

ISSUE

The issue is whether OWCP properly declined to reopen appellant's case for merit review under 5 U.S.C. § 8128(a).

FACTUAL HISTORY

Appellant, a 52-year-old rural carrier, has an accepted claim for acute lumbar strain, which arose on June 6, 2008.³ There was contemporaneous evidence of lumbar degenerative disc disease, right lower extremity sciatica, and L4-5 disc herniation with stenosis. When the claim was first accepted in July 2008, OWCP determined that the record did not support that appellant's other lumbar-related conditions were either caused or aggravated by the June 6, 2008 employment incident.⁴ It paid wage-loss compensation for temporary total disability (TTD) beginning July 29, 2008.⁵

OWCP issued a notice of proposed termination on April 26, 2012. Counsel submitted an eight-page response dated May 25, 2012. No additional medical evidence was submitted.

By decision dated June 1, 2012, OWCP terminated appellant's wage-loss compensation and medical benefits effective May 29, 2012. It based the decision on the December 11, 2011 report of Dr. Raju M. Vanapalli, a Board-certified orthopedic surgeon and OWCP referral physician, who found that appellant's accepted lumbar strain had resolved without residuals.⁶ Although she was unable to resume work as a rural carrier, her limitations were unrelated to her accepted employment injury of June 6, 2008.

Appellant requested a hearing, which was held on October 10, 2012.

In a January 7, 2013 decision, the hearing representative affirmed the termination of all FECA benefits effective May 29, 2012.

On April 1, 2013 appellant submitted a list of her current medications. She also submitted a January 12, 2010 report from her podiatrist, Dr. Praya Mam, who diagnosed left ankle joint instability, chronic left ankle sprain, peripheral neuropathy bilateral feet -- relating to

³ Appellant felt a pull in her right lower back while loading trays of mail. She previously suffered work-related lumbar injuries in May 2000 and July 2002 (File Nos. xxxxxx436 and xxxxxx124).

⁴ Appellant subsequently developed fibromyalgia unrelated to her June 6, 2008 employment injury.

⁵ Appellant returned to part-time, limited-duty work on September 27, 2010, but only worked a total of five days through October 11, 2010. OWCP subsequently resumed periodic rolls payments for TTD. Effective March 31, 2012, the employing establishment separated appellant from service due to her employment-related disability (separation disability).

⁶ Dr. Vanapalli indicated that appellant's fibromyalgia was not work related. He also noted that appellant's L4-5 and L5-S1 lumbar degenerative disease preexisted the June 6, 2008 employment injury, as did her right-side lumbar radiculopathy. Dr. Vanapalli explained that the preexisting conditions were temporarily aggravated by the June 6, 2008 injury, and had since returned to preinjury baseline. He also noted that appellant's current subjective complaints of low back pain and shooting pain to the right leg did not correspond to the objective findings. Dr. Vanapalli advised that appellant could work full time with restrictions.

low back problems, bilateral feet/ankle pain, and bilateral lower leg/ankle dermatitis. Dr. Mam referred appellant to a pain management specialist with respect to her low back problems.

OWCP also received four work capacity evaluations (OWCP-5c) dated August 9, 2010, August 2 and November 1, 2011, and February 15, 2012. The first three reports were already part of the record, and the latter report, from Dr. Raghuram Kolanu, indicated that appellant could work one to two hours with restrictions.⁷ He noted appellant has back pain and she is on medications that make her sleepy. Dr. Kolanu stated that the restrictions were permanent.⁸

On January 7, 2014 counsel requested reconsideration on her behalf.

By decision dated January 10, 2014, OWCP denied appellant's request for reconsideration.

LEGAL PRECEDENT

Section 8128(a) of FECA does not entitle a claimant to review of an OWCP decision as a matter of right.⁹ OWCP has discretionary authority in this regard and has imposed certain limitations in exercising its authority.¹⁰ One such limitation is that the application for reconsideration must be received by OWCP within one year of the date of the decision for which review is sought.¹¹ A timely application for reconsideration, including all supporting documents, 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 OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.¹² When a timely application for reconsideration does not meet

⁷ Dr. Kolanu is a Board-certified neurologist who initially examined appellant on January 14, 2009. The February 15, 2012 OWCP-5c indicated that appellant was limited to one-hour each of sitting, walking, and standing. Dr. Kolanu precluded driving both at work and to/from work. Appellant could not bend/stoop, twist, squat, kneel, and climb. Dr. Kolanu also appears to have imposed limitations with respect to pushing, pulling, and lifting. However, those particular limitations are illegible.

