

FACTUAL HISTORY

OWCP accepted that on June 17, 2013 appellant, then a 64-year-old nurse, sustained a left elbow contusion when she slipped and fell on a slippery wet floor at work.

On November 8, 2013 appellant filed a claim for compensation (Form CA-7) for leave without pay (LWOP) from November 5 to 16, 2013. An October 10, 2013 progress note from appellant's physical therapist provided a history of the June 17, 2013 employment injury and addressed the treatment of appellant's left shoulder pain.

Also provided were medical reports dated June 20 to September 19, 2013, from Dr. Michael Oliverio, Jr., a Board-certified family practitioner, who provided a history of the June 17, 2013 employment injury and appellant's medical, family, and social background. He reported findings and assessed, among other things, shoulder, hip, back, and thigh pain, and a bruising huge hematoma. Dr. Oliverio recommended diagnostic testing of the left shoulder, lumbar spine, and left lower extremity, and referred appellant to physical therapy. In an August 5, 2013 report, he extended appellant's time off work until December 30, 2013.

By letter dated November 22, 2013, OWCP requested that appellant submit contemporaneous medical evidence explaining the medical necessity for time off work. It noted that the last medical report received was Dr. Oliverio's September 19, 2013 report.²

In a November 21, 2013 visit summary report, Dr. Oliverio noted that appellant presented for a follow-up evaluation of her left shoulder pain. He described a history that her pain started four months ago due to a fall. Dr. Oliverio noted appellant's diagnoses which included shoulder, thigh, and back pain due to a slip and fall at work. He provided her plan of care which included referral to a neurologist for evaluation of her persistent left shoulder, back, left thigh, and left leg pain.

In a July 16, 2013 report, Dr. Barney S. Grames, a Board-certified orthopedic surgeon, provided a history that on June 19, 2013 appellant fell at work. He noted her history and complaint of sharp aching pain in her left shoulder, elbow, hip, and leg. Appellant was not currently working. Dr. Grames reported findings on physical examination and diagnostic testing. He provided an impression of left shoulder adhesive capsulitis, and left shoulder, elbow, and hip contusions due to the June 19, 2013 work injury, mild degenerative arthritis of the left shoulder glenohumeral joint and acromioclavicular joint, left elbow contusion and epicondylitis, and left hip greater trochanteric bursitis and mild degenerative arthritis. Dr. Grames advised that appellant could perform modified duty with no lifting over 10 pounds and no overhead work. He opined that her left elbow, left shoulder, and left hip conditions were industrial in nature.

² The Board notes that it appears OWCP inadvertently stated that Dr. Oliverio's report was dated September 9, 2013 rather than September 19, 2013. The Integrated Federal Employees' Compensation System (iFECs) indicates that Dr. Oliverio's report was dated September 19, 2013 and was the last report received by OWCP prior to the issuance of its November 22, 2013 developmental letter.

A December 23, 2013 certificate to return to work/school from Oliverio Medical Group contained an unknown signature and indicated that appellant had a left shoulder injury. Her time off work was extended to January 30, 2014.

In a February 20, 2014 decision, OWCP denied appellant's claim for compensation from November 5 to 16, 2013. It found that she had failed to submit rationalized medical evidence to establish her disability for work during the claimed period due to her accepted June 17, 2013 employment injury.

By letter dated March 14, 2014, appellant, through counsel, requested a telephone hearing with an OWCP hearing representative.

In an undated letter and visit summary reports dated June 20, 2013 to February 20, 2014, Dr. Oliverio diagnosed left shoulder pain spasm, a fall at work, hip and thigh injury, undefined numbness of the left hip, and muscle spasms. He reiterated diagnoses of left hip, thigh, and back pain and hematoma of the hip. Physical therapy progress notes addressed the treatment of left shoulder joint pain and lumbar conditions from August 16, 2013 to April 3, 2014.

In a left hip magnetic resonance imaging (MRI) scan report dated December 20, 2013, Dr. Greg Peters, a Board-certified radiologist, diagnosed very minimal spurring of the left femoral head and superolateral acetabulum consistent with very mild osteoarthritis. No paralabral cyst or subchondral cyst were seen. Dr. Peters advised that the MRI scan was otherwise negative. In a December 20, 2013 left shoulder MRI report, Dr. Peters found postsurgical changes from a prior rotator cuff repair. Suture anchors were in the region of the supraspinatus and its junction of the infraspinatus. There was a fluid cleft compatible with nonwatertight repair or low-grade partial-thickness tear. Dr. Peters suspected prior acromioplasty. He found a small acromioclavicular joint ossicle or tiny unfused os acromiale without edema. There was very minimal spurring of the glenohumeral joint space.

