



## **FACTUAL HISTORY**

On September 28, 2004 appellant, then a 42-year-old city letter carrier, filed a traumatic injury claim (Form CA-1) file number 112024980. She alleged that on September 16, 2004 she sustained a herniated disc at L3-4 based on a magnetic resonance imaging (MRI) scan performed by her attending physician.<sup>2</sup> Appellant stated that her condition was caused by pushing a hamper full of mail out to the dock. She stopped work on September 17, 2004. In a witness statement, Jerry Lakebrink, a coworker, stated that he saw her on the dock “getting loaded.” He related that she could hardly move and that she looked like she could cry.

In a September 22, 2004 narrative statement, appellant further described the September 16, 2004 incident. She cased mail and delivered it on her route between 10:00 a.m. and 3:15 p.m. Appellant returned to the employing establishment at 3:20 p.m. and finished putting away trays at 3:30 p.m. On the following morning, she awoke with pain in her lower back. Appellant arrived at work and notified Joyce Bacon, an acting supervisor, about her back pain. She informed Ms. Bacon that she would attempt to deliver mail on her route and then go home. Appellant stated that, while pushing a hamper out, she experienced sharp pain down her leg. She finished her route and went home. Dr. David M. Schoenwalder, an attending Board-certified internist, prescribed medication. Early the next morning, appellant was treated at a hospital emergency room for back pain.

A September 17, 2004 prescription of Dr. Garry R. Scarato, a Board-certified emergency medicine specialist, stated that appellant sustained a herniated disc at L3-4. He recommended that she stay off work for at least one week through September 24, 2004.

In a letter dated September 30, 2004, the employing establishment controverted appellant’s claim. It noted that she had not provided rationalized medical evidence establishing a causal relationship between her alleged injury and the implicated factors of her employment. The employing establishment noted that appellant had filed prior claims for back injuries dating back to 1994 and that her physician did not address her preexisting condition and how her work conditions may have aggravated her condition.

By letter dated October 6, 2004, the Office advised appellant that the evidence submitted was insufficient to establish her claim. It addressed the additional medical evidence she needed to submit.

An unsigned treatment note dated September 16, 2004 indicated that appellant experienced pain in her back, hips and leg. In a September 22, 2005 progress note, Dr. Schoenwalder stated that she had acute sciatica. In a September 26, 2004 medical certificate, he stated that appellant had lumbar pain and chronic radiculopathy. Dr. Schoenwalder related that she was unable to work beginning on September 16, 2004. In a September 29, 2004 report, he stated that appellant experienced chronic back pain with a recent exacerbation on September 16, 2004. Dr. Schoenwalder further stated that she was disabled for work as of

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<sup>2</sup> Prior to the instant claim, appellant filed a claim, file number 112010101, alleging that she sustained an injury on July 29, 2002 caused by her federal employment. The Office accepted the claim for low back, posterior neck and left wrist strain.

September 27, 2004. In a September 17, 2004 report, Dr. Scarato diagnosed appellant as having a herniated disc at L3-4. On the same date Dr. Royce E. Lovern, a Board-certified radiologist, performed an MRI scan of appellant's lumbar spine which demonstrated right paracentral disc protrusion at L3-4 and degenerative disc changes at L4-5 and L5-S1.

On November 9, 2004 the Office advised appellant that the medical evidence of record may be related to her prior July 2002 employment injury. The Office agreed to review the medical evidence to determine whether she sustained a new injury.

In a November 9, 2004 report, Dr. Schoenwalder stated that he last examined appellant on September 22, 2004. He reviewed a history of the medical treatment she received for her back condition. Dr. Schoenwalder stated that, on physical examination, appellant had definite right leg weakness with a right positive straight leg raising test and moderately severe paraspinal spasm. He stated that she was unable to walk without assistance, noting that she used a cane. Dr. Schoenwalder related that appellant had degenerative disc and herniated disc diseases based on x-ray examination. He opined that she had chronic low back pain related to injuries she sustained at work dating back to July 29, 2002 and that she suffered from ongoing chronic back problem that was exacerbated by her work duties. In an October 11, 2004 form medical report, Dr. Schoenwalder reiterated his prior diagnosis of sciatica. He stated that appellant could perform limited-duty work with restrictions.

By decision dated November 19, 2004, the Office denied appellant's claim. The medical evidence of record failed to establish that she sustained a back condition causally related to the accepted September 16, 2004 employment incident. The Office noted that the medical evidence was related to her July 29, 2002 employment injury claim, file number 112010101, and that she should seek authorization for medical treatment under that file number.

