United States Department of Labor
Employees' Compensation Appeals Board

D.R., Appellant	)	
and	)	**Docket No. 15-1292**
	)	**Issued: August 20, 2015**
U.S. POSTAL SERVICE, POST OFFICE, Brooklyn, NY, Employer	)	

Appearances:
Stephen Larkin, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On May 20, 2015 appellant, through her representative, filed a timely appeal from a May 12, 2015 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Because more than 180 days has elapsed between the last merit decision dated May 8, 2014 and the filing of this appeal on May 20, 2015, pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction to review the merits of this case.

ISSUE

The issue is whether OWCP properly denied appellant's request for further merit review under 5 U.S.C. § 8128(a).

[1] 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

On August 17, 2012 appellant, then a 51-year-old mail handler, filed an occupational disease claim (Form CA-2) alleging that she developed a bilateral arm condition as a result of her repetitive employment duties which involved heavy lifting. She stated that for years her arms hurt when lifting and she experienced sharp pains moving up and down her arms. Appellant noted that she was required to push heavy postcons, pull and lift heavy buckets, and carry heavy books and magazines which caused her pain and the need for treatment on August 6, 2012.

In reports dated July 14 and August 2, 2012, Dr. Mary Chaglassian, a treating physician, diagnosed elbow tendinitis.

In a medical report dated August 6, 2012, Dr. Lubov Sychikov, Board-certified in internal medicine, reported that appellant worked for the employing establishment and carried heavy objects which started to affect her right elbow, arm, and hand. He diagnosed lateral epicondylitis of the right elbow and left medial epicondylitis.

By letter dated September 19, 2012, OWCP informed appellant that the evidence of record was insufficient to support her claim. Appellant was advised of the medical and factual evidence needed and asked that she respond to the provided requests within 30 days.

In a June 28, 2012 medical report, Dr. Salil Gupta, a Board-certified orthopedic surgeon, reported that appellant complained of significant pain in her bilateral elbows for several years which she felt was exacerbated by her employment, right worse than left. Upon physical examination, he diagnosed right lateral epicondylitis and left medial epicondylitis.

By decision dated November 21, 2012, OWCP denied appellant's claim finding that the evidence of record failed to establish that the occupational exposure occurred as alleged.

On November 1, 2013 appellant requested reconsideration of OWCP's decision and provided a detailed statement describing her federal employment duties.

In support of her claim, appellant submitted a number of prescription and treatment notes pertaining to the right and left elbow, a November 19, 2012 magnetic resonance imaging (MRI) scan of the left elbow, and a December 4, 2005 electromyography study of the upper extremity.

OWCP also received medical reports dated November 14, 2012 and February13, 2013 from Dr. Gupta who reported that appellant complained of increased elbow pain which she had a history of for the last 15 years from her repetitive employment duties. Dr. Gupta noted review of diagnostic testing and opined that appellant's repetitive use and occupational disease over years lead to a chronic and persistent lateral epicondylitis.

In medical reports dated June 26 to September 20, 2013, Dr. Young Kwon, a Board-certified orthopedic surgeon, reported that he was treating appellant for left elbow pain. Appellant underwent left elbow athroscopic synovectomy and debridement on August 5, 2013 and was restricted from working until November 1, 2013.

By decision dated May 8, 2014, OWCP affirmed the November 21, 2012 decision, as modified, finding that the evidence of record established that the occupational exposure occurred as alleged and also established a firm medical diagnosis. It denied the claim, however, finding that the medical evidence did not demonstrate that the diagnosed conditions were causally related to the established work-related factors.

On May 7, 2015 appellant requested reconsideration of OWCP's decision. Her representative stated that January 12 and April 20, 2015 medical reports from Dr. Joseph Bosco, a Board-certified orthopedic surgeon, and a February 4, 2015 MRI scan established her occupational disease claim.

