

FACTUAL HISTORY

On March 22, 2010 appellant, then a 52-year-old transportation security officer, filed an occupational disease claim alleging that she sustained degenerative disc disease. She became aware of her condition and realized its relationship to her employment on December 7, 2009. Appellant did not incur any lost time from work.²

OWCP informed appellant in an April 7, 2010 letter that additional evidence was needed to establish her case. It gave her 30 days to submit a factual statement detailing the employment factors that caused or aggravated her degenerative disc disease and a medical report from a physician explaining how this condition resulted from these factors.

In statements dated March 21 and April 20, 2010, appellant specified that she worked as a transportation security officer since 2002. Her regular job duties, such as operating x-ray machines and handheld security wands, patting down passengers, screening baggage, and carrying trays and bins to checkpoints, entailed repetitive bending, stooping, squatting, lifting, pushing and pulling. Appellant indicated that she previously sustained three separate back injuries in January 2003, July 2007 and January 2009.

A March 26, 2009 magnetic resonance imaging (MRI) scan obtained by Dr. Darren M. Cutter, a Board-certified diagnostic radiologist, revealed minor lumbar degenerative disc disease and L4-L5 and L5-S1 facet arthropathy.

In a December 18, 2009 report, Dr. Allen P. McDonald III, a Board-certified orthopedic surgeon, related that appellant experienced bilateral hip pain and previously sustained back injuries in 2003 and 2007. On examination, he observed hip discomfort during range of motion (ROM) testing. X-rays showed mild to moderate degenerative changes, particularly in the right hip. Dr. McDonald diagnosed bilateral hip pain. He later diagnosed degenerative disease of the right hip in January 15 and March 12, 2010 follow-up reports.³

A December 28, 2009 MRI scan obtained by Dr. Gerald Domescik, a Board-certified diagnostic radiologist, exhibited osteoarthritic changes involving the articular surface of the femoral head and acetabulum, anterosuperior acetabular labral tearing and degenerative changes of the symphysis pubis.

In a March 17, 2010 report, Dr. David M. Sack, an employing establishment physician Board-certified in occupational medicine, reviewed the medical file and noted that none of the medical reports attributed appellant's hip condition to her federal employment. He opined, "Degenerative changes are quite common, increase with age, and may or may not be symptomatic. As a result, assigning cause to a specific event or activity is very problematic."

² The case record indicates that appellant filed at least one prior claim regarding a January 13, 2009 back injury. OWCP File No. xxxxxx301. This other claim is not presently before the Board.

³ Dr. McDonald's January 15 and March 12, 2010 reports essentially reiterated the contents found in his earliest report.

The employing establishment controverted the claim in an April 14, 2010 letter, asserting that appellant primarily performed sedentary activities.

By decision dated May 6, 2010, OWCP denied appellant's claim, finding the medical evidence insufficient to demonstrate that the accepted employment factors caused or aggravated a hip condition.

Appellant's counsel requested reconsideration on May 3, 2011. He submitted an undated statement from appellant reiterating that her right hip injury was causally related to her job duties.

By decision dated May 9, 2011, OWCP denied appellant's request for reconsideration on the grounds that she 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,⁴ OWCP 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.⁵ 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.⁶

ANALYSIS

On May 3, 2011 appellant's counsel filed a reconsideration request. He submitted an undated statement from appellant maintaining that her federal employment caused her right hip condition. This evidence, while new and not previously considered, was not relevant to the underlying medical issue. The Board has held that the submission of evidence that does not address the relevant issue involved does not constitute a basis for reopening a case.⁷ Furthermore, 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.⁸ Because she failed to meet one of the standards enumerated under section 8128(a) of FECA, she was not entitled to a further merit review of her claim.

⁴ 5 U.S.C. § 8128(a).

⁵ *E.K.*, Docket No. 09-1827 (issued April 21, 2010). See 20 C.F.R. § 10.606(b)(2).

⁶ *L.D.*, 59 ECAB 648 (2008). See 20 C.F.R. § 10.608(b).

⁷ *D.K.*, 59 ECAB 141 (2007).

⁸ 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).

Appellant's counsel argues on appeal that the decision was contrary to fact and law. As noted, appellant did not provide evidence or argument satisfying any of the three regulatory criteria for reopening a claim. Therefore, OWCP properly denied the reconsideration request.

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 May 9, 2011 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: March 9, 2012
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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