A January 14, 2014 progress note from Dr. Wesley P. Phipatanakul, a Board-certified orthopedic surgeon, provided a history of the June 17, 2013 employment injury and examination findings. He assessed left shoulder pain from the June 17, 2013 injury and status post left shoulder arthroscopic rotator cuff repair performed by him in September 2007. Dr. Phipatanakul noted that, since her June 2013 work injury, appellant had been unable to return to work.

In a January 23, 2014 report, Dr. Kenneth G. Jordan, a Board-certified internist, provided a history of the June 17, 2013 employment injury and examination findings. He diagnosed "7802"³ and indicated that an MRI scan was needed to rule out radiculopathy. Dr. Jordan provided an impression of left upper and lower extremity radiating paresthesias following appellant's June 17, 2013 fall at work. He recommended diagnostic testing to rule out radiculopathy. In a March 3, 2014 note, Dr. Jordan placed appellant off work through March 31, 2014 due to a consultation with a spine surgeon. In a February 18, 2014 nerve conduction study report, he provided an impression of severe right carpal tunnel syndrome and mild left carpal tunnel syndrome. There was no evidence of radiculopathy or peripheral neuropathy.

³ A diagnosis of 7802 is a syncope and collapse.

Certificates to return to work/school dated August 5, 2013 to January 27, 2014 and a prescription dated June 20, 2014 from Oliverio Medical Group contained the same prior unknown signature and indicated that appellant had a traumatic left shoulder injury secondary to a fall, and pain and numbness in her left thigh and left shoulder. She was disabled intermittently for work from June 20, 2013 to February 7, 2014.

An unsigned report dated February 26, 2014 from Jordan Neuroservices provided appellant's history regarding her June 17, 2013 employment injury and examination findings. Appellant was diagnosed as having "7802." A consultation with a spine surgeon was recommended as it was not clear whether surgery was required at that time.

In a March 25, 2014 report, Dr. Baher Nashat Boctor, an employing establishment physician Board-certified in anesthesiology, referred appellant for physical therapy to treat her lumbar stenosis, lumbar radiculopathy, and lumbar degenerative disc disease.

In letters dated March 31 to August 28, 2014, Dr. William Wel-Jan Jih, a Board-certified family practitioner, found that appellant was disabled intermittently for work from March 31 to December 1, 2014. In an October 27, 2014 progress note, he provided appellant's history regarding her June 17, 2013 employment injury and examination findings. Dr. Jih assessed the need for prophylactic vaccination and inoculation against influenza, bilateral carpal tunnel syndrome, hypertension, and a preoperative examination.

In an October 7, 2014 progress note, Dr. Subhas Chandra Gupta, a Board-certified anesthesiologist, provided a history of the June 17, 2013 employment injury, appellant's medical background, and findings on physical examination. He provided an impression of bilateral carpal tunnel syndrome, lumbar radiculopathy, and lumbar spinal stenosis. Dr. Gupta recommended carpal tunnel release.

In an October 27, 2014 progress note, Dr. Boctor noted appellant's complaints of low back and neck pain, and headaches since her June 17, 2013 work-related fall. He provided a history of her medical background and findings on examination. Dr. Boctor reiterated his assessment of lumbar stenosis, lumbar radiculopathy, and lumbar degenerative disc disease. He also assessed lumbar spondylosis, lumbar facet arthropathy, and myofascial neck pain.

Progress notes dated March 18 to October 27, 2014 from Dr. Gupta, Dr. Boctor, Dr. Farbod Asgarzadie, a Board-certified neurosurgeon, and Dr. Jih provided appellant's history and examination findings. The physicians diagnosed, among other things, bilateral carpal tunnel syndrome, lumbar radiculopathy, lumbar spinal stenosis, cervical spinal stenosis, lumbar spondylosis, lumbar degenerative disc disease with back pain, lumbar facet arthropathy, myofascial neck pain, lower extremity symptoms, and left shoulder pain, since the June 17, 2013 employment injury. Physical therapy progress notes from April 3 to August 27, 2014 noted treatment of appellant's low back pain. The treatment of her shoulder joint pain, lumbar stenosis, and lumbar radiculopathy were addressed.

