

<sup>3</sup> 5 U.S.C. § 8101 *et seq.*

## **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 15, 2024 appellant, then a 58-year-old rural carrier associate, filed an occupational disease claim (Form CA-2) alleging that she developed severe pain and swelling in her wrists due to factors of her federal employment. She noted that she first became aware of her condition and realized its relation to her federal employment on April 13, 2024. Appellant stopped work on April 13, 2024, and returned to full-time modified duty with restrictions on July 11, 2024.

In an undated statement, appellant indicated that, on April 13, 2024, she experienced a sharp shooting pain in her wrists and forearms, which progressed to a tingling in her fingers. She further related that she noticed that a lump had formed on the inside (dorsal) of her wrist.

In an April 15, 2024 letter, the employing establishment noted that appellant started working on March 9, 2024, but had spent the first couple of weeks in training. It explained that appellant had delivered her route for three weeks, during which she received assistance with large parcels or portions of the routes.

In an April 17, 2024 duty status report (Form CA-17), an unidentifiable provider indicated that appellant had preexisting carpal tunnel syndrome, and that her wrists were swollen due to an overuse injury. The provider opined that she was disabled from regular work and provided lifting restrictions.

In an undated statement, appellant noted that she had worked 12- to 16-hour days delivering packages weighing up to 70 pounds daily for her route, which was listed as a 9.5-hour route. She indicated that the help, which was provided for her route, arrived late in the day.

The employing establishment controverted the claim. In an April 24, 2024 letter, G.C., an attending customer supervisor, noted that on April 5, 2024 appellant believed that she might have been having an allergic reaction from her cancer treatment, which was in remission. He indicated that she did not report an on-the-job injury.

In an April 25, 2024 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed to establish her claim and provided a questionnaire for her completion. OWCP afforded appellant 60 days to submit the necessary evidence.

OWCP thereafter received statements from appellant and a May 21, 2024 statement from the employing establishment, regarding her work requirements, which included printouts of hours worked. Additional reports from a nurse practitioner, dated April 18 and June 4, 2024, noted a prior history of bilateral wrist surgery and diagnosed overuse injury of the carpal tunnel.

In a July 1, 2024 medical report and work note, Dr. Mark Mellinger, a Board-certified orthopedic hand surgeon, diagnosed bilateral carpal tunnel syndrome, bilateral thumb arthropathy, and basilar pain. He opined that appellant could work light duty with restrictions.

In a follow-up development letter dated July 18, 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 25, 2024 letter to submit the 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.

On July 18, 2024, OWCP referred appellant, along with the medical record and a statement of accepted facts (SOAF) to Dr. Anthony C. Theiler, a Board-certified orthopedic surgeon, for a second opinion evaluation.

In a July 26, 2024 report, Dr. Ryan Zate, an osteopath Board-certified in physiatry, diagnosed bilateral carpal tunnel syndrome. In a report of even date, a physician assistant further noted that bilateral carpal tunnel release surgery was recommended, and that appellant could return to light duty with restrictions.

In an October 8, 2024 report, Dr. Theiler reviewed the SOAF and the medical record and provided examination findings. He noted that appellant reported a right carpal tunnel release 10 to 11 years ago with no surgery on the left side. Dr. Theiler opined that appellant has mild bilateral carpal tunnel syndrome, right worse than left, and bilateral elbow ulnar neuropathy. He opined that there is no evidence that her bilateral carpal tunnel syndrome was work related, noting that she has nonoccupational risk factors of age and gender for median nerve entrapment at the wrist. Dr. Theiler also opined that there was no evidence that appellant's limited work exposure had aggravated any preexisting condition for the carpal tunnel syndrome or CMC joint arthrosis of the thumbs, noting that her symptoms had not changed after not working for six months. Thus, he concluded that there was no causal connection between appellant's complaints and her limited occupational activities as there was no diagnosis related to work activities. Dr. Theiler also opined that there was no reason to limit her work activities as her carpal tunnel syndrome was mild. In an October 8, 2024 work capacity evaluation (Form OWCP-5c), he opined that appellant was capable of performing her usual job without restrictions.

