

On appeal appellant's attorney contends that OWCP improperly denied reopening appellant's claim for merit review as he submitted a statement of history of injury and employment factors and a report of causal relationship by Dr. Randy Marrinan, a physician Board-certified in physical medicine and rehabilitation, which constituted relevant and pertinent new evidence.

FACTUAL HISTORY

On September 24, 2009 appellant, then a 55-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that he sustained neck and back conditions due to factors of his federal employment, including loading and unloading heavy postcons up a ramp onto a truck. He submitted an undated treatment note with an illegible signature from an emergency room. Appellant also submitted two prescription notes dated September 21, 2009 by Dr. Rosendito S. Largoza, the emergency medicine physician, indicating back pain due to activity at work and diagnosing right spinal stenosis and left lumbar radiculopathy.

By letter dated October 5, 2009, OWCP requested additional factual and medical evidence from appellant and allotted 30 days for submission.

By decision dated December 23, 2009, OWCP denied appellant's claim on the basis that the evidence submitted was not sufficient to establish fact of injury or causal relationship.

On December 27, 2010 appellant, through his attorney, requested reconsideration and submitted additional evidence.

In a September 25, 2009 report by Dr. Paresh Rijasinghani, a Board-certified radiologist, diagnosed L4-5 broad-based disc bulge effacing the anterior thecal sac contributing to mild central canal and bilateral neural foraminal encroachment. In a November 9, 2009 report, he diagnosed C3-4 broad-based disc bulge mildly effacing the anterior thecal sac, C4-5 focal central disc herniation of the protrusion-type contributing to mild central canal stenosis, C5-6 right paracentral/foraminal disc herniation of the protrusion-type contributing to mild central canal and mild-to-moderate right neural foraminal stenosis and C6-7 disc bulge.

On February 12, 2010 Dr. Marrinan diagnosed cervical spondylosis without myelopathy, displacement of cervical intervertebral disc, degeneration of lumbar and thoracic or lumbosacral neuritis or radiculitis. He indicated that appellant had been experiencing cervical pain, left leg pain and left leg numbness since September 2009 while at work where his duties included lifting and pushing heavy objects.

By decision dated January 5, 2011, OWCP denied appellant's request for reconsideration of the merits finding that he did not submit new relevant and pertinent new evidence, did not show that OWCP erroneously applied or interpreted a point of law, nor advanced a point of law or a fact not previously considered by OWCP.

LEGAL PRECEDENT

Section 8128(a) of FECA does not entitle a claimant to a review of an OWCP decision as a matter of right; it vests OWCP with discretionary authority to determine whether it will review

an award for or against compensation.³ OWCP, through regulations, has imposed limitations on the exercise of its discretionary authority under section 8128(a).⁴

To require OWCP to reopen a case for merit review under section 8128(a) of FECA, OWCP's regulations provide that the evidence or argument submitted by 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.⁵ 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.⁶ 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.⁷

The Board has held that the submission of evidence or argument which repeats or duplicates evidence or argument already in the case record⁸ and the submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.⁹

ANALYSIS

The Board finds that appellant has not shown that OWCP erroneously applied or interpreted a specific point of law; he has not advanced a relevant legal argument not previously considered by OWCP; and he has not submitted relevant and pertinent new evidence not previously considered by OWCP.

In support of his December 27, 2010 reconsideration request, appellant submitted a February 12, 2010 report by Dr. Marrinan diagnosing cervical spondylosis without myelopathy, displacement of cervical intervertebral disc, degeneration of lumbar and thoracic or lumbosacral neuritis or radiculitis. While Dr. Marrinan indicated that appellant had been experiencing symptoms since September 2009 while at work and mentioned that his duties included lifting and pushing heavy objects, he did not address whether appellant's neck and back conditions were causally related to those employment factors. Thus, the Board finds that the report does not constitute relevant and pertinent new evidence. Therefore, it is not sufficient to require OWCP to reopen the claim for consideration of the merits.

³ 5 U.S.C. § 8101 *et seq.* Under section 8128 of FECA, the 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).

⁴ See *Annette Louise*, 54 ECAB 783, 789-90 (2003).

⁵ 20 C.F.R. § 10.606(b)(2). See *A.L.*, Docket No. 08-1730 (issued March 16, 2009).

⁶ 20 C.F.R. § 10.607(a).

⁷ *Id.* at § 10.608(b).

⁸ See *A.L.*, *supra* note 5. See also *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

⁹ *Id.* See also *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

Similarly, Dr. Rijsinghani provided firm diagnoses on x-ray examination. However, due to the diagnostic nature of these reports, he did not address causal relationship. As such, the Board finds that submission of Dr. Rijsinghani's reports did not require reopening appellant's case for merit review.

On appeal appellant's attorney contends that OWCP improperly denied reopening appellant's claim for merit review as he submitted a statement of history of injury and employment factors and a report of causal relationship by Dr. Marrinan which constituted relevant and pertinent new evidence. For the reasons stated above, the Board finds the attorney's arguments are not substantiated.

CONCLUSION

The Board finds that appellant failed to submit relevant and pertinent new evidence, a relevant legal argument not previously considered by OWCP, or evidence or argument which shows that OWCP erroneously applied or interpreted a specific point of law. Therefore, OWCP properly refused to reopen appellant's claim for further consideration of the merits of his claim under 5 U.S.C. § 8128.

ORDER

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

Issued: January 20, 2012
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