

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

L.J., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Staten Island, NY, Employer**

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**Docket No. 14-357
Issued: May 22, 2014**

Appearances:

*Thomas S. Harkins, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 2, 2013 appellant, through her attorney, filed a timely appeal from the June 14, 2013 nonmerit decision of the Office of Workers' Compensation Programs (OWCP), which denied her reconsideration request. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review this nonmerit decision. Under 5 U.S.C. § 8128(a).

ISSUE

The issue is whether OWCP properly denied appellant's reconsideration request.

FACTUAL HISTORY

On November 25, 2005 appellant, then a 44-year-old mail processing clerk, sustained a traumatic injury in the performance of duty while lifting. OWCP accepted her claim for cervical radiculitis.

¹ 5 U.S.C. § 8101 *et seq.*

In a decision dated June 8, 2007, OWCP terminated appellant's monetary benefits under 5 U.S.C. § 8106(c)(2) on the grounds that she refused an offer of suitable work. The Board reviewed the matter on December 3, 2008 and affirmed the termination.² The Board found that the weight of the medical evidence rested with the opinion of Dr. Stanley Soren, a Board-certified orthopedic surgeon and impartial medical specialist. The Board found that the employing establishment offered appellant a modified assignment suitable to her medically-established work restrictions. The Board also found that Dr. Raul P. Sala, the attending physiatrist, did not directly address the medical restrictions noted in Dr. Soren's report and did not explain why appellant could not work the six hours required by the modified assignment. For that reason, Dr. Sala's opinion was of diminished probative value and did not create a conflict with the opinion of the impartial medical specialist.³

In a decision dated July 6, 2011, OWCP denied authorization for medical treatment of appellant's current complaints. It found that the medical opinion evidence failed to support a causal relationship between the need for treatment of her newly diagnosed conditions and the traumatic work incident on November 25, 2005, "as your condition(s) pertains to the unrelated current diagnoses for the right shoulder and the cervical spine."

Appellant, through counsel, requested reconsideration. Counsel indicated that she was requesting reconsideration of OWCP's July 6, 2011 decision denying authorization for medical treatment, as well as the Board's December 3, 2008 decision affirming the termination of her monetary compensation.⁴

Counsel argued that the medical evidence established that conditions other than the accepted condition were causally related to the November 25, 2005 work injury. In particular, he pointed to the April 12, 2011 report of Dr. Sala. Counsel contended that OWCP did not meet its burden of proof to terminate appellant's compensation because the medical evidence unequivocally established that she was not capable of performing the duties of the offered position. He added that the opinions of OWCP-retained physicians were based on the injuries and conditions that OWCP had accepted as causally related to the work injury and not on the more significant injuries diagnosed by appellant's treating physician, including rotator cuff syndrome of the right shoulder.

On June 20, 2012 OWCP reviewed the merits of appellant's case and denied modification of the July 6, 2011 prior decision. It found that medical evidence was not sufficient to support that the need for further treatment causally related to the November 25, 2005 work injury. Although Dr. Sala diagnosed cervical radiculopathy due to discogenic disease of the cervical spine and rotator cuff syndrome of the right shoulder, he did not adequately explain how those conditions were causally related to the November 25, 2005 work injury.

² OWCP accepted that on November 25, 2005 appellant, then a 44-year-old mail processing clerk, sustained cervical radiculitis in the performance of duty.

³ The facts of this case as set forth in the Board's prior decision are hereby incorporated by reference. *See* Docket No. 08-1283 (issued December 3, 2008).

⁴ Appellant had 30 days after December 3, 2008 to file with the Board a petition for reconsideration of its decision. 20 C.F.R. § 501.7. OWCP has no jurisdiction to reconsider a Board decision and order.

Appellant, through counsel, again requested reconsideration. OWCP received the June 11, 2013 request on June 12, 2013. The request was a nearly identical copy of appellant's previous reconsideration request.

In a decision dated June 14, 2013, OWCP denied appellant's reconsideration request. It found that the request repetitious, as it was a copy of the request previously considered in the most recent merit decision.

On appeal, counsel repeats the basic points argued in his reconsideration request. He states that OWCP's denial of a merit review was "clearly improper in light of the evidence and argument contained within the second reconsideration request submitted to [OWCP]."

LEGAL PRECEDENT

OWCP may review an award for or against payment of compensation at any time on its own motion or upon application.⁵ An employee (or representative) seeking reconsideration should send the request for reconsideration to the address as instructed by OWCP in the final decision. The request for reconsideration, including all supporting documents, must be in writing and must set forth arguments and contain evidence that either: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by it; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.⁶

A request for reconsideration must be received by OWCP within one year of the date of OWCP decision for which review is sought.⁷ A timely request for reconsideration may be granted if OWCP determines that the employee has presented evidence or argument that meets at least one of these standards. If reconsideration is granted, the case is reopened and the case is reviewed on its merits. Where the request is timely but fails to meet at least one of these standards, OWCP will deny the request for reconsideration without reopening the case for a review on the merits.⁸

Evidence that repeats or duplicates evidence already in the record has no evidentiary value and constitutes no basis for reopening a case.⁹

ANALYSIS

OWCP received appellant's reconsideration request within one year of the most recent merit decision in her case, namely, OWCP's June 20, 2012 decision denying modification of its

⁵ 5 U.S.C. § 8128(a).

⁶ 20 C.F.R. § 10.606.

⁷ *Id.* at § 10.607(a).

⁸ *Id.* at § 10.608.

⁹ *Eugene F. Butler*, 36 ECAB 393 (1984); *Bruce E. Martin*, 35 ECAB 1090 (1984).

decision to deny authorization for medical treatment. Appellant's request is therefore timely. The question for determination is whether that request met at least one of the standards for obtaining a merit review of her case.

Appellant's request did not show that OWCP erroneously applied or interpreted a specific point of law. The request did not advance a relevant legal argument not previously considered by OWCP. The legal arguments advanced were the same as those advanced in the previous request, which OWCP adjudicated on June 20, 2012. As the Board has held, evidence that repeats or duplicates evidence already in the record has no evidentiary value and constitutes no basis for reopening a case. A claimant may be entitled to a merit review by submitting relevant and pertinent new evidence not previously considered by OWCP, but appellant submitted no evidence to support her request.

Accordingly, as appellant's reconsideration request did not meet any of the requirements for reopening her case, the Board finds that OWCP properly denied a merit review. The Board will affirm OWCP's June 14, 2013 decision.

On appeal, counsel contends that OWCP's denial of reconsideration was clearly improper, but failed to address the standards for obtaining reconsideration. The request simply disagrees with OWCP's assessment of the weight of the medical evidence, either with respect to which medical conditions are causally related to the 2005 work injury or with respect to whether appellant refused an offer of suitable work. As to the latter, the most recent merit decision on the issue was the Board's December 3, 2008 decision affirming the termination of appellant's compensation. As the last merit decision was that of this Board and, as OWCP has not further reviewed this issue, the matter is *res judicata* and is not subject to further review by the Board on this appeal.¹⁰

CONCLUSION

The Board finds that OWCP properly denied appellant's reconsideration request.

¹⁰ See *G.R.*, Docket No. 13-2054 (issued March 10, 2014); see also 20 C.F.R. § 501.6(d) as to the finality of Board decisions.

ORDER

IT IS HEREBY ORDERED THAT the June 14, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 22, 2014
Washington, DC

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

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

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