In a November 24, 2014 decision, an OWCP hearing representative affirmed the February 20, 2014 decision, finding that there was no rationalized medical opinion supporting appellant's claimed disability commencing November 5, 2013 due to her accepted work injury.

By letter dated May 8, 2015, appellant requested reconsideration of the November 24, 2014 decision. She contended that medical records from her previous primary physician and specialist physicians, and notes from her rehabilitation physical therapists were not comprehensively reviewed, correlated, and considered in relation to her fall. Appellant maintained that all these notes revealed how she was examined and treated and how all of her symptoms and diagnoses of cervical and lumbar spine stenosis progressively developed and worsened after her fall. She asserted that both of these major medical problems were confirmed by MRI scan results. Appellant contended that based on a call from an employing establishment human resources specialist in January 2015, she realized that since her June 17, 2013 fall she was inadequately informed about what to do as an injured employee and that she should have seen workers' compensation physicians and submitted appropriate documentation related to an incident report. Appellant noted that she had since submitted a picture that showed where she fell when she accidentally stepped on a wet sign board that had fallen in front of her. The picture proved that the scratches on her elbow resulted from being thrown to an angular sharp part of the wall where her coworkers found her on her back with her right hand under her neck. Appellant claimed that her fall caused a hematoma and bruises on the left side of her body and extremities, and a right hand and wrist injury which required surgery.

Appellant also claimed that a diagnosis and appropriate treatment were delayed. Dr. Oliverio wanted to rule out internal injury, but OWCP and appellant's personal health insurance carrier refused to authorize an MRI scan. Instead, OWCP personnel advised Dr. Oliverio to initiate physiotherapy first. Appellant contended that she and Dr. Oliverio had relentlessly requested guidance in writing from claims examiners, but they did not receive any help until March 10, 2015 when Whitney Synder provided written documentation about the guidelines. She concluded that she was still in the same medical condition suffering and struggling day and night due to all of her worsened symptoms of severe back pain, pedal/leg, and sharp painful cramps from uncontrolled positions especially while asleep.

In a March 25, 2014 progress note, Dr. Boctor provided a history of appellant's medical and social background and noted that she complained about chronic low back pain for years. He reported findings and reviewed diagnostic test results. Dr. Boctor reiterated his assessment of lumbar stenosis, lumbar radiculopathy, lumbar spondylosis, lumbar degenerative disc disease, and lumbar facet arthropathy. In a November 3, 2014 addendum note, he clarified that when appellant presented to his clinic on March 25, 2014, she reported that her back pain had been aggravated for the last few months before her visit.

An April 2, 2015 State of California Doctor's First Report of Occupational Injury or Illness form signed by Dr. Michael D. Wade, Board-certified in emergency medicine, related that the June 18, 2013 work injury occurred when appellant accidentally slipped on a wet/waxed floor wet sign that had been leaning against a wall and fell. Appellant attempted to maintain her balance by holding onto a wall. Dr. Wade referred to an attached supplemental report regarding appellant's subjective complaints and his objective findings and diagnoses. He checked a box marked "no" to the question of whether his findings and diagnosis were consistent with appellant's account of injury or onset of illness. Dr. Wade also checked a box marked "no" to the question of whether there was any other current condition that would impede or delay appellant's recovery. In the accompanying supplemental report, he noted that appellant had subjective complaints related to her neck, back, wrist, hand, ankle, and lower leg. Dr. Wade

reported findings of his April 2, 2015 physical examination. He diagnosed cervicgia, lumbago, pain in the joints of the shoulder region, forearm, hand, left ankle, left foot, and soft tissues of the left lower leg. Dr. Wade recommended a comprehensive evaluation by a different treating physician as he was an acute and subacute treating physician.

In an August 11, 2015 decision, OWCP denied further merit review of appellant's claim. It found that the evidence submitted was irrelevant or immaterial.

