

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

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**O.S., Appellant**

**and**

**GOVERNMENT PRINTING OFFICE,  
Washington, DC, Employer**

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**Docket No. 13-1329  
Issued: November 18, 2013**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

PATRICIA HOWARD FITZGERALD, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On May 13, 2013 appellant filed a timely appeal from a November 16, 2012 nonmerit decision of the Office of Workers' Compensation Programs (OWCP) denying her request for reconsideration.<sup>1</sup> Because more than 180 days elapsed from the last merit decision dated August 31, 2012 to the filing of this appeal, the Board lacks jurisdiction to review the merits of appellant's claim pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3.

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<sup>1</sup> Under the Board's *Rules of Procedure*, an appeal must be filed within 180 days from the date of the last OWCP decision. An appeal is considered filed upon receipt by the Clerk of the Appellate Boards. One hundred and eighty days from November 16, 2012 the date of OWCP's decision, was May 15, 2013. Since using May 17, 2013 the date the appeal was received by the Clerk of the Board, would result in the loss of appeal rights, the date of the postmark is considered the date of filing. The date of U.S. Postal Service postmark is May 13, 2013, which renders the appeal timely filed. *See* 20 C.F.R. § 501.3(f)(1).

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## ISSUE

The issue is whether OWCP properly refused to reopen appellant's case for further review of the merits pursuant to 5 U.S.C. § 8128(a).

## FACTUAL HISTORY

On March 16, 2012 appellant, then a 73-year-old materials handler, filed a traumatic injury claim alleging that on March 15, 2012 her lower back went out due to reaching to take a 25-pound carton off a skid.

In support of her claim, appellant submitted a March 16, 2012 disability note from Christin Hale, a registered nurse, who indicated that she was disabled from work for three days.

A March 26, 2012 duty status report (Form CA-17),<sup>3</sup> diagnosed sciatica and indicated that appellant was disabled from working. The employment incident was described as occurring on March 15, 2012 when appellant lifted a 25-pound carton above her head and injured her lower back.

In a March 26, 2012 report, Dr. Dennis A. Carlini, a treating Board-certified orthopedic surgeon, stated that appellant was disabled from work until further evaluation at her next appointment on April 2, 2012.

By letter dated April 13, 2012, OWCP informed appellant that the evidence she submitted was insufficient to support her claim. Appellant was advised as to the medical and factual evidence required to support her claim and given 30 days to provide this information.

In response, appellant submitted a March 23, 2012 report from Dr. Carlini, who diagnosed sciatica and provided physical findings. She attributed her condition to a back injury, which occurred on March 15, 2012. Dr. Carlini reported that appellant was seen for acute lumbar back pain, which occurred without any known injury.

On March 23, 2012 Dr. Carlini noted that appellant attributed her condition to a back injury on March 15, 2012. He reported that she was seen for acute lumbar back pain, which occurred without any known injury. In an April 2, 2012 report, Dr. Carlini diagnosed sciatica and reiterated his findings and conclusions.

In an April 23, 2012 report and duty status report (Form CA-17), Dr. Carlini released appellant to work on April 30, 2012 with lifting restrictions. On the duty status report form, he noted a diagnosis of sciatica. Dr. Carlini reported that the incident occurred on March 15, 2012 when appellant lifted a 25-pound carton above her head and injured her lower back.

On May 11, 2012 OWCP received an undated attending physician's report (Form CA-20) from Dr. Carlini diagnosing sciatica. Under history of injury, Dr. Carlini reported that appellant

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<sup>3</sup> The signature of the physician is illegible.

was injured while lifting a 25-pound carton from a skid. He diagnosed sciatica, which had been aggravated by lifting a heavy object.

By decision dated May 16, 2012, OWCP denied appellant's claim on the grounds that she failed to establish fact of injury. It found the evidence insufficient to establish that the March 15, 2012 incident occurred as alleged and the medical evidence was not sufficient to establish causal relationship to the alleged incident.

Subsequent to the decision, OWCP received a May 21, 2012 report from Dr. Carlini providing physical findings and diagnosing sciatica. In May 30, 2012 report, Dr. Carlini noted that on March 15, 2012 appellant was injured at work due to lifting a 25-pound carton. Appellant was diagnosed with sciatica and x-ray interpretations revealed advanced spinal stenosis.

On June 1, 2012 appellant requested reconsideration.

In a June 4, 2012 report, Dr. Carlini provided physical findings and diagnosed sciatica.

By decision dated August 31, 2012, OWCP denied modification of the May 16, 2012 decision. It found the medical evidence insufficient to establish that appellant's diagnosed condition was causally related to the March 15, 2012 employment incident.

In a letter dated October 3, 2012, appellant requested reconsideration. She noted that, in January 2000, she sustained a back injury in the performance of duty and returned to her regular work duties in 2001. On March 15, 2012 appellant felt excruciating lower back and right shoulder pain as the result of reaching to place a carton on top of other cartons. She submitted medical and factual evidence including medical evidence from 2001 to 2003 and physical therapy notes from May 2012 for treatment of her sciatica.

