

FACTUAL HISTORY

On April 1, 2008 appellant, then a 49-year-old letter carrier, filed a Form CA-1 alleging that she was delivering a parcel during a windy day on March 25, 2008 when she was struck by a tree limb. She claimed neck, back, right arm and right buttock injuries. Appellant submitted a May 14, 2008 treatment note and April 2008 duty status reports and emergency department records, none of which contained a legible physician's signature.

By decision dated May 19, 2008, OWCP denied appellant's claim, finding the medical evidence insufficient to establish that the accepted March 25, 2008 employment incident caused or contributed to a neck, back, right arm and right buttock condition.

Appellant requested reconsideration on August 24, 2008 and furnished additional evidence. Cervical and thoracic x-rays performed on April 24, 2008 by Dr. Eung Man Cha, a Board-certified radiologist, exhibited degenerative joint disease and muscle spasms.

In a May 14, 2008 report, Dr. Rajaie A. Obaid, a Board-certified neurologist, related that appellant was hit by a tree branch on March 25, 2008 while on duty. Appellant thereafter sustained headaches and various right ear, eye, upper extremity, knee and leg symptoms. Dr. Obaid pointed out that appellant underwent right shoulder surgery in 2006. On examination, he observed neck and right shoulder tenderness as well as right upper extremity give-away weakness. Dr. Obaid also noted that an x-ray showed evidence of cervical muscle spasms. He assessed possible fibromyalgia, cervical radiculopathy and musculoskeletal injury. In an August 13, 2008 follow-up report, Dr. Obaid detailed that appellant continued to experience neck, lower back and right lower extremity pain, right shoulder tenderness and right arm paresthesia.

On December 11, 2008 OWCP denied modification of the May 19, 2008 decision.

Appellant requested reconsideration on December 29, 2008 and submitted additional evidence. Dr. Cha's April 10, 2008 cervical and lumbar x-ray reports indicated degenerative joint disease and disc space narrowing at C4-C6 and L5-S1. In a September 12, 2008 note, Dr. Gary W. Misamore, a Board-certified orthopedic surgeon, diagnosed frozen right shoulder, cervical spondylosis and arthritis. An October 20, 2008 magnetic resonance imaging (MRI) scan report from Dr. John R. Bies, a Board-certified diagnostic radiologist, showed multilevel cervical spondylosis and radiculopathy. Dr. Bies' November 20, 2008 MRI scan report exhibited supraspinatus and infraspinatus tendinitis and full thickness tearing.

In a November 3, 2008 report, Dr. Stephen M. Ritter, a Board-certified orthopedic surgeon, specified that the right side of appellant's body was struck by a tree limb in March 2008. Appellant was previously attacked by dogs on her mail route in late 2005, which led to shoulder decompression surgery in January 2006. On examination, Dr. Ritter observed limited range of motion (ROM) of the neck and shoulder and breakaway weakness of the right deltoid. Prior radiological testing confirmed multilevel cervical disc space narrowing and desiccation. Dr. Ritter diagnosed cervical degenerative disc disease with neck and arm symptoms due to an employment injury.

A November 3, 2008 electromyogram (EMG) report from Dr. Philip D. Zaneteas, a Board-certified physiatrist, revealed bilateral median neuropathies consistent with carpal tunnel syndrome as well as left ulnar and suprascapular neuropathies. Following these results, Dr. Ritter diagnosed cervical foraminal stenosis, bilateral carpal tunnel syndrome, right-sided paraspinal radiculopathy and suprascapular neuropathy in a November 10, 2008 report.

On February 17, 2009 OWCP denied modification of the December 11, 2008 decision. Appellant requested reconsideration on March 12, 2009 and offered additional evidence. In a February 19, 2009 report, Dr. Ritter opined that appellant's C6-C7 disc herniation and associated dermatomal symptoms resulted when she was struck by a tree branch. He reiterated in a March 12, 2009 report that appellant was working when she was struck by a tree branch on March 25, 2008 and that her condition was directly attributable to this event.