⁸ The prior record included various follow-up reports from Dr. Kolanu, including his February 12, 2012 treatment notes wherein he diagnosed lumbar sprain. Dr. Kolanu noted appellant remained symptomatic and her clinical condition had not changed. He further noted that she required regular doses of medications that made her sleepy, and therefore, she should refrain from driving.

⁹ This section provides in pertinent part: “[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application.” 5 U.S.C. § 8128(a).

¹⁰ 20 C.F.R. § 10.607.

¹¹ *Id.* at § 10.607(a). The one-year period begins on the date of the original decision, and an application for reconsideration must be received by OWCP within one year of OWCP's decision for which review is sought for merit decisions issued on or after August 29, 2011. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (October 2011). 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.

¹² 20 C.F.R. § 10.606(b)(2).

at least one of the above-noted requirements, OWCP will deny the request for reconsideration without reopening the case for a review on the merits.¹³

ANALYSIS

The January 7, 2014 request for reconsideration neither alleged nor demonstrated that OWCP erroneously applied or interpreted a specific point of law. Counsel did not advance any relevant legal arguments not previously considered by OWCP.

Counsel argued that OWCP should have expanded the claim to include chronic pain syndrome and aggravation of appellant's preexisting lumbar conditions. He also challenged OWCP's reliance on Dr. Vanapalli's December 11, 2011 report as a basis for terminating FECA benefits. Counsel reiterated arguments raised in response to the April 26, 2012 notice of proposed termination, and again when the case was pending before the Branch of Hearings and Review. The Board finds that appellant is not entitled to a review of the merits based on the first and second requirements under section 10.606(b)(2).¹⁴

Appellant did not submit any "relevant and pertinent new evidence" with her January 7, 2014 request for reconsideration. OWCP later received several documents following the hearing representative's January 7, 2013 decision. In April 2013 appellant submitted, *inter alia*, four work capacity evaluations (OWCP-5c) dated August 9 and 2 and November 1, 2011, and February 15, 2012. The August 9 and 2 and November 1, 2011 reports were already part of the record. While Dr. Kolanu's February 15, 2012 OWCP-5c was new to the record, the information regarding the sedative effect of appellant's prescribed medication(s) was consistent with his February 15, 2012 follow-up treatment notes, which were already part of the record. Providing additional evidence that repeats or duplicates information already in the record does not constitute a basis for reopening a claim.¹⁵ Appellant also submitted a January 12, 2010 report from her podiatrist, Dr. Mam, who diagnosed bilateral peripheral neuropathy of the feet related to low back problems. Dr. Mam referred appellant to a pain management specialist with respect to her low back problems.

The question on reconsideration was not simply whether appellant had ongoing lumbar complaints, but whether the condition was related to her June 6, 2008 employment injury. Dr. Mam did not mention the employment injury and his January 12, 2010 report does not constitute "relevant and pertinent new evidence." Because appellant did not provide any new medical evidence relevant to the prior decision, she is not entitled to a review of the merits based on the third requirement under section 10.606(b)(2).¹⁶ Accordingly, OWCP properly declined to reopen appellant's case under 5 U.S.C. § 8128(a).

¹³ *Id.* at §§ 10.607(b), 10.608(b).

¹⁴ *Id.* at § 10.606(b)(2)(1) and (2).

¹⁵ *James W. Scott*, 55 ECAB 606, 608 n.4 (2004).

¹⁶ 20 C.F.R. § 10.606(b)(2)(3).

CONCLUSION

The Board finds that OWCP properly denied further merit review with respect to appellant's January 7, 2014 request for reconsideration.

ORDER

IT IS HEREBY ORDERED THAT the January 10, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 12, 2015
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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