LEGAL PRECEDENT

Section 8128(a) of FECA vests OWCP with discretionary authority to determine whether it will review an award for or against compensation, either under its own authority or on application by a claimant.⁴ Section 10.608(a) of OWCP's regulations provide that a timely request for reconsideration may be granted if OWCP determines that the claimant has presented evidence and/or argument that meet at least one of the standards described in section 10.606(b)(3).⁵ This section provides that the application for reconsideration must be submitted in writing and set forth arguments and contain evidence that either: (i) shows that OWCP erroneously applied or interpreted a specific point of law; or (ii) advances a relevant legal argument not previously considered by OWCP; or (iii) constitutes relevant and pertinent new evidence not previously considered by OWCP.⁶ Section 10.608(b) provides that when a request for reconsideration is timely but fails to meet at least one of these three requirements, OWCP will deny the application for reconsideration without reopening the case for a review on the merits.⁷

ANALYSIS

On May 8, 2015 appellant requested reconsideration of the November 24, 2014 hearing representative's decision that she was not entitled to compensation for total disability from November 5 to 16, 2013 resulting from the June 17, 2013 employment injury. The underlying issue on reconsideration is medical in nature, whether appellant was totally disabled during the claimed period due to her accepted June 17, 2013 employment injury.

The Board finds that appellant did not show that OWCP erroneously applied or interpreted a specific point of law. Moreover, appellant did not advance a relevant legal argument not previously considered. In her May 8, 2015 request for reconsideration, she contended that OWCP ignored the medical evidence from her physicians and physical therapists which established that her cervical and lumbar spinal stenosis, confirmed by MRI scan results, and continuing symptoms were related to her accepted employment injury. Appellant expressed her frustration with the workers' compensation process, contending that the employing establishment did not adequately inform her about obtaining medical treatment and submitting

⁴ 5 U.S.C. § 8128(a).

⁵ 20 C.F.R. § 10.608(a).

⁶ *Id.* at § 10.606(b)(3).

⁷ *Id.* at § 10.608(b).

appropriate documentation related to an incident report. She maintained that a picture showing where she fell on June 17, 2013 proved that she sustained a hematoma and bruises on the left side of her body and extremities, and a right hand and wrist injury which required surgery. Appellant claimed that her diagnosis and appropriate treatment were delayed and described the difficulty she and Dr. Oliverio had in obtaining authorization for an MRI scan to rule out an internal injury as a result of her employment-related fall. The relevant issue, however, is whether she submitted sufficient medical evidence to establish total disability from November 5 to 16, 2013 due to her accepted June 17, 2013 employment injury, which is a medical question that can only be resolved through the submission of probative medical evidence from a physician.⁸ Appellant's lay opinion is of no probative value as lay individuals are not competent to render a medical opinion,⁹ and her contentions are not relevant to the issue involved and thus are insufficient to warrant reopening her case for merit review.¹⁰

The Board further finds that appellant did not submit relevant or pertinent new evidence not previously considered. Dr. Boctor's March 25, 2014 progress note assessed appellant as having lumbar stenosis, lumbar radiculopathy, lumbar spondylosis, lumbar degenerative disc disease, and lumbar facet arthropathy. He had previously assessed these same conditions in a March 25, 2014 report and an October 27, 2014 progress note. Moreover, Dr. Boctor did not provide an opinion addressing whether appellant was totally disabled from November 5 to 16, 2013 due to the accepted June 17, 2013 work injury. Dr. Boctor's November 3, 2014 progress notes and Dr. Wade's April 2, 2015 State of California Doctor's First Report of Occupational Injury or Illness form reports addressed appellant's lumbar, cervical, shoulder, forearm, hand, left ankle, left foot, and left lower leg conditions, but did not provide an opinion addressing disability during the claimed period.

Evidence or argument that repeats or duplicates evidence previously of record has no evidentiary value and does not constitute a basis for reopening a case.¹¹ Likewise, the submission of evidence that does not address the particular issue involved does not constitute a basis for reopening a case.¹²

The Board accordingly finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(3). Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

On appeal, counsel contends that OWCP's decision is contrary to fact and law. For the reasons stated above, the Board finds counsel's arguments are not substantiated.

⁸ *L.G.*, Docket No. 09-1517 (issued March 3, 2010); *Gloria J. McPherson*, 51 ECAB 441 (2000).

⁹ *See R.B.*, Docket No. 15-1143 (issued January 27, 2016).

¹⁰ *See J.P.*, 58 ECAB 289 (2007); *Freddie Mosley*, 54 ECAB 255 (2002) (evidence that does not address the particular issue involved does not warrant reopening a case for merit review).

¹¹ *J.P.*, *supra* note 10.

¹² *S.J.*, Docket No. 08-2048 (issued July 9, 2009); *D'Wayne Avila*, 57 ECAB 642 (2006).

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the August 11, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 27, 2016
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board