

**United States Department of Labor
Employees' Compensation Appeals Board**

_____)
W.W., Appellant)

and)

DEPARTMENT OF HOMELAND SECURITY,)
TRANSPORTATION SECURITY)
ADMINISTRATION, Charleston, SC, Employer)

_____)

Docket No. 12-514
Issued: July 17, 2012

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 10, 2012 appellant filed a timely appeal from the November 7, 2011 nonmerit decision of the Office of Workers' Compensation Programs (OWCP) denying her request for further review of her claim. As more than 180 days elapsed from the last merit decision of June 28, 2011 and the filing of this appeal, pursuant to Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board does not have jurisdiction over the merits of this case.

ISSUE

The issue is whether OWCP properly denied appellant's request for reconsideration of the merits pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On November 12, 2010 appellant, then a 45-year-old transportation security screener filed an occupational disease claim alleging that she sustained a groin/hip injury "enthesopathy

¹ 5 U.S.C. § 8101 *et seq.*

of the hip groin, nerve” at work. She indicated that her condition was caused or aggravated by her employment on July 6, 2009.² The employing establishment noted that appellant was receiving retirement benefits.

In a November 22, 2010 statement, appellant indicated that she was transferred to the evening shift in July 2009 because of an injury. As a result, she had a longer walk due to the unavailability of parking. Appellant indicated that she had pain in her groin and hip as a result and that she was no longer working and receiving retirement benefits. She also included a November 24, 2009 report from a physician’s assistant, who indicated that appellant’s condition was aggravated by walking.

Appellant submitted several reports from her treating physician, Dr. Bright McConnell, III, a Board-certified orthopedic surgeon. In a September 3, 2009 report, Dr. McConnell advised that she had an onset of pain from a work injury and slip and fall on July 12, 2007. He indicated that aggravating factors included walking and house work.

In an October 29, 2009 treatment note, Dr. J. Edward Nolan, a Board-certified anesthesiologist, diagnosed pelvic hip pain, disuse atrophy of the muscles, lumbar radiculopathy and muscle spasms. He advised that appellant was treated for right groin, hip and lower extremity pain and was advised that there is “nothing structurally in the hip which is causing this pain. In a January 25, 2010 report, Dr. Nolan advised Dr. McConnell that appellant was initially treated on October 26, 2009 for chronic hip, groin and leg pain associated with a July 2007 work injury. He noted that appellant’s claim was denied and requested Dr. McConnell’s assistance with regards to explaining why she may still have issues with walking. In a January 26, 2010 disability certificate, Dr. Nolan placed appellant off work on January 16 and 22, 2010 due to increased hip pain. He indicated that she was unable to walk for prolonged distances. In his April 12, 2010 report, Dr. Nolan advised that appellant would be seen every one to two months for treatment of chronic pain associated with a work injury in July 2007.

By decision dated January 18, 2011, OWCP denied appellant’s claim on the factual component of the third basic element, fact of injury. It found that the evidence did not support that the injury or events occurred. Furthermore, appellant did not submit any medical evidence containing a medical diagnosis in connection with the injury or events.

On February 2, 2011 appellant requested a telephonic hearing, which was held on April 26, 2011. She explained that her July 6, 2009 injury was made worse when she was placed on the evening shift noting because it required more walking than the morning shift.

By decision dated June 28, 2011, OWCP’s hearing representative affirmed the January 18, 2011 decision, finding that appellant had not submitted sufficient medical evidence to establish that additional walking beginning July 2009 caused or aggravated an injury.

² The record reflects that appellant has several claims including a traumatic injury claim for a July 12, 2007 injury under File No. xxxxxx635 and a May 22, 2005 injury under File No. xxxxxx482. She was separated for cause on June 2010. These other claims are not presently before the Board.

