

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

_____)	
I.M., Appellant)	
)	
and)	Docket No. 20-0980
)	Issued: February 2, 2021
U.S. POSTAL SERVICE, RALEIGH)	
PROCESSING & DISTRIBUTION CENTER,)	
Raleigh, 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
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On April 4, 2020 appellant filed a timely appeal from an October 17, 2019 merit decision and January 22, 2020 nonmerit decision of the Office of Workers' Compensation Programs (OWCP).¹ Pursuant to the 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

¹ Together with his appeal request, appellant submitted a timely request for oral argument pursuant to 20 C.F.R. § 501.5(b). However, in a letter received by OWCP on July 20, 2020, appellant withdrew his oral argument request.

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that, following the January 22, 2020 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* 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.*

ISSUES

The issues are: (1) whether appellant has met his burden of proof to establish a recurrence of disability for the period July 24, 2018 through April 12, 2019 causally related to his accepted employment injuries; and (2) whether OWCP properly denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On November 12, 1997 OWCP accepted that appellant, then a 39-year-old distribution clerk, sustained a triangular fibrocartilage tear of his right wrist, due to handling mailbags on June 24, 1996 (OWCP File No. xxxxxx600). The accepted conditions were later expanded to include closed dislocation of the right wrist, left wrist ganglion, bilateral primary osteoarthritis of the forearms, tenosynovitis of the right hand/wrist, and right wrist sprain. Appellant stopped work for various periods and OWCP paid him wage-loss compensation for periods of disability from work.⁴

Under OWCP File No. xxxxxx771, OWCP accepted that on May 22, 1997 appellant sustained temporary aggravation of right wrist triangular fibrocartilage tear. Under OWCP File No. xxxxxx274, OWCP accepted that on August 5, 1997 he sustained right wrist extensor tenosynovitis. It administratively combined the files for OWCP File Nos. xxxxxx771, xxxxxx274, and xxxxxx600, designating the latter as the master file.

On February 2, 2017 appellant began working in a limited-duty position on a full-time basis for the employing establishment. The position restricted appellant from lifting more than 5 pounds, pushing/pulling more than 10 pounds, and from engaging in climbing. Appellant stopped work on February 17, 2017 due to a back injury, which has not been accepted as work related.

Appellant later filed claims for compensation (Form CA-7) alleging that he sustained a recurrence of disability for the period July 24, 2018 through April 12, 2019, causally related to his accepted employment injuries.

Appellant submitted medical evidence, including a July 3, 2018 duty status report (Form CA-17), a July 3, 2018 work excuse report, a July 24, 2018 work release report, and an August 3, 2018 work excuse report. Some of the reports delineated short periods of disability and mentioned appellant's back complaints.

In a January 31, 2019 development letter, OWCP requested that appellant submit additional factual and medical evidence in support of his claim.

Appellant submitted additional medical evidence, including an August 16, 2018 Form CA-17 report, and February 14 and 21, and March 14, 2018 work excuse reports. Some of the reports delineated short periods of disability and mentioned appellant's back complaints.

⁴ On February 6, 1997 appellant underwent OWCP-authorized debridement surgery for his right wrist triangular fibrocartilage tear. OWCP placed appellant on the supplemental rolls commencing April 27, 2005.

By decision dated April 3, 2019, OWCP denied appellant's recurrence of disability claim because he failed to submit sufficient medical evidence in support thereof.

On May 5, 2019 appellant requested reconsideration of the April 3, 2019 decision. In support of his reconsideration request, appellant submitted time analysis forms (Forms CA-7a) for the period March 30 through April 11, 2019.

By decision dated June 6, 2019, OWCP denied modification of the April 3, 2019 decision.

On July 19, 2019 appellant requested reconsideration of the June 6, 2019 decision. In a July 19, 2019 statement, he asserted that OWCP had improperly denied his claim by asserting that the employing establishment had not rescinded his limited-duty assignment.

By decision dated October 17, 2019, OWCP denied modification of the June 6, 2019 decision.

On October 29, 2019 appellant requested reconsideration of the October 17, 2019 decision. In an October 29, 2019 statement, he noted that he was presenting arguable error for the denial of his claim. Appellant indicated, "The evidence I submitted on my last request for reconsideration was to show that my agency had not rescinded my limited[-]duty assignment, based on the fact that I worked my assignment in April 2019, and there is no evidence that they ever tried to rescind my limited[-]duty assignment, which you used as ... reasons to deny my claim for compensation."

By decision dated January 22, 2020, OWCP denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

LEGAL PRECEDENT -- ISSUE 1

A recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition resulting from a previous compensable injury or illness without an intervening injury or new exposure in the work environment.⁵ This term also means an inability to work because a light-duty assignment made specifically to accommodate an employee's physical limitations, and which is necessary because of a work-related injury or illness, is withdrawn or altered so that the assignment exceeds the employee's physical limitations. A recurrence does not occur when such withdrawal occurs for reasons of misconduct, nonperformance of job duties, or a reduction-in-force.⁶

OWCP's procedures provide that a recurrence of disability includes a work stoppage caused by a spontaneous material change in the medical condition demonstrated by objective findings. That change must result from a previous injury or occupational illness rather than an intervening injury or new exposure to factors causing the original illness. It does not include a

⁵ 20 C.F.R. § 10.5(x); *see J.D.*, Docket No. 18-1533 (issued February 27, 2019).

