

FACTUAL HISTORY

On September 13, 2009 appellant, then a 44-year-old mail handler, filed a Form CA-2a notice of recurrence alleging that he sustained an injury “working on dock doing flat tubs” in June 2008 and “bending doing sacks” on September 9, 2009.² He did not incur any time loss from work.

OWCP informed appellant in a December 10, 2009 letter that his recurrence claim was converted into a new occupational disease claim and additional evidence was needed. It gave him 30 days to submit a statement describing the employment factors that contributed to his condition and a physician’s medical report explaining how the identified factors caused or aggravated the injury.

In a December 3, 2009 note, Dr. Charles A. Finn, a Board-certified orthopedic surgeon, diagnosed displacement of a lumbar intervertebral disc without myelopathy. Appellant also provided physical therapy records from December 29 to 31, 2009.³

By decision dated January 15, 2010, OWCP denied appellant’s claim, finding the evidence insufficient to establish that he experienced the alleged occupational exposure.

Appellant requested reconsideration on March 17, 2010 and submitted additional medical evidence. In a September 18, 2009 report, Dr. Finn related that appellant aggravated a lower back condition due to repetitive bending, twisting and lifting. He noted that appellant previously sustained a work-related injury in 2003. On examination, Dr. Finn observed lumbar spine tenderness. X-rays showed degenerative L5-S1 disc narrowing and multilevel anterior osteophytes. Dr. Finn opined that appellant’s symptoms were “causally related to his work accident” and released him to modified full-time duty.⁴

A November 2, 2009 magnetic resonance imaging (MRI) scan report from Dr. Soheil Sooudi, a Board-certified diagnostic radiologist, exhibited mild degenerative disc disease of the L4-L5 and L5-S1 as well as an L4-L5 posterior central disc protrusion associated with an annular tear indenting the anterior thecal sac and mild central canal narrowing.

In a November 3, 2009 note, Dr. Finn diagnosed a herniated disc based on the November 2, 2009 MRI scan report. A January 20, 2010 follow-up note from Dr. Finn pointed out that appellant was able to perform his regular job duties with little to no difficulty. Appellant subsequently received a lumbar epidural steroid injection on April 13, 2010.⁵

² Appellant’s original claim involved a September 14, 2003 injury. OWCP File No. xxxxxx646. That claim for the September 14, 2003 injury is not before the Board on the present appeal.

³ Appellant later submitted physical therapy records for the period January 4 to 8, 2010.

⁴ Dr. Finn reiterated his opinion in an October 13, 2009 report.

⁵ Appellant also provided several state workers’ compensation medical forms signed by Dr. Finn for the period September 18, 2009 to April 20, 2010, all of which essentially duplicated the information found in the physician’s aforementioned records.

On April 30, 2010 OWCP modified the January 15, 2010 decision to reflect that appellant experienced the alleged occupational exposure. However, it denied the claim, finding that the medical evidence did not sufficiently demonstrate that the accepted work factors caused or aggravated his lower back condition.

Appellant requested reconsideration on May 19, 2010 and furnished copies of Dr. Finn's November 3, 2009 and January 20, 2010 notes and Dr. Sooudi's November 2, 2009 MRI scan report. By decision dated July 23, 2010, OWCP denied the request on the basis that he did not present new evidence or legal contentions warranting further merit review.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,⁶ 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.⁷ 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.⁸

ANALYSIS

On April 30, 2010 OWCP denied appellant's occupational disease claim on the basis that the medical evidence did not establish that his lower back condition was causally related to "doing flat tubs" and "bending doing sacks." Appellant timely requested reconsideration and offered copies Dr. Finn's November 3, 2009 and January 20, 2010 notes and Dr. Sooudi's November 2, 2009 MRI scan report, all of which were previously of record. The Board has held that the submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.⁹ 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.¹⁰ Because he failed to meet one of the standards enumerated under section 8128(a) of FECA, he was not entitled to further merit review of his claim.

Appellant contends on appeal that he sustained a recurrence of a medical condition related to his previous back injury in 2003 and that OWCP improperly converted his claim into one for a new occupational disease. The Board only has jurisdiction to consider whether OWCP

⁶ 5 U.S.C. § 8128(a).

⁷ *E.K.*, Docket No. 09-1827 (issued April 21, 2010). See 20 C.F.R. § 10.606(b)(2).

⁸ *L.D.*, 59 ECAB 648 (2008). See 20 C.F.R. § 10.608(b).

⁹ *Edward W. Malaniak*, 51 ECAB 279 (2000).

¹⁰ See *Charles A. Jackson*, 53 ECAB 671 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).

properly denied reconsideration without further merit review based on the evidence and argument that was before OWCP at the time it issued its July 23, 2010 decision. As discussed above, the medical evidence did not warrant reopening of the April 30, 2010 decision.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the July 23, 2010 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: October 17, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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

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