Appellant also submitted reports dated April 2 to May 21, 2012 from Dr. Carlini, who provided physical findings and diagnosed sciatica. In a April 12, 2012 report, she related to him that in March 2012 she had pain after feeling something pop in her back.

By decision dated November 16, 2012, OWCP denied reconsideration without further merit review.

### **LEGAL PRECEDENT**

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,<sup>4</sup> OWCP's regulations provide that a claimant must: (1) show that OWCP erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by OWCP; or (3) constitute relevant and pertinent new evidence not previously considered by OWCP.<sup>5</sup> To be entitled to a merit review of an OWCP decision denying or

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<sup>4</sup> 5 U.S.C. §§ 8101-8193. Section 8128(a) of FECA provides that the Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application.

<sup>5</sup> 20 C.F.R. § 10.606(b)(3). See *J.M.*, Docket No. 09-218 (issued July 24, 2009); *Susan A. Filkins*, 57 ECAB 630 (2006).

terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.<sup>6</sup> When a claimant fails to meet one of the above standards, OWCP will deny the application for reconsideration without reopening the case for review on the merits.<sup>7</sup>

### ANALYSIS

Appellant's October 3, 2012 request for reconsideration did not allege or demonstrate that OWCP erroneously applied or interpreted a specific point of law. Additionally, she did not advance a relevant legal argument not previously considered by OWCP. The Board finds that appellant is not entitled to a review of the merits of her claim based on the first and second requirements under section 10.606(b)(3).

Appellant also failed to submit relevant and pertinent new evidence not previously considered by OWCP. The Board has held that the submission of evidence which does not address the particular issue involved in the case does not constitute a basis for reopening the claim.<sup>8</sup> The medical evidence from 2000 to 2003 and the May 2012 physical therapy notes, while new to the record, are not relevant to the issue of whether appellant's sciatica was causally related to the March 15, 2012 employment incident. The medical evidence from 2000 to 2003 predates the March 15, 2012 incident. The physical therapy notes are not relevant as they provide no medical opinion as to causal relationship. A physical therapist is not a "physician" as defined under FECA.<sup>9</sup> The submission of this evidence does not warrant reopening appellant's case for merit review as it is not relevant to the underlying issue of the present case.

Appellant also submitted medical reports from Dr. Carlini for the period April 2 to May 21, 2012, which reiterated his diagnoses and physical findings. The reports are largely duplicative of reports previously submitted and reviewed by OWCP as they diagnosed sciatica and provided physical findings with no explanation or opinion as to how the condition was caused or aggravated by the March 15, 2012 employment incident. The Board has held that evidence which is duplicative or repetitive of evidence existing in the record is not sufficient to warrant further merit review.<sup>10</sup> These reports do not constitute relevant and pertinent new

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<sup>6</sup> *Id.* at § 10.607(a). See *S.J.*, Docket No. 08-2048 (issued July 9, 2009); *Robert G. Burns*, 57 ECAB 657 (2006).

<sup>7</sup> *Id.* at § 10.608(b). See *Y.S.*, Docket No. 08-440 (issued March 16, 2009); *Tina M. Parrelli-Ball*, 57 ECAB 598 (2006).

<sup>8</sup> *L.T.*, Docket No. 09-1798 (issued August 5, 2010); *R.M.*, 59 ECAB 690 (2008); *D'Wayne Avila*, 57 ECAB 642 (2006).

<sup>9</sup> See *B.B.*, Docket No. 09-1858 (issued April 16, 2010); *L.D.*, 59 ECAB 648 (2008); *G.G.*, 58 ECAB 389 (2007); *David P. Sawchuk*, 57 ECAB 316 (2006) (lay individuals such as physician's assistants, nurses and physical therapists are not competent to render a medical opinion under FECA); 5 U.S.C. § 8101(2) (this subsection defines a physician as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law).

<sup>10</sup> *L.T.*, Docket No. 09-1798 (issued August 5, 2010); *L.H.*, 59 ECAB 253 (2007); *Jennifer A. Guillary*, 57 ECAB 485 (2005).

medical evidence and are insufficient to require OWCP to reopen appellant's case for further review of the merits.

As appellant did not satisfy any of the criteria of 20 C.F.R. § 10.606(b)(3), OWCP properly denied merit review.

The Board finds that OWCP properly determined that appellant was not entitled to further review of the merits of his claim pursuant to any of the three requirements under section 10.606(b)(2) and properly denied his December 19, 2012 request for reconsideration.<sup>11</sup>

**CONCLUSION**

The Board finds that OWCP properly denied appellant's request for reconsideration under 5 U.S.C. § 8128(a).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated November 16, 2012 is affirmed.

Issued: November 18, 2013  
Washington, DC

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>11</sup> *M.E.*, 58 ECAB 694 (2007); *Susan A. Filkins*, 57 ECAB 630 (2006); *Candace A. Karkoff*, 56 ECAB 622 (2005) (when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), OWCP will deny the application for reconsideration without reopening the case for a review on the merits).