dr. Reppy concluded that her upper extremity injury was caused by her postal duties and indicated that his opinion was “based on my medical experience, objective evidence, and my examination of the patient.”

By decision dated August 27, 2019, OWCP modified its August 14, 2018 decision to find that appellant had submitted medical evidence diagnosing a medical condition in connection with the accepted employment factors; however, the claim remained denied as the medical evidence of record evidence was insufficient to establish a bilateral upper extremity condition causally related to the accepted employment factors. Appellant appealed to the Board and, by decision dated March 1, 2021, the Board affirmed OWCP’s August 27, 2019 decision.⁶

On June 15 2021 appellant, through counsel, requested reconsideration. Appellant submitted an April 29, 2021 report in which Dr. Reppy maintained that OWCP was in error when it “stated that [it] had not received a medical report explaining the chain of causation for the upper extremity conditions of [appellant], thus triggering a denial.” Dr. Reppy asserted that he had established the chain of causation in his previously submitted July 11, 2019 report and then provided the text of that report.

By decision dated September 8, 2021, OWCP denied appellant’s occupational disease claim, finding that she had not submitted sufficient medical evidence to establish a bilateral upper extremity condition causally related to the accepted employment factors. Appellant appealed to the Board and, by decision dated June 6, 2022, the Board affirmed OWCP’s September 8, 2021 decision.⁷

Appellant subsequently submitted an August 15, 2022 photoplethysmography, which recorded appellant’s heart rate, as well as her physical stress, mental stress, and stress resistance. In an August 15, 2022 report, Dr. Reppy indicated that the Board had denied appellant’s workers’ compensation case despite his belief that he had provided sufficient objective evidence to establish her case. He detailed physical examination findings and diagnosed bilateral carpal tunnel syndrome.

⁶ Docket No. 19-1954 (issued March 1, 2021).

⁷ Docket No. 22-0038 (issued June 6, 2022).

Appellant also submitted a November 23, 2022 report, wherein Dr. Reppy indicated that a July 1, 2016 EMG/NCV study of appellant's upper extremities demonstrating conduction latency in both median nerves was pathognomonic for bilateral carpal tunnel syndrome, thereby confirming she definitely had the condition. Dr. Reppy advised that, upon physical examination, appellant had a positive Tinel's sign and Phalen's test findings, which also were pathognomonic for bilateral carpal tunnel syndrome. He indicated that the medical literature found high prevalence rates and relative risks for carpal tunnel syndrome in a number of jobs involving repetitive gripping. Dr. Reppy noted, "[r]epetitive gripping is precisely the action required of [appellant] in her employment as an LSM operator, and she did it for *years*." (Emphasis in the original.) He further advised that carpal tunnel syndrome was comprised of sensory and motor features in the median nerve distribution of the hand, including delayed nerve conduction and gradual onset of numbness/tingling and pain in that distribution. Dr. Reppy indicated, "[t]his exactly matches the symptomatology reported by this patient." He noted that conditions that decreased the carpal tunnel's size, or swelled the structures in the tunnel, served to compress the median nerve against the transverse ligament bounding the tunnel's roof. Dr. Reppy maintained that such circumstances could arise traumatically, as was the case for appellant. He advised that carpal tunnel syndrome was caused by extreme flexion/extension of the wrist, which increased the pressure in the carpal tunnel sufficiently to impair blood perfusion of the median nerve. Dr. Reppy found that the same mechanism applied in appellant's case. He concluded that appellant's upper extremity injury was caused by her postal duties and indicated that his opinion was "based on my medical experience, objective evidence, and my examination of the patient."

On February 21, 2023 appellant, through counsel, requested reconsideration.

Appellant subsequently submitted an April 4, 2023 report, wherein Dr. Reppy asserted that appellant's workers' compensation case "was wrongly closed and deserves to be reopened." Dr. Reppy noted that he had not conducted a physical examination and diagnosed bilateral carpal tunnel syndrome.

By decision dated May 22, 2023, 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 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.⁸

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

⁸ 5 U.S.C. § 8128(a); *see L.D.*, Docket No. 18-1468 (issued February 11, 2019); *V.P.*, Docket No. 17-1287 (issued October 10, 2017); *D.L.*, Docket No. 09-1549 (issued February 23, 2010); *W.C.*, 59 ECAB 372 (2008).

