

FACTUAL HISTORY

This case has previously been before the Board. On April 2, 2010 the Board affirmed as modified OWCP's November 14, 2008 merit decision denying appellant's claim for an employment-related injury.³ In the same decision, the Board set aside a January 23, 2009 nonmerit decision denying reconsideration and remanded the case for a review on the merits. The Board found the evidence sufficient to establish that the September 25, 2008 incident occurred as alleged, but found that the record contained no doctor's report providing a well-reasoned report explaining how the incident caused or contributed to an injury. As to the January 23, 2009 nonmerit decision, the Board found appellant had submitted new relevant medical evidence which OWCP failed to review. The facts and the circumstances of the case up to that point are set forth in the Board's prior decision and are incorporated herein by reference.⁴

The record reveals that appellant submitted an October 24, 2008 CA-17 form and an October 1, 2008 employing establishment health unit report with his November 18, 2008 reconsideration request. The October 1, 2008 report revealed that he sustained a lower back strain on September 25, 2008 when a tray of mail he was about to load broke.

Subsequent to OWCP's January 23, 2010 nonmerit decision, progress notes dated January 19 and April 20, 2010 from an unknown person at appellant's family practice provider were received. The January 19, 2010 progress notes related that appellant felt great, but still had lower back pain. On April 20, 2010 the progress notes related that he was seen for a follow-up for his September 25, 2008 injury and a flare-up of lower back pain.

By merit decision dated June 1, 2010, OWCP modified the November 14, 2008 decision to reflect that the September 25, 2008 incident occurred as alleged, but the medical evidence was insufficient to establish that the diagnosed condition was causally related to the September 25, 2008 injury.

OWCP subsequently received progress notes dated May 24, June 29 and October 4, 2010 from an unknown person at appellant's family practice provider. On May 24, 2010 the progress notes relate that appellant was injured on September 25, 2008 and experienced intermittent back pain and stiffness. The June 29, 2010 progress notes revealed that he stated that his back was hurting on Sunday morning following his riding a mechanical bull the night before. The October 4, 2010 progress notes revealed that appellant was seen for back pain. Appellant related that his back went out on him at work on September 8, 2010 and he was diagnosed with a pinched nerve at the emergency room.

Appellant requested reconsideration in a form dated August 31, 2010 and received by OWCP on October 13, 2010.

³ Docket No. 09-1825 (issued April 2, 2010).

⁴ On October 1, 2008 appellant, then a 40-year-old clerk, filed a traumatic injury claim alleging that he injured his back when a plastic tray handle broke while he was bending over. The front of the form listed September 24, 2008 as the date of injury. On the back of the form the date of injury was noted as September 25, 2008.

By nonmerit decision dated January 5, 2011, OWCP denied reconsideration, finding the evidence submitted insufficient to warrant merit review. It found that progress notes submitted by appellant could not be considered valid medical evidence, in that they were unsigned and completed by an unknown person.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,⁵ OWCP's regulations provide that 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.⁶ To be entitled to a merit review of an OWCP 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.⁷ When a claimant fails to meet one of the above standards, OWCP will deny the application for reconsideration without reopening the case for review on the merits.⁸

A report may not be considered as probative medical evidence if there is no indication that the person completing the report qualifies as a physician as defined in 5 U.S.C. § 8102(2).⁹ The Board has found that reports lacking proper identification, such as unsigned treatment notes, do not constitute probative medical evidence.¹⁰

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.¹¹

ANALYSIS

The Board finds that OWCP properly refused to reopen appellant's case for reconsideration on the merits of his claim pursuant to 5 U.S.C. § 8128(a).

The issue presented on appeal is whether appellant met any of the requirements of 20 C.F.R. § 10.606(b)(2) to reopen his case for review of the merits of the claim. In his August 31, 2010 application for reconsideration, appellant did not show that OWCP erroneously

⁵ 5 U.S.C. §§ 8101-8193. Section 8128(a) of FECA provides that the Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application.

⁶ 20 C.F.R. § 10.606(b)(2). See *Susan A. Filkins*, 57 ECAB 630 (2006); *J.M.*, Docket No. 09-218 (issued July 24, 2009).

⁷ *Id.* at § 10.607(a). See *Robert G. Burns*, 57 ECAB 657 (2006); *S.J.*, Docket No. 08-2048 (issued July 9, 2009).

⁸ *Id.* at § 10.608(b). See *Tina M. Parrelli-Ball*, 57 ECAB 598 (2006); *Y.S.*, Docket No. 08-440 (issued March 16, 2009).

⁹ *R.M.*, 59 ECAB 690 (2008); *Thomas L. Agee*, 56 ECAB 465 (2005).

¹⁰ *D.D.*, 57 ECAB 734 (2006); *C.B.*, Docket No. 09-2027 (issued May 12, 2010).

¹¹ *Ronald A. Eldridge*, 53 ECAB 218 (2001); *Alan G. Williams*, 52 ECAB 180 (2000).

applied or interpreted a specific point of law. He did not advance a new and relevant legal argument. The underlying issue in this case was whether appellant's injury was causally related to the accepted September 25, 2008 employment incident. Although it is his belief that he has been injured, this is a medical issue which must be addressed by relevant medical evidence.¹² The unsigned treatment notes contain findings pertaining to back pain sustained while riding a mechanical bull in June 2010. These reports are not relevant to the underlying issue because they do not address appellant's claimed condition and are not attributable to a physician; therefore, they are not probative on the medical issues. The Board has held that the submission of evidence which does not address the underlying issue involved in the case does not constitute a basis for reopening the claim.¹³ Although the May 24 and October 4, 2010 progress notes relate that appellant was injured at work and experienced intermittent back pain as a result, these reports are also not attributable to a physician as they are unsigned.¹⁴ They are not deemed as medical evidence¹⁵ and do not constitute a basis for reopening the case on the merits. Appellant's reconsideration request failed to show that OWCP erroneously applied or interpreted a point of law, nor did it advance any relevant legal argument not previously considered by OWCP. OWCP did not abuse its discretion in refusing to reopen his claim for a review on the merits.

CONCLUSION

The Board finds that OWCP properly denied appellant's request for a merit review pursuant to section 8128(a) of FECA, in its January 5, 2011 nonmerit decision.

¹² See *Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006); *Bobbie F. Cowart*, 55 ECAB 746 (2004); *K.C.*, Docket No. 09-1666 (issued August 25, 2010).

¹³ See *L.H.*, 59 ECAB 253 (2007); *D'Wayne Avila*, 57 ECAB 642 (2006); *S.J.*, Docket No. 08-2048 (issued July 9, 2009).

¹⁴ See *supra* note 10.

¹⁵ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 5, 2011 is affirmed.

Issued: December 6, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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