

sustaining a fall at which time a steel beam fell on him. He also alleged a head and neck injury on that same day after passing out and falling at the emergency room while being treated for his right hip and pelvis condition. Appellant stopped work on July 19, 2006 and returned to light duty on December 5, 2006. The Office accepted his claim for closed fracture of the right ischium or hip.

Appellant submitted several Form CA-7s claiming wage-loss compensation beginning September 3, 2006. In a November 3, 2006 decision, the Office denied wage-loss compensation beginning August 8, 2006 finding the evidence was insufficient to establish total disability for work as a result of the accepted injury.

A July 20, 2006 report from Dr. Bruce Teich, Board-certified in family medicine, diagnosed right hip strain with adductor muscle strain. In a July 22, 2006 addendum, he noted that appellant had passed out and struck his head against a wall of an emergency room bathroom. Dr. Teich diagnosed resolved vasovagal syncope, closed head injury with intact neurologic status and cervical sprain. Appellant also submitted several physical therapy notes.

On November 10, 2006 appellant requested a telephone hearing, which was held on March 9, 2007. In reports dated August 8 and September 18, 2006, Dr. Michael Seel, a Board-certified orthopedic surgeon, diagnosed nondisplaced fracture of the right ischium and right pubic rami status post a July 19, 2006 injury. He advised that appellant could return to sedentary duty. On December 5, 2006 Dr. Seel released appellant to light duty. In reports dated January 18, 2007, he advised that appellant could return to full duty without restrictions on January 22, 2007. Dr. Seel also diagnosed right trochanteric bursitis and resolved right ischium and pubic ramus fractures.

In a June 19, 2007 decision, an Office hearing representative reversed the November 3, 2006 decision finding the evidence established disability for work from August 8 to December 5, 2006. She also found that the Office should develop the issue of whether appellant's fall at the emergency room constituted a consequential injury.

On July 25, 2007 the Office advised appellant of the factual and medical evidence necessary to establish a consequential injury and allowed him 30 days to submit such evidence. Appellant submitted a July 26, 2006 treatment note listing his complaint of arthritis, bilateral knee pain and right fifth finger pain. In an August 21, 2007 report, Dr. Nancy Shaler, a chiropractor, noted that appellant's history and examination were related to the diagnoses of neck pain with headaches, thoracic/lumbar neuritis and subluxation of the cervical, thoracic, lumbar and pelvic spine which were complicated by muscle spasms and degenerative joint changes. She opined that appellant's fall in the hospital was the result of a work-related injury.

In a September 17, 2007 decision, the Office denied appellant's consequential injury claim finding the medical evidence insufficient to establish that the fall was a consequence of the accepted work injury.

On September 25, 2007 appellant requested a telephone hearing, which was held on January 10, 2008.

In a March 25, 2008 decision, an Office hearing representative affirmed the September 17, 2007 decision finding the medical evidence failed to establish that appellant sustained a consequential fall causally related to the accepted work injury.

In a June 14, 2008 letter, appellant requested reconsideration. He noted that, with his request, he had enclosed new evidence from his primary care physician indicating that he had no history of passing out or fainting. Appellant also noted that he based his reconsideration request on his new evidence.

In a June 26, 2008 decision, the Office denied appellant's reconsideration request without a merit review finding that appellant did not submit any new and relevant evidence or raise any substantive legal questions.

LEGAL PRECEDENT

To require the Office to reopen a case for merit review under section 8128(a), the Office's regulations provide that the evidence or argument submitted by 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.¹ Section 10.608(b) of Office regulations provide that when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.²

ANALYSIS

Appellant's June 14, 2008 reconsideration request consists of a letter asking for reconsideration based on evidence from his primary care physician who indicates that appellant has no history of fainting. His request does not demonstrate that the Office erroneously applied or interpreted a specific point of law and it also does not advance a relevant legal argument not previously considered by the Office. Instead, appellant based his request on his primary care physician's report, but it did not specify any particular report from this physician or advance any legal arguments based on this physician's report.

The Board also notes that appellant did not submit any new and relevant evidence with his reconsideration request. As the issue of appellant's alleged consequential injury is medical in nature, whether the accepted hip fracture caused appellant to fall and sustain additional injury, it should be addressed by the submission of pertinent new medical evidence. However, the record reflects that no new medical evidence was received with appellant's reconsideration request.

On appeal, appellant asserts that he sustained a consequential injury after passing out at the hospital while being treated for his original accepted injury. As noted, the Board only has jurisdiction over whether the Office properly denied appellant's reconsideration request without

¹ *D.K.*, 59 ECAB ___ (Docket No. 07-1441, issued October 22, 2007).

² *K.H.*, 59 ECAB ___ (Docket No. 07-2265, issued April 28, 2008).

conducting further merit review. As the underlying issue is medical in nature, to require the Office to reopen the claim for a merit review, it was necessary for appellant to submit new medical evidence supporting that his accepted injury caused him to fall and sustain an injury. No new medical evidence accompanied appellant's reconsideration request. Appellant's general assertion that he sustained a consequential injury is insufficient to require the Office to conduct a merit review. Appellant also asserts that he submitted new medical evidence with his reconsideration request. On appeal, he submitted a certified mail receipt, indicating that a letter was received by the Office on June 19, 2008, and an April 10, 2008 medical report. However, the Board may not consider new evidence on appeal as its review is limited to the evidence that was in the record at the time the Office issued its final decision.³ Appellant also alleges that the Office claims examiner who issued the June 26, 2008 decision did not conduct an independent evaluation as she was involved in his claim in October 2006 when he discussed his claim with her on the telephone. However, his allegations do not establish that the June 26, 2008 decision was contrary to Office procedures or that Office personnel acted improperly in issuing the decision. While Office procedures specify that each request for reconsideration must be handled by a senior claims examiner who was not involved in making the contested decision,⁴ the claims examiner in question did not participate in making the March 25, 2008 decision from which appellant sought reconsideration nor does her name appear on prior Office decisions.⁵

CONCLUSION

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

³ See 20 C.F.R. § 501.2(c).

⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.2(b) (May 1996).

⁵ See *Jacqueline M. Williamson*, Docket No. 01-1724 (issued May 24, 2002) (where appellant contended that a claims examiner improperly prepared the Office's reconsideration decision because this claims examiner had previously written a letter to her and talked to her on the telephone; the Board found that, as the record did not show that this claims examiner was involved in making the decision that was the subject of the request for reconsideration, this claims examiner was not precluded from preparing the decision denying the reconsideration request).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decision dated June 26, 2008 is affirmed.

Issued: March 4, 2010
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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