On May 19, 2009 OWCP denied modification of the February 17, 2009 decision. Appellant requested reconsideration on June 9, 2009 and provided a June 5, 2009 report from Dr. Ritter.²

On August 31, 2009 OWCP denied modification of the May 19, 2009 decision.

Appellant requested reconsideration on August 26, 2010. She submitted Dr. Ritter's work status forms dated November 3 and 10 and December 15, 2008 and copies of the following documents: Dr. Cha's April 10, 2008 cervical and lumbar x-ray reports; Dr. Obaid's May 14 and August 13, 2008 reports; Dr. Bies' October 20 and November 20, 2008 MRI scan reports; Dr. Zaneteas' November 3, 2008 EMG report; and Dr. Ritter's reports from November 3 and 10, 2008, February 19, March 12 and June 5, 2009.

By decision dated November 29, 2010, OWCP denied appellant's reconsideration request on the grounds that she did not present pertinent new evidence warranting further merit review.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,³ OWCP's regulations provide that the evidence or argument submitted by a claimant must either: (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.⁴ Where the request for reconsideration fails to meet at least one of these standards, OWCP will deny the application for reconsideration without reopening the case for a review on the merits.⁵

² Dr. Ritter's June 5, 2009 report essentially restated the contents of his earlier March 12, 2009 report.

³ 5 U.S.C. § 8128(a).

⁴ *E.K.*, Docket No. 09-1827 (issued April 21, 2010). See 20 C.F.R. § 10.606(b)(2).

⁵ *L.D.*, 59 ECAB 648 (2008). See 20 C.F.R. § 10.608(b).

ANALYSIS

By decision dated May 19, 2008, OWCP accepted that appellant was struck by a tree limb in the performance of duty on March 25, 2008, but denied her traumatic injury claim on the basis that the medical evidence did not demonstrate that this employment incident caused a neck, back, right arm and right buttock condition. Following timely applications for reconsideration, OWCP denied modification on four separate occasions. On August 26, 2010 appellant requested reconsideration for a fifth time.

The Board finds that OWCP properly denied appellant's request for reconsideration without further merit review. First, most of the medical evidence submitted with her recent application was previously received and considered by OWCP. The submission of evidence that repeats or duplicates evidence already included in the case record does not constitute a basis for reopening a case.⁶ Second, Dr. Ritter's November 3 and 10 and December 15, 2008 work status forms and reports, which constituted new evidence not previously considered by OWCP, nevertheless failed to address whether the accepted March 25, 2008 work event caused or contributed to a neck, back, right arm and right buttock condition. The submission of evidence that does not address the relevant issue involved does not constitute a basis for reopening a case.⁷

Finally, appellant neither showed that OWCP erroneously applied or interpreted a specific point of law nor advanced a relevant legal argument not previously considered by OWCP.⁸ Because she failed to meet one of the standards enumerated under section 8128(a) of FECA, she was not entitled to further merit review of her claim.

Appellant's representative contends on appeal that the medical evidence was sufficient to reopen the case for a review on the merits. As noted, appellant did not offer pertinent new evidence not previously considered by OWCP. Therefore, OWCP properly denied her application for reconsideration.

CONCLUSION

The Board finds that OWCP properly denied appellant's request for reconsideration under 5 U.S.C. § 8128(a).

⁶ *Edward W. Malaniak*, 51 ECAB 279 (2000).

⁷ *D.K.*, 59 ECAB 141 (2007).

⁸ *See Charles A. Jackson*, 53 ECAB 671 at n.14 (2002); *Daniel O'Toole*, 1 ECAB 107 (1948) (request for reconsideration predicated on legal premise should contain at least an assertion of an adequate legal premise having some reasonable color of validity).

ORDER

IT IS HEREBY ORDERED THAT the November 29, 2010 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: November 21, 2011
Washington, DC

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

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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