⁶ *Id.*

condition that results from a new injury, even if it involves the same part of the body previously injured.⁷

An employee who claims a recurrence of disability due to an accepted employment-related injury has the burden of proof to establish by the weight of the substantial, reliable, and probative evidence that the disability for which he or she claims compensation is causally related to the accepted injury. This burden of proof requires that a claimant furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that, for each period of disability claimed, the disabling condition is causally related to the employment injury, and supports that conclusion with medical reasoning.⁸ Where no such rationale is present, the medical evidence is of diminished probative value.⁹

When an employee who is disabled from the job he or she held when injured on account of employment-related residuals returns to a limited-duty position or the medical evidence of record establishes that he or she can perform the limited-duty position, the employee has the burden of proof to establish by the weight of the reliable, probative, and substantial evidence a recurrence of total disability and to show that he or she cannot perform such limited-duty work.¹⁰ As part of this burden, the employee must show a change in the nature and extent of the injury-related condition, or a change in the nature and extent of the limited-duty job requirements.¹¹

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met his burden of proof to establish a recurrence of disability for the period July 24, 2018 through April 12, 2019 causally related to his accepted employment injuries.

Appellant submitted a series of medical reports in support of his recurrence of disability, consisting of a July 3, 2018 Form CA-17, a July 3, 2018 work excuse report, a July 24, 2018 work release report, an August 3, 2018 work excuse report, an August 16, 2018 Form CA-17, and February 14 and 21, and March 14, 2018 work excuse reports. However, none of the reports contains an opinion that he sustained disability for the period July 24, 2018 through April 12, 2019 causally related to his accepted employment injuries sustained on June 24, 1996, May 22 and August 5, 1997. The Board has held that medical evidence that does not offer an opinion regarding

⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.2b (June 2013); *L.B.*, Docket No. 18-0533 (issued August 27, 2018).

⁸ *J.D.*, Docket No. 18-0616 (issued January 11, 2019); *see C.C.*, Docket No. 18-0719 (issued November 9, 2018).

⁹ *H.T.*, Docket No. 17-0209 (issued February 8, 2018).

¹⁰ *See D.W.*, Docket No. 19-1584 (issued July 9, 2020); *S.D.*, Docket No. 19-0955 (issued February 3, 2020); *Terry R. Hedman*, 38 ECAB 222 (1986).

¹¹ *C.B.*, Docket No. 19-0464 (issued May 22, 2020); *see R.N.*, Docket No. 19-1685 (issued February 26, 2020); *Terry R. Hedman, id.*

the cause of an employee's disability is of no probative value on the issue of causal relationship.¹² Therefore, these reports are insufficient to establish appellant's recurrence of disability claim.

As appellant has not submitted any rationalized medical evidence establishing a recurrence of disability for the period July 24, 2018 through April 12, 2019 causally related to his accepted employment injuries, he has failed to meet his burden of proof.

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(a) 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.¹³

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.¹⁴

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.¹⁵ If it chooses to grant reconsideration, it reopens and reviews the case on its merits.¹⁶ 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.¹⁷ The Board has held that the submission of evidence or argument which repeats or duplicates evidence or argument already in the case record¹⁸ and the

¹² See *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹³ 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).

¹⁴ 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).

¹⁵ 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 (February 2016). 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.

¹⁶ *Id.* at § 10.608(a); see *D.C.*, Docket No. 19-0873 (issued January 27, 2020); *M.S.*, 59 ECAB 231 (2007).

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

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

submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.¹⁹

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

On October 29, 2019 appellant filed a timely request for reconsideration of an October 17, 2019 decision.²⁰ The Board finds that he did not establish that OWCP erroneously applied or interpreted a specific point of law, nor did he advance a relevant legal argument not previously considered by OWCP. In an October 29, 2019 statement, he noted that he was presenting arguable error for the denial of his claim. Appellant indicated, "The evidence I submitted on my last request for reconsideration was to show that my agency had not rescinded my limited[-]duty assignment, based on the fact that I worked my assignment in April 2019, and there is no evidence that they ever tried to rescind my limited[-]duty assignment, which you used as ... reasons to deny my claim for compensation." However, OWCP had previously considered and rejected this same argument when it previously denied appellant's claim. The Board has held that the resubmission of a previous argument does not require reopening of claim for merit review.²¹ Accordingly, the Board finds that appellant is not entitled to a review of the merits based on either the first or second requirement under 20 C.F.R. § 10.606(b)(3).

Upon reconsideration, appellant did not submit any evidence in support of his recurrence of disability claim. Therefore, he also failed to satisfy the third requirement under 20 C.F.R. § 10.606(b)(3), *i.e.*, the submission of relevant and pertinent new evidence not previously considered by OWCP.

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 appellant has not met his burden of proof to establish a recurrence of disability for the period July 24, 2018 through April 12, 2019 causally related to his accepted employment injuries. The Board further finds that OWCP properly denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

¹⁹ *M.K.*, Docket No. 18-1623 (issued April 10, 2019); *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

²⁰ *See J.F.*, Docket No. 16-1233 (issued November 23, 2016).

²¹ *See supra* note 18.

ORDER

IT IS HEREBY ORDERED THAT the January 22, 2020 and October 17, 2019 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: February 2, 2021
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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