On August 30, 2011 appellant requested reconsideration and submitted additional evidence. She alleged that she sustained a traumatic injury on July 12, 2007 and was unable to walk without pain since the incident. Appellant alleged that the injury caused her to sustain an occupational disease. She explained that she saw her physician in July 2009, after she experienced an extremely painful night. Appellant suggested that her condition was due to the walking at work. She indicated that she had to get a note from her physician to avoid being suspended. Appellant advised that her physician prescribed a “100 yard walking limitation” which was “secondary to pain.” She indicated that her traumatic injury claim should be reviewed and noted that she had worsened after all the walking she had to do when she was transferred to the p.m. shift.

In a July 1, 2011 report, Dr. Nolan advised that appellant sustained a work-related right groin injury on July 12, 2007. He noted that aggravating factors included too much activity or over exertion. Dr. Nolan related that appellant indicated that she was not working, as she was fired due to increased pain from her work injury. He diagnosed radiculopathy to include moderate lumbar radiculitis pain with range of motion in the right L1 and L5 nerve distribution to the groin. Dr. Nolan also diagnosed a piriformis/sciatic nerve moderate pain in the right piriformis muscle over the sciatic nerve to palpation with lower extremity moderate pain in the right anterior hip to palpation and range of motion.

By decision dated November 7, 2011, OWCP denied appellant’s request for reconsideration without reviewing the merits of the case.

LEGAL PRECEDENT

Under section 8128(a) of FECA,³ OWCP may reopen a case for review on the merits in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations, which provide that a claimant may obtain review of the merits if the written application for reconsideration, including all supporting documents, sets forth arguments and contains evidence that: “(1) shows that OWCP erroneously applied or interpreted a specific point of law; or (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.”⁴

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by OWCP without review of the merits of the claim.⁵

³ 5 U.S.C. § 8128(a).

⁴ 20 C.F.R. § 10.606(b).

⁵ *Id.*

ANALYSIS

Appellant disagreed with the denial of her claim for an occupational disease and requested reconsideration on August 30, 2011. The underlying issue on reconsideration was whether she submitted sufficient medical evidence to establish that she sustained a work-related occupational disease beginning July 2009. However, appellant did not provide any relevant or pertinent new evidence to the issue of whether she sustained an occupational disease in the performance of duty.

In her August 30, 2011 request for reconsideration, appellant essentially reiterated her previous arguments. As noted above, this involved allegations that she sustained a groin injury due to increased walking when she was transferred to another shift. The submission of evidence which repeats or duplicates evidence that is already in the case record does not constitute a basis for reopening a case for merit review.⁶

Appellant also submitted a July 1, 2011 report from Dr. Nolan, who advised that she sustained a right groin injury on July 12, 2007. Dr. Nolan noted that aggravating factors included too much activity or over exertion and that she was no longer working, as she had been fired due to increased pain from her work injury. However, this report, while new, is not relevant or pertinent as he did not address whether appellant's job duties beginning in July 2009 caused or aggravated a diagnosed medical condition. The Board also finds that this evidence was similar to Dr. Nolan's January 25, 2010 report that was previously of record and considered by OWCP.⁷

Consequently, the evidence submitted by appellant on reconsideration does not satisfy the third criterion, noted above, for reopening a claim for merit review. Furthermore, she also has not shown that OWCP erroneously applied or interpreted a specific point of law or advanced a relevant new argument not previously submitted. Therefore, OWCP properly denied appellant's request for reconsideration.

On appeal, appellant contends that the claims examiner indicated that her condition was an occupational disease. However, the Board notes that the issue in the present appeal is whether appellant submitted the requisite evidence to obtain a merit review. As found above, the evidence submitted on reconsideration was insufficient.

CONCLUSION

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits pursuant to 5 U.S.C. § 8128(a).

⁶ *Khambandith Vorapanya*, 50 ECAB 490 (1999); *John Polito*, 50 ECAB 347 (1999); *David J. McDonald*, 50 ECAB 185 (1998).

⁷ *See id.*

ORDER

IT IS HEREBY ORDERED THAT the November 7, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 17, 2012
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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