By decision dated October 28, 2024, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish causal relationship between her diagnosed medical conditions and the accepted factors of her federal employment. The weight of the medical opinion evidence was accorded to Dr. Theiler's October 8, 2024 second opinion report.

On February 4, 2025, appellant requested reconsideration and submitted additional medical evidence.

In a December 9, 2024 report, Dr. Michael McGrath, an orthopedic surgeon, reported that appellant began working as a mail carrier in January 2024 and her work duties included lifting, carrying, sorting, pushing, and pulling moderate to heavy loads of mail and packages (up to 70 pounds) throughout the day, with frequent and prolonged grasping, lifting, holding, reaching, pulling, and overhead movements. He diagnosed bilateral carpal tunnel syndrome, which he

opined was aggravated by repetitive, forceful movements and abnormal wrist positions associated with her work duties. Dr. McGrath indicated that while appellant had only worked in the position for three months, she had no other activities outside of work, no hobbies, and no sports that could have contributed to the symptoms. He also opined that while appellant was at risk of developing carpal tunnel syndrome due to her preexisting personal factors, her rural mail carrier work duties accelerated or aggravated the carpal tunnel syndrome, which caused her symptoms to become severe enough to impair her ability to work and require treatment.

By decision dated February 6, 2025, OWCP denied modification of the October 28, 2024 decision.

On April 2, 2025, appellant, through counsel, requested reconsideration. A duplicate copy of Dr. McGrath's February 4, 2025 report was provided.

By decision dated April 3, 2025, 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.<sup>4</sup>

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.<sup>5</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>6</sup> If it chooses to grant reconsideration, it reopens and reviews the case on its merits.<sup>7</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 without

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<sup>4</sup> 5 U.S.C. § 8128(a); *see V.W.*, Docket No. 24-0750 (issued September 11, 2024); *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).

<sup>5</sup> 20 C.F.R. § 10.606(b)(3); *see V.W.*; *id.*; *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).

<sup>6</sup> 20 C.F.R. § 10.607(a). OWCP's procedures provide that 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). The right to reconsideration within one year also accompanies any subsequent merit decision on the issues, including any merit decision by the Board. *Id.* at Chapter 2.1602.4a (September 2020).

<sup>7</sup> *Id.* at § 10.608(a); *see D.C.*, Docket No. 19-0873 (issued January 27, 2020); *M.S.*, 59 ECAB 231 (2007).

reopening the case for review on the merits.<sup>8</sup> The Board has held that the submission of evidence or argument which repeats or duplicates evidence or argument already in the case record,<sup>9</sup> or does not address the particular issue involved, does not constitute a basis for reopening a case.<sup>10</sup>

### **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 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 a review of the merits 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 submitted a duplicate copy of Dr. McGrath's December 9, 2024 report, which OWCP had previously considered in its February 6, 2025 decision. 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.<sup>11</sup> Therefore, appellant was not entitled to a merit review 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.

### **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).

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<sup>8</sup> *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).

<sup>9</sup> *J.N.*, Docket No. 23-0974 (issued May 14, 2024); *N.L.*, Docket No. 18-1575 (issued April 3, 2019); *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

<sup>10</sup> *T.E.*, Docket No. 24-0575 (issued July 31, 2024); *M.K.*, Docket No. 18-1623 (issued April 10, 2019); *Edward Matthew Diekemper*; 31 ECAB 224, 225 (1979).

<sup>11</sup> *C.C.*, Docket No. 25-0191 (issued February 12, 2025); *see B.S.*, Docket No. 20-0927 (issued January 29, 2021); *Eugene F. Butler*, *supra* note 9.

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 3, 2025 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 30, 2025  
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board