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.¹¹ 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.¹²

The Board has held that the submission of evidence or argument which repeats or duplicates evidence or argument already in the caserecord¹³ and the submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.¹⁴

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).

On February 21, 2023 appellant filed a request for reconsideration following the Board's June 22, 2022 decision. The Board finds, however, that she neither established that OWCP erroneously applied or interpreted a specific point of law, nor did she advance a relevant legal argument not previously considered by OWCP. Accordingly, the Board finds that appellant is not entitled to a review of the merits based on either the first or second above-noted requirements under 20 C.F.R. § 10.606(b)(3).

In support of her request for reconsideration, appellant submitted a November 23, 2022 report, wherein Dr. Reppy discussed the signs/symptoms of her bilateral carpal tunnel syndrome and indicated that the medical literature found high prevalence rates and relative risks for carpal tunnel syndrome in a number of jobs involving repetitive gripping. Dr. Reppy noted, "[r]epetitive gripping is precisely the action required of [appellant] in her employment as an LSM operator, and she did it for *years*." (Emphasis in the original.) He advised that carpal tunnel syndrome was comprised of sensory and motor features in the median nerve distribution of the hand, including

⁹ 20 C.F.R. § 10.606(b)(3); *see M.S.*, Docket No. 18-1041 (issued October 25, 2018); *L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

¹⁰ 20 C.F.R. § 10.607(a). The one-year period begins on the next day after the date of the original contested decision. 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 (September 2020).

¹¹ *Id.* at § 10.608(a); *see D.C.*, Docket No. 19-0873 (issued January 27, 2020); *M.S.*, 59 ECAB 231 (2007).

¹² *Id.* at § 10.608(b); *see T.V.*, Docket No. 19-1504 (issued January 23, 2020); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

¹³ *N.L.*, Docket No. 18-1575 (issued April 3, 2019); *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

¹⁴ *M.K.*, Docket No. 18-1623 (issued April 10, 2019); *Edward Matthew Diekemper*; 31 ECAB 224, 225 (1979).

delayed nerve conduction and gradual onset of numbness/tingling and pain in that distribution. Dr. Reppy indicated, “[t]his exactly matches the symptomatology reported by this patient.” He then further discussed the mechanism of how carpal tunnel syndrome occurred and found that the same mechanism applied in appellant’s case. Dr. Reppy concluded that appellant’s upper extremity injury was caused by her postal duties and indicated that his opinion was “based on my medical experience, objective evidence, and my examination of the patient.”

However, the Board finds that the submission of this report of Dr. Reppy would not require the reopening of appellant’s case for merit review because it is substantially similar to previously submitted reports of Dr. Reppy, which were previously considered by OWCP in denying appellant’s claim. As noted above, the Board has held that the submission of evidence or argument which repeats or duplicates evidence or argument already of case record does not constitute a basis for reopening a case.¹⁵

Appellant also submitted an August 15, 2022 report wherein Dr. Reppy diagnosed bilateral carpal tunnel syndrome and indicated that the Board had denied appellant’s workers’ compensation case despite his belief that he had provided sufficient objective evidence. In an April 4, 2023 report, Dr. Reppy diagnosed bilateral carpal tunnel syndrome and asserted that appellant’s workers’ compensation case “was wrongly closed and deserves to be reopened.” However, this evidence is also substantially similar to previously submitted reports of Dr. Reppy regarding his belief that appellant sustained an occupational injury to her upper extremities.¹⁶

Appellant also submitted an August 15, 2022 photoplethysmography, which recorded her heart rate, as well as her physical stress, mental stress, and stress resistance. However, this evidence is irrelevant to the underlying issue of the case because it does not contain an opinion on causal relationship between the diagnosed upper extremity condition(s) and the accepted employment factors. As noted above, the Board has held that the submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.¹⁷ Therefore, appellant is not entitled to further review of the merits of her claim based on the third above-noted requirement under 20 C.F.R. § 10.606(b)(3).

The Board accordingly 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.

¹⁵ See *supra* note 12.

¹⁶ *Id.*

¹⁷ See *supra* note 13.

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 the May 22, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 4, 2024
Washington, DC

Patricia H. Fitzgerald, Deputy 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