

that she did not meet any of the requirements of 20 C.F.R. § 10.606(b)(2).² Appellant did not show that OWCP erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by OWCP or constitute relevant and pertinent evidence not previously considered. The facts and history as set forth in the prior decision are incorporated by reference.³

Appellant was treated by Dr. Raymond G. Shea, a Board-certified orthopedist, from June 4 to 26, 2009, for back and left buttock pain which started at work on October 20, 2005. Dr. Shea diagnosed degenerative disc disease of the lumbar spine. In notes dated June 22, 2009, he advised that appellant presented with pain and discomfort in the buttock area. Straight leg testing was negative and reflexes were intact. In July 23, 2009 reports, Dr. Shea noted seeing appellant for a work-related injury. He indicated that she had been off work since 2005. Dr. Shea stated that appellant stood on a mat at work for 10 years and, as a result, had pain in her back, legs and feet. He opined that she was totally disabled due to her workers' compensation injury. In a February 26, 2010 report, Dr. Shea diagnosed trochanteric bursitis of the left hip and recommended a cortisone injection. On May 17, 2010 he noted that appellant worked at the employing establishment for 10 years and in 2005 was diagnosed with plantar fasciitis, which caused her to limp and have low back pain. Dr. Shea stated that her current treatment was based on her workers' compensation injury. Appellant submitted a June 14, 2009 report from Dr. William H. Haney, a Board-certified internist, who treated her for edema. In an August 17, 2009 report, Dr. Haney treated her for left hip pain. Appellant submitted a June 23, 2008 venous evaluation, which revealed no abnormalities.

On September 16, 2011 appellant requested reconsideration. She requested that she be placed back on the periodic rolls because her injuries had not subsided and she was seeking pain management care. Appellant also requested that her prescriptions be paid. She submitted reports from Dr. Shea dated June 4, 2009 to May 17, 2010, previously of record. In reports dated June 28, 2010 to June 22, 2011, Dr. Shea noted treating appellant for persistent pain and discomfort in her back. He noted that she was diagnosed with degenerative disc disease of the lumbosacral spine. Also submitted were physical therapy reports dated March 7 to 24, 2010 and March 7 to 31, 2011. An October 29, 2010 x-ray of the right foot revealed no abnormalities.

Appellant was treated in an emergency room on June 18, 2008 for right leg abscess and cellulitis with fasciitis and was diagnosed with morbid obesity and plantar fasciitis. Other visits from December 28, 2010 to February 14, 2011 documented treatment for chest congestion, left foot pain, lumbar pain and radiculopathy. A December 28, 2010 chest x-ray revealed no abnormalities. Appellant was treated at Norton Immediate Care centers from October 28, 2010 to July 12, 2011, for left foot pain and was diagnosed with plantar fasciitis, left foot sprain and fracture of the metatarsal. Similarly, on July 12, 2011 she presented with complaints of a work-related pinched nerve in her low back and was diagnosed with lumbar herniated disc at L4-5. On February 14, 2011 an x-ray of the lumbar spine revealed mild loss of disc height at L5-S1. An

² Docket No. 10-1905 (issued June 16, 2011).

³ On December 7, 2005 appellant, a mail processor, claimed a foot and leg condition. OWCP accepted the claim for aggravation of bilateral plantar fasciitis, bilateral edema in the lower extremities, right leg sciatica and right leg bacterium. It terminated appellant's benefits on September 25, 2009.

April 23, 2011 magnetic resonance imaging (MRI) scan of the lumbar spine revealed degenerative disc and facet changes at multiple levels, mild-to-moderate canal stenosis and mild left neural foraminal narrowing at L4-5. Appellant sought treatment from Dr. Stephen K. Young, a Board-certified orthopedist, on July 28, 2011 for chronic insidious onset of lumbar back pain present since 2005. Dr. Young noted limitation on range of motion for the cervical and lumbar spine and normal motor and sensory examination. He diagnosed lumbar degenerative disc disease, lumbar spondylosis and lumbar spinal stenosis. On August 17, 2011 appellant was treated by Dr. Martin Fritzhand, a Board-certified physiatrist, for pain in her ankles and feet and low back pain. She reported working at the employing establishment since 1996 keying, loading mail with prolonged standing. Dr. Fritzhand noted that appellant reached maximum medical improvement and sustained permanent impairment. A September 15, 2011 report from Dr. Haney diagnosed lumbar degenerative disc disease, lumbar spondylosis and lumbar spinal stenosis.

In a decision October 17, 2011, OWCP denied appellant's reconsideration request finding that the request was insufficient to warrant review of the prior decision.

LEGAL PRECEDENT

Under section 8128(a) of FECA,⁴ OWCP has the discretion to reopen a case for review on the merits. It must exercise this discretion 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 of his or her written application for reconsideration, including all supporting documents, sets forth arguments and contain 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.”⁵

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.⁶

ANALYSIS

OWCP terminated appellant's compensation and medical benefits on September 25, 2009 for the conditions of aggravation of bilateral plantar fasciitis, bilateral edema in the lower extremities, right leg sciatica and right leg bacterium based on the opinion of a referee physician.

⁴ 5 U.S.C. § 8128(a).

⁵ 20 C.F.R. § 10.606(b)(2).

