

heavy parcel when she sustained a lumbar back condition. The employing establishment controverted the claim and noted that nothing was reported for eight months and no medical treatment was sought. It further noted that appellant was on a temporary detail as an OIC in Horse Creek, Wyoming on the date of the injury.

OWCP received several statements to include an undated statement from Ray Lacy, a supervisor of maintenance operations, who explained that, while appellant was on detail at Horse Creek, he was never informed that appellant had an on-the-job injury. Mr. Lacy explained that appellant did not use sick days or leave due to an on-the-job injury. In an October 14, 2006 statement, Janet Ruby, the postmaster, indicated that appellant called her at home on February 1, 2006 and requested that she work for her on that date. She noted that appellant indicated that she had hurt herself, the day before, lifting a box at work and that her husband was going to take her to the emergency room. In a November 8, 2006 statement, appellant's husband, a manager with the employing establishment, noted that appellant was injured at work on January 31, 2006, while on detail in Horse Creek, Wyoming, when she handled a box of "mineral dirt." He noted that appellant took pain medication that evening but he took her to an emergency room the next day when the pain did not subside. Appellant's husband advised that appellant was off work for the remainder of the week.

In a November 24, 2006 decision, OWCP denied appellant's claim. It found that the evidence supported that the claimed events occurred. However, there was no medical evidence that provided a diagnosis which could be connected to the events.

On December 18, 2006 appellant requested a hearing, which was held on May 22, 2007.

In a September 6, 2007 decision, OWCP's hearing representative affirmed the November 24, 2006 decision.

On September 4, 2008 appellant requested reconsideration. She described her injury and explained that she had no other back problems subsequent to a back sprain in 1998, which only lasted a few days and ceased to cause problems until she sustained her current back injury. Appellant reiterated that she was injured at work on January 31, 2006. She indicated that she was in constant pain, undergoing various types of treatments and spending hundreds of dollars on co-pays and medications.

In a July 30, 2008 report, Dr. Edward Dohring, a Board-certified orthopedic surgeon and a fitness-for-duty physician, noted appellant's history of injury and treatment. He examined her and opined that there was no evidence that the lumbar spine condition was causally related to the January 31, 2006 incident. Dr. Dohring noted that appellant had a preexisting history of back pain and referred to the February 1, 2006 emergency room records which included that pain was noted when she bent over to wash her hair.

In a January 8, 2009 decision, OWCP denied the claim. It found that the medical evidence was insufficient to establish a causal relationship between her back condition and the January 31, 2006 incident.

On January 6, 2010 appellant requested reconsideration. In her request, she stated the details surrounding her claimed injury on January 31, 2006, and her course of action following

the claimed injury. Appellant also indicated that she disagreed with the opinion of Dr. Dohring, who only saw her one time and only examined her for the back. She indicated that she continued to suffer from her back conditions.

In a January 29, 2010 decision, OWCP denied modification of the prior decisions. It found that the medical evidence was insufficient to establish a causal relationship between the claimant's back condition and the January 31, 2006 work injury.

On January 27, 2011 appellant requested reconsideration. She repeated her previous assertions regarding the claim. This included that appellant did not have a history of back problems and that she did not advise the emergency room physician that she had previous back problems. She also repeated the details of the January 31, 2006 incident, which included that when she arrived at home on the date of the incident, she took some Ibuprofen and sat with a heating pad on her back. Furthermore, when appellant's husband came home from work, appellant informed him that she hurt her back at work. She indicated that she was having repeated back problems since the incident occurred. Appellant also indicated that the employer sent her for a second opinion examination with Dr. Dohring, who indicated that there was nothing wrong with her back. However, she disagreed with his opinion and alleged that he did not make a proper examination of her condition. Appellant indicated that she was forced to retire and continued to suffer from severe muscle spasms and could "not live a normal life."

OWCP received a copy of the November 8, 2006 statement from appellant's husband and Ms. Ruby's October 14, 2006 statement.

In a May 2, 2011 decision, OWCP denied appellant's request for reconsideration without a review of the merits on the grounds that her request was insufficient to warrant review of its prior decision.

LEGAL PRECEDENT

Under section 8128(a) of FECA, 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:

“(i) Shows that OWCP erroneously applied or interpreted a specific point of law;
or

“(ii) Advances a relevant legal argument not previously considered by OWCP; or

“(iii) Constitutes relevant and pertinent new evidence not previously considered by OWCP.”²

² 20 C.F.R. § 10.606(b).

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.³

ANALYSIS

Appellant disagreed with OWCP's January 29, 2010 decision, which denied modification of the prior decisions finding that appellant, did not meet her burden of proof to establish that her back condition was causally related to her January 31, 2006 incident. The underlying issue on reconsideration is medical in nature. However, appellant did not provide any relevant or pertinent new medical evidence to the issue of whether her back condition was causally related to her January 31, 2006 incident.

On reconsideration, appellant made several arguments with regard to how her claim occurred. She denied having a prior back condition and disagreed with Dr. Dohring's assessment of her back condition. However, the Board notes that this evidence and these arguments were previously considered by OWCP. The underlying issue in this case, whether appellant's back condition is causally related to her January 31, 2006 incident, as the issue is medical in nature and the submission of evidence that does not address the particular issue involved does not constitute a basis for reopening a case.⁴ These assertions do not show that OWCP erroneously applied or interpreted a specific point of law or advance a relevant legal argument not previously considered by OWCP. Appellant also submitted copies of documents from Ms. Ruby and her husband which were previously received by OWCP. The Board has held that submission of duplicative or repetitious evidence is insufficient to require OWCP to reopen a case for merit review.⁵ Thus, this evidence is not relevant and pertinent new evidence. Appellant did not submit any new medical evidence supporting that the January 31, 2006 work incident caused an injury.

Consequently, the evidence submitted by appellant on reconsideration does not satisfy any of the three regulatory criteria for reopening a claim for merit review. Therefore, OWCP properly denied her request for reconsideration.

CONCLUSION

The Board finds that OWCP properly refused to reopen appellant's case for further review of the merits of her claim under 5 U.S.C. § 8128(a).

³ 20 C.F.R. § 10.608(b).

⁴ *Alan G. Williams*, 52 ECAB 180 (2000); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000); *Robert P. Mitchell*, 52 ECAB 116 (2000).

⁵ *Edward W. Malaniak*, 51 ECAB 279 (2000); *Eugene F. Butler*, 36 ECAB 393 (1984); *Jerome Ginsburg*, 32 ECAB 31 (1980).

ORDER

IT IS HEREBY ORDERED THAT the May 2, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 1, 2012
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