

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

L.C., Appellant)	
)	
and)	Docket No. 25-0444
)	Issued: April 23, 2025
DEPARTMENT OF VETERANS AFFAIRS,)	
MID-ATLANTIC HEALTH CARE NETWORK,)	
VA SALISBURY HEALTH CARE,)	
Salisbury, NC, 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
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On April 1, 2025 appellant filed a timely appeal from a December 17, 2024 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days elapsed from OWCP's last merit decision, dated September 9, 2024, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of this case.²

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the December 17, 2024 decision, appellant submitted additional evidence to OWCP. 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.*

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

On April 11, 2024 appellant, then a 48-year-old nurse, filed an occupational disease claim (Form CA-2) alleging that she developed pain in her right middle finger due to factors of her federal employment including typing her triage information into her computer. She noted that she first became aware of this condition on February 24, 2024, and realized its relation to her federal employment on April 5, 2024. Appellant stopped work on February 24, 2024, and returned to work on February 27, 2024.

In a development letter dated April 22, 2024, OWCP advised appellant that the evidence submitted was insufficient to establish her claim. It informed her of the type of factual and medical evidence required to establish her claim. OWCP afforded appellant 60 days to provide the requested evidence.

OWCP subsequently received an April 29, 2024 note from Dr. Tim Murphy, an osteopath Board-certified in family practice, finding that appellant was totally disabled from work from April 22 through May 29, 2024 due to surgery.

In a follow-up development letter dated May 20, 2024, OWCP advised appellant that it had conducted an interim review, and the evidence remained insufficient to establish her claim. It noted that she had 60 days from the April 22, 2024 development letter to submit the requested necessary evidence. OWCP further advised that if the evidence was not received during this time, it would issue a decision based on the evidence contained in the record.

OWCP subsequently received an April 5, 2024 note from Dr. Murphy diagnosing trigger finger of the right long finger and recommended an open trigger release. He noted that the condition had been on-going for a few months and that her finger regularly locked whenever she flexed it down, including at night.

On May 16, 2024 Dr. Murphy performed a right long finger tendon sheath incision for trigger finger. In a May 29, 2024 note, he continued to find that appellant was totally disabled through June 26, 2024.

In a June 26, 2024 form report, Dr. Murphy diagnosed right long finger trigger finger release and indicated by checkmarks that appellant's job duties caused or significantly contributed to her diagnosed condition. He opined that she was totally disabled from work through July 24, 2024.

By decision dated July 3, 2024, OWCP accepted that the implicated employment factors; however, denied appellant's claim as causal relationship had not been established between her diagnosed condition and the accepted employment factors. It concluded, therefore, that the requirements had not been met to establish an injury.

OWCP continued to receive evidence. In a note dated May 29, 2024, Dr. Murphy diagnosed status-post right long finger trigger finger release on May 16, 2024 and right de Quervain's tenosynovitis. On June 26, 2024 he completed a treatment note relating that appellant was experiencing synovitis and swelling around her right long finger release. Dr. Murphy also prescribed physical therapy. In a July 24, 2024 note, he related that she had residual inflammation, and that she should continue to increase her range of motion.

On September 5, 2024 appellant requested reconsideration of OWCP's July 3, 2024 decision and submitted additional evidence, including a narrative statement attributing her condition to work requirements that she turn, reposition, and transport patients as well as the increased typing in her new position beginning in June 2023 performing telephone triage. OWCP also received a July 24, 2024, wherein Dr. Murphy released appellant to limited duty, for 30 hours a week.

In an August 22, 2024 report, Dr. Murphy diagnosed right long finger trigger finger. He opined that increased use of her finger such as pulling and moving patients led to the inflammation of her flexor tendon which led to triggering and the need for a trigger release and subsequent inflammation in her finger. Dr. Murphy further asserted that this made "temporal sense" based on appellant's history.

By decision dated September 9, 2024, OWCP denied modification of its February 24, 2021 decision.

On December 14, 2024 appellant requested reconsideration. She resubmitted Dr. Murphy's August 22, 2024 report, which was previously of record. Appellant also provided occupational therapy notes from Mark Jellous, an occupational therapist, dated September 3 through October 2, 2024.

By decision dated December 17, 2024, 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.³

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 OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.⁴

³ 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).

⁴ 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).

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.⁵ If it chooses to grant reconsideration, it reopens and reviews the case on its merits.⁶ 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.⁷

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 December 14, 2024 request for reconsideration neither alleged nor demonstrated that OWCP erroneously applied or interpreted a specific point of law. Additionally, it did not advance a relevant legal argument not previously considered by OWCP. Consequently, appellant 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).

Furthermore, appellant has not provided relevant and pertinent new evidence in support of her request for reconsideration. On reconsideration, she resubmitted Dr. Murphy's August 22, 2024 report, which was previously of record. The Board has held that medical evidence that either duplicates or is substantially similar to evidence previously of record does not constitute a basis for reopening a case.⁸ Appellant also provided treatment notes from an occupational therapist. However, this evidence is irrelevant to the underlying issue, as certain healthcare providers such as nurses, physician assistants, and physical and occupational therapists are not considered "physician[s]" as defined under FECA.⁹ Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.¹⁰ Appellant did not provide any relevant and pertinent new evidence regarding the issue of whether she developed a right long

⁵ 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.

⁶ *Id.* at § 10.608(a); *see D.C.*, Docket No. 19-0873 (issued January 27, 2020); *M.S.*, 59 ECAB 231 (2007).

⁷ *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).

⁸ *See C.C.*, Docket No. 25-0191 (issued February 12, 2025); *B.S.*, Docket No. 20-0927 (issued January 29, 2021); *M.O.*, Docket No. 19-1677 (issued February 25, 2020); *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

⁹ Section 8101(2) provides that under FECA the term physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by the applicable state law. 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). *See* Federal (FECA) Procedure Manual, Part 2 - Claims, *Causal Relationship*, Chapter 2.805.3a(1) (May 2023); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, physical and occupational therapists are not competent to render a medical opinion under FECA); *see also J.R.*, Docket No. 19-0812 (issued September 29, 2020) (an occupational therapist is not considered a physician under FECA).

¹⁰ *Id.*

finger trigger finger due to factors of her federal employment. Therefore, she was not entitled to a review of the merits based on the third above-noted requirement under 20 C.F.R. § 10.606(b)(3).

The Board, accordingly, finds that as appellant has not met any of the requirements under 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 her claim, pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT December 17, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 23, 2025
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