In a January 12, 2015 medical report, Dr. Bosco reported that appellant had an insidious atraumatic onset of right shoulder pain. He stated that she worked for the employing establishment and was also noted to have left elbow pain, having undergone elbow surgery for lateral epicondylitis. Dr. Bosco recommended an MRI scan of the right shoulder to rule out right rotator cuff tear.

Dr. Renata La Rocca Vieira, a Board-certified diagnostic radiologist, reported on February 4, 2015 that an MRI scan of the right shoulder revealed a high grade partial thickness tear of the insertional fibers of the supraspinatus tendon accompanied by grade 1 muscle atrophy.

In an April 20, 2015 follow-up note, Dr. Bosco diagnosed right rotator cuff tear and recommended surgery.

By decision dated May 12, 2015, OWCP denied appellant's request for reconsideration finding that she neither raised substantive legal questions nor included new and relevant evidence.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under FECA section 8128(a), OWCP regulations provide that the evidence or argument submitted by 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.[2] Section 10.608(b) of OWCP regulations provide that when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(3), OWCP will deny the application for reconsideration without reopening the case for a review on the merits.[3]

ANALYSIS

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

[2] *D.K.*, 59 ECAB 141 (2007).

[3] *K.H.*, 59 ECAB 495 (2008).

The issue presented on appeal is whether appellant met any of the requirements of 20 C.F.R. § 10.606(b)(3), requiring OWCP to reopen the case for review of the merits of the claim. In her May 7, 2015 application for reconsideration, appellant did not show that OWCP erroneously applied or interpreted a specific point of law. She did not advance a new and relevant legal argument. Appellant's argument was that her condition was work related. The decisive issue in this case was whether her bilateral elbow condition was causally related to her repetitive employment activities. That is a medical issue which must be addressed by relevant medical evidence.[4] Appellant, however, failed to submit new and relevant medical evidence in support of her claim.[5]

Appellant argues that Dr. Bosco's reports and the February 4, 2015 MRI diagnostic scan constitute new and relevant evidence warranting merit review of her case. The February 4, 2015 MRI scan of the right shoulder simply interpreted imaging studies and provided no opinion that appellant's condition was caused by her repetitive employment activities. Moreover, the MRI scan and the reports of Dr. Bosco pertained to the right shoulder. Appellant filed this occupational disease claim alleging injury to her arms and submitted numerous medical reports in support of a bilateral elbow injury. Her prior medical reports make no mention of a right shoulder injury or complaints pertaining to the right shoulder. Not only are the newly submitted reports not relevant to appellant's occupational disease claim for a bilateral elbow condition, but the reports also provide no opinion regarding the cause of appellant's injury.[6]

Appellant failed to provide detailed medical rationale from a physician to explain and support the medical opinion that her diagnosed bilateral elbow condition was caused by her occupational employment duties.[7] The Board has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.[8] Claimant may obtain a merit review of an OWCP decision by submitting new and relevant evidence. In this case, while appellant submitted new evidence, it was not relevant in addressing causal relationship pertaining to her bilateral elbow injury.[9]

The Board accordingly finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(3). Appellant did not show that OWCP erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by OWCP, or submit relevant and pertinent evidence not previously considered. Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

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[4] *C.B.*, Docket No. 08-1583 (issued December 9, 2008).

[5] *See Bobbie F. Cowart*, 55 ECAB 746 (2004).

[6] *L.J.*, Docket No. 14-523 (issued August 7, 2014).

[7] *See George Randolph Taylor*, 6 ECAB 986, 988 (1954) (Where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

[8] *Jimmy O. Gilmore*, 37 ECAB 257 (1985); *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

[9] *M.H.*, Docket No. 13-2051 (issued February 21, 2014); *M.C.*, Docket No. 14-21 (issued March 11, 2014).

CONCLUSION

The Board finds that OWCP properly denied appellant's request for reconsideration without a merit review.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decision dated May 12, 2015 is affirmed.

Issued: August 20, 2015
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

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

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