

FACTUAL HISTORY

On June 2, 2010 appellant, then a 58-year-old crew leader assistant and enumerator, filed an occupational disease claim alleging that she sustained a pinched nerve and compressed spinal cord as a result of moving, loading and unloading numerous boxes for the period April 11 to 28, 2010. She stopped work on April 28, 2010 and did not return. Appellant became aware of her condition on April 15, 2010 and realized its relationship to her federal employment on April 29, 2010.

In an April 30, 2010 progress note, Dr. Kevin O. Keown, a Board-certified family practitioner, related that appellant had severe back pain since April 26, 2010 and experienced bilateral arm numbness on April 29, 2010. On examination, he observed muscle spasms and pain in the sciatic notch. Dr Keown diagnosed lumbago and sciatica. Hospital discharge instructions dated April 29, 2010 identified left trapezius and parathoracic muscle spasms.

OWCP informed appellant in a June 16, 2010 letter that additional evidence was needed to establish her claim. It gave her 30 days to submit a physician's comprehensive medical report explaining how her job duties contributed to her injury.

Appellant provided additional medical evidence. In an April 29, 2010 emergency department report, Dr. Jeffrey Gunderson, an emergency physician, noted that her back and left leg symptoms arose two to three days earlier at home. Following a physical evaluation, he diagnosed left trapezius and parathoracic spasms. An accompanying nursing record specified that appellant did not sustain a recent injury.

A May 5, 2010 magnetic resonance imaging (MRI) scan report from Dr. William G. Greene, a Board-certified diagnostic radiologist, revealed multilevel degenerative disc desiccation, varying degrees of neural foraminal narrowing, mild central L4-L5 spinal canal stenosis and T12-L1 and L5-S1 paracentral disc protrusions.

In a May 25, 2010 report, a physician's assistant related that appellant was lifting and moving heavy boxes when she sustained pain in the lower back, which then radiated to her neck, spine, hips and legs. Thereafter, she complained of bilateral arm paresthesia. The physician's assistant observed cervical and lumbar pain on extension, cervical facet pain and bilateral sacroiliac joint tenderness on palpation and positive Tinel's and Patrick's signs. After reviewing the findings of the prior MRI scan, he diagnosed lower back pain secondary to bilateral sacroiliitis, lower lumbar facet joint pain syndrome, degenerative disc disease and lumbar spondylosis without myelopathy. The physician's assistant also assessed cervicalgia with possible bilateral carpal tunnel syndrome.

A June 1, 2010 MRI scan report from Dr. Adriana M. Rodriguez, a Board-certified diagnostic radiologist, exhibited diffuse degenerative disc disease and spondylitic changes, resulting in mild effacement of the ventral thecal sac and bilateral foraminal stenosis from C3 to C7.

In a June 9, 2010 follow-up report, the physician's assistant reviewed appellant's cervical MRI scan and diagnosed bilateral upper extremity paresthesia and cervical and thoracic spondylosis without myelopathy.

Dr. Keown opined in a July 15, 2010 progress note that appellant's lumbar symptoms were due to her work activities as she was asymptomatic beforehand. He added that, while she injured her back on the job, she was unable to obtain workers' compensation because she had preexisting arthritis. In progress notes dated May 18 and June 10, 2010, Dr. Keown diagnosed lower back pain and radiculitis.²

By decision dated July 28, 2010, OWCP denied appellant's claim, finding the medical evidence insufficient to establish that the accepted employment factors caused or aggravated her condition.

Appellant requested reconsideration on August 30, 2010. She submitted copies of Dr. Keown's April 30, May 18, June 10 and July 15, 2010 progress notes, Dr. Greene's May 5, 2010 MRI scan report and Dr. Rodriguez's June 1, 2010 MRI scan report.

By decision dated October 15, 2010, OWCP denied appellant's reconsideration request on the grounds that she did not present new evidence warranting further merit review.

Appellant requested reconsideration on December 2, 2010. She submitted copies of Dr. Keown's April 30 and July 15, 2010 progress reports and Dr. Green's May 5, 2010 MRI scan report.

By decision dated December 14, 2010, OWCP denied appellant's reconsideration request on the grounds that she did not present new evidence warranting further merit review.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,³ OWCP's regulations provide that the evidence or argument submitted by a claimant must either: (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.⁴ Where the request for reconsideration fails to meet at least one of these standards, OWCP will deny the application for reconsideration without reopening the case for a review on the merits.⁵

² Appellant also submitted a June 21, 2010 statement further detailing her work activities for the period April 11 to 28 and July 8, 2010 medical notes pertaining to hypertension and left bundle branch block. These conditions are not presently at issue before the Board.

³ 5 U.S.C. § 8128(a).

⁴ *E.K.*, Docket No. 09-1827 (issued April 21, 2010). See 20 C.F.R. § 10.606(b)(2).

⁵ *L.D.*, 59 ECAB 648 (2008). See 20 C.F.R. § 10.608(b).

ANALYSIS

By decision dated July 28, 2010, OWCP denied appellant's occupational disease claim on the basis that the medical evidence did not establish that her cervical, lumbar, bilateral arm and leg condition was due to moving and lifting boxes. Appellant timely requested reconsideration on August 30 and December 2, 2010. On both occasions, however, she submitted medical evidence that was already of record, namely copies of Dr. Keown's April 30, May 18, June 10 and July 15, 2010 progress notes, Dr. Greene's May 5, 2010 MRI scan report and Dr. Rodriguez's June 1, 2010 MRI scan report. The Board has held that the submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.⁶ Appellant did not show that OWCP erroneously applied or interpreted a specific point of law or advance a relevant legal argument not previously considered.⁷ Because she failed to meet one of the standards enumerated under section 8128(a) of FECA, she was not entitled to further merit review of her claim.

Appellant contends on appeal that she sustained a back injury in the performance of duty and is entitled to disability compensation. The Board only has jurisdiction to consider whether OWCP properly denied reconsideration without further merit review based on the evidence and argument that was before OWCP at the time it issued the October 15 and December 14, 2010 decisions. As discussed above, appellant did not offer relevant and pertinent new evidence not previously considered by OWCP. Therefore, OWCP properly denied her application without reopening the case for a review on the merits.

CONCLUSION

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

⁶ *Edward W. Malaniak*, 51 ECAB 279 (2000).

⁷ *See Charles A. Jackson*, 53 ECAB 671 n.14 (2002); *Daniel O'Toole*, 1 ECAB 107 (1948) (request for reconsideration predicated on legal premise should contain at least an assertion of an adequate legal premise having some reasonable color of validity).

ORDER

IT IS HEREBY ORDERED THAT the December 14 and October 15, 2010 decisions of the Office of Workers' Compensation Programs be affirmed.

Issued: November 10, 2011
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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