⁶ *Id.* at § 10.608(b).

The referee physician opined that her work-related conditions ceased and she had no work restrictions related to her accepted conditions. OWCP denied appellant's September 16, 2011 reconsideration request, without a merit review and she appealed this decision to the Board. The issue presented on appeal is whether she met any of the requirements of 20 C.F.R. § 10.606(b)(2), requiring OWCP to reopen the case for review of the merits of the claim.

In her September 16, 2011 application for reconsideration, appellant did not show that OWCP erroneously applied or interpreted a specific point of law. She did not identify a specific point of law or show that it was erroneously applied or interpreted. Appellant did not advance a new and relevant legal argument. She asserted that she still had residuals of her work-related conditions of plantar fasciitis, edema and sciatica and was still being treated by physicians for these conditions and was seeking pain management treatment. The underlying issue in this case was whether appellant had residuals of her accepted conditions. That is a medical issue which must be addressed by relevant medical evidence.⁷ A claimant may be entitled to a merit review by submitting new and relevant evidence, but appellant did not submit any new and relevant medical evidence in this case. Consequently, appellant is not entitled to a review of the merits of his claim based on the first and second above-noted requirements under section 10.606(b)(2).

Appellant submitted reports from Dr. Shea dated June 4, 2009 to May 17, 2010, previously of record. The Board notes that evidence that repeats or duplicates evidence from Dr. Shea already in the case record has no evidentiary value and does not constitute a basis for reopening a case.⁸ Appellant submitted new reports from Dr. Shea dated June 28, 2010 to June 22, 2011. Dr. Shea noted treating her for persistent pain and discomfort in her back. He diagnosed degenerative disc disease of the lumbosacral spine. Although these reports are new, they are not relevant because they are similar to his notes dated June 4, 2009 to May 17, 2010 previously of record and previously considered by OWCP and found to be insufficient. Therefore, these reports are insufficient to require OWCP to reopen the claim for a merit review.

Appellant was treated in the emergency room on June 18, 2008 and diagnosed with morbid obesity and plantar fasciitis. In visits dated December 28, 2010 to July 14, 2011, she was treated for chest congestion, left foot pain, lumbar pain and radiculopathy. Other reports from Norton Immediate Care centers from October 28 to December 15, 2010, noted treatment for plantar fasciitis, left foot sprain and fracture of the metatarsal. Similarly, on February 12, 2011 appellant was treated for a work-related pinched nerve in her low back and was diagnosed with lumbar herniated disc at L4-5. Although these reports are new, they are not relevant because they do not contain a physician's opinion addressing whether she continued to have residuals of her accepted work-related conditions. Therefore, this new evidence is not relevant and is insufficient to warrant reopening the case for a merit review.

On July 28, 2011 appellant was treated by Dr. Young for chronic insidious onset of lumbar back pain present since 2005. Dr. Young diagnosed lumbar degenerative disc disease, lumbar spondylosis and lumbar spinal stenosis. Similarly, on August 17, 2011 appellant was

⁷ See *Bobbie F. Cowart*, 55 ECAB 746 (2004).

⁸ See *Daniel Deparini*, 44 ECAB 657 (1993); *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984).

treated by Dr. Fritzhand for pain in her ankles and feet and low back pain. She reported working at the employing establishment since 1996 keying, loading mail with prolonged standing. Likewise, a September 15, 2011 report from Dr. Haney diagnosed lumbar degenerative disc disease, lumbar spondylosis and lumbar spinal stenosis. Although these reports are new, they are not relevant because they do not address the particular issue involved, whether appellant had residuals of her work-related injuries. Drs. Young, Fritzhand and Haney noted appellant's symptoms; however, failed to clearly state whether she had continuing residuals or disability, after September 25, 2009, causally related to her accepted work-related injuries. Therefore, this new evidence is not relevant and is insufficient to warrant reopening the case for a merit review.

The remainder of the medical evidence, including diagnostic test reports, fail to provide a physician's opinion on the causal relationship between appellant's job and his diagnosed cervical condition. For this reason, this evidence did not constitute a basis for reopening the case for a merit review.

Also submitted were physical therapy reports dated March 7 to 24, 2010, previously of record and new physical therapy reports dated March 7 to 31, 2011. The Board has held that treatment notes signed by a physical therapist are not considered medical evidence as these providers are not a physician under FECA.⁹

The Board accordingly finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(2). Appellant did not show that OWCP erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by OWCP or submit relevant and pertinent evidence not previously considered. Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

On appeal, appellant asserts that she continued to have residuals of her work injury and submitted sufficient medical evidence in support of her claim. The Board notes, however, that it only has jurisdiction over whether OWCP properly denied a merit review of the claim. As explained, appellant did not submit any evidence or argument in support of her reconsideration request that warrants reopening of her claim for a merit review under 20 C.F.R. § 10.606(b)(2).

CONCLUSION

The Board finds that OWCP properly denied appellant's request for reconsideration.

⁹ See *David P. Sawchuk*, 57 ECAB 316 (2006) (lay individuals such as physician's assistants, nurses and physical therapists are not competent to render a medical opinion under FECA); 5 U.S.C. § 8101(2) (this subsection defines a "physician" as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law).

ORDER

IT IS HEREBY ORDERED THAT the October 17, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 13, 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