Appellant submitted Dr. Schoenwalder's October 25, 2004 letter. Dr. Schoenwalder advised the employing establishment that he was no longer her physician since he did not handle workers' compensation cases. He stated that she was unable to work at the time of his recent examination as her back pain was quite intense and severe. Dr. Schoenwalder also stated that appellant could barely walk at that time.

On December 2, 2004 the Office advised appellant that the evidence of record related to her July 29, 2002 employment injury in file number 112010101. It advised her to file a claim for a recurrence of disability or request that the claim be reopened for further medical treatment.<sup>3</sup>

In a December 13, 2004 report, Dr. Schoenwalder stated that on September 16, 2004 appellant aggravated her current herniated disc at L3-4 while pushing a hamper at work. He stated that resistance from pushing the hamper loaded down with mail caused her current sciatica condition. Dr. Schoenwalder further stated that, if appellant stayed in her position, she would eventually have further problems with her back. He opined that she aggravated her current condition on September 16, 2004 which caused a new problem with her sciatica nerve. In a

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<sup>3</sup> By decision dated May 3, 2004, the Office denied appellant's recurrence of disability claim. It found the evidence of record insufficient to establish that she sustained a recurrence of disability causally related to the July 29, 2002 employment injury.

May 3, 2004 report, he reviewed a history of appellant's July 29, 2002 employment injury and a back injury she sustained in May 2003 and her medical treatment. Dr. Schoenwalder stated that she currently suffered from chronic low back pain with herniated discs and required work restrictions. He opined that her symptoms were clearly related to her work duties as a mail carrier and that such work would continue to aggravate her condition. Dr. Schoenwalder concluded that appellant could work and that she wanted to continue working at the employing establishment if she could transfer to a position that did not require her to be a mail carrier.

By letters dated April 28 and 29, 2005, appellant, through counsel, requested reconsideration of the Office's November 19, 2004 decisions. In an April 12, 2005 prescription, Dr. Schoenwalder stated that there were no changes in appellant's work status. On April 12, 2005 he reiterated his prior opinion that appellant could work with restrictions.

In a July 29, 2005 decision, the Office denied modification of the November 19, 2004 decision. The medical evidence of record failed to establish a causal relationship between appellant's back condition and the September 16, 2004 employment incident.

In a July 19, 2006 letter, appellant, through counsel, requested reconsideration of the July 29, 2005 decision. She submitted a duplicate copy of Dr. Schoenwalder's December 13, 2004 report.

By decision dated September 14, 2006, the Office denied appellant's request for reconsideration. It found that the evidence submitted was repetitious in nature and, thus, insufficient to warrant a merit review of its prior decisions.

### **LEGAL PRECEDENT**

To require the Office to reopen a case for merit review under section 8128 of the Federal Employees' Compensation Act,<sup>4</sup> the Office's regulations provide that a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) constitute relevant and pertinent new evidence not previously considered by the Office.<sup>5</sup> To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.<sup>6</sup> When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review of the merits.

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<sup>4</sup> 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, [t]he Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application. 5 U.S.C. § 8128(a).

<sup>5</sup> 20 C.F.R. § 10.606(b)(1)-(2).

<sup>6</sup> *Id.* at § 10.607(a).

### ANALYSIS

By letter dated July 19, 2006, appellant, through counsel, disagreed with the Office's July 29, 2005 decision, finding that she did not sustain a back injury in the performance of duty because the medical evidence of record did not establish that the claimed injury was causally related to the September 16, 2004 employment incident. The relevant issue is whether her back injury was causally related to the accepted September 16, 2004 employment incident. The Board notes that this issue is medical in nature.

Appellant submitted a duplicate copy of Dr. Schoenwalder's December 13, 2004 report, which was already of record and was previously reviewed by the Office. The submission of evidence which repeats or duplicates evidence that is already in the case record does not constitute a basis for reopening a case for merit review.<sup>7</sup> The Board, therefore, finds that his report is insufficient to warrant reopening appellant's claim for further merit review.

The evidence submitted by appellant did not show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by the Office or constitute relevant and pertinent new evidence not previously considered by the Office. As she did not meet any of the necessary regulatory requirements, the Board finds that she is not entitled to further merit review.<sup>8</sup>

### CONCLUSION

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

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<sup>7</sup> *Patricia G. Aiken*, 57 ECAB \_\_\_ (Docket No. 06-75, issued February 17, 2006).

<sup>8</sup> *See* 20 C.F.R. § 10.608(b); *Richard Yadron*, 57 ECAB \_\_\_ (Docket No. 05-1738, issued November 8, 2005).

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 14, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 17, 2008  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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