

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

C.A., Appellant)

and)

DEPARTMENT OF THE INTERIOR,)
NATIONAL PARK SERVICE, Denali, AK,)
Employer)

Docket No. 12-964
Issued: November 5, 2012

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

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA HOWARD FITZGERALD, Judge
ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On March 17, 2012 appellant filed a timely appeal from a September 21, 2011 nonmerit decision of the Office of Workers' Compensation Programs (OWCP) denying her request for reconsideration.¹ Because more than 180 days elapsed from the last merit decision of August 30, 2010 to the filing of this appeal, the Board lacks jurisdiction to review the merits of appellant's claim pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3.

ISSUE

The issue is whether OWCP properly refused to reopen appellant's case for further review of the merits pursuant to 5 U.S.C. § 8128(a).

¹ Appellant requested an oral argument. The Clerk of the Board mailed a letter to appellant to confirm a continuing desire for an oral argument in Washington, DC. No written confirmation was received within the time allotted. The Board has decided the appeal on the record.

² 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On August 27, 2008 appellant, then a 34-year-old park ranger, injured her back after lifting up a plastic tub weighing approximately 25 pounds. OWCP accepted the claim for lumbar radiculopathy and paid compensation.³ Appellant stopped work on August 31, 2008 and returned to light-duty work on May 3, 2009. She was released to return to full-duty work three weeks from December 4, 2009.

On March 11, 2010 Dr. Susan T. Bertrand, a treating Board-certified physiatrist, diagnosed lumbosacral neuritis, lumbar disc injury, lumbar facet arthropathy, low back pain radiating into right lower extremity, depression and anxiety due to chronic pain and inability to continue with her former active lifestyle and probable right piriformis syndrome. Appellant related being miserable since returning to work full time due to back pain. A physical examination revealed right gluteus tenderness, tenderness along the great trochanter and rotation of hips caused discomfort. Dr. Bertrand found that appellant was disabled from her physically demanding career.

In an April 16, 2010 report, Dr. Bertrand reviewed a medical and employment injury history and physical findings. Her assessment was low back pain, persistent tenderness over the right sacroiliac (SI) joint, distal pain throughout the gluteus maximus and hamstrings and reduction of radicular symptoms following lumbar epidural steroid injection. Dr. Bertrand opined these findings were suggestive of a strain, sprain and injury to the right SI joint ligament and was consistent with a L5-S1 localized soft tissue injury.

On June 25, 2010 appellant filed claims for wage-loss compensation (Form CA-7) for the period February 14 to June 19, 2010 for a total of 720 hours.

In a letter dated July 8, 2010, OWCP informed appellant that the evidence of record was insufficient to support her claim for 720 hours of wage-loss compensation for the period February 14 to June 19, 2010 as the record contained no medical evidence of disability. It advised her as to the additional medical evidence required to support her claim.

Appellant submitted medical reports from Dr. Bertrand noting the history of injury and medical treatment received. In a February 18, 2010 report, Dr. Bertrand stated that appellant's chief complaint was pain in the leg, foot, hamstrings and right buttocks. Appellant related being miserable since returning to work full time as a result of her back pain. A physical examination revealed right gluteus tenderness, tenderness along the great trochanter and rotation of hips caused discomfort. Diagnoses included lumbosacral neuritis, lumbar disc injury, lumbar facet arthropathy, low back pain radiating into right lower extremity, depression and anxiety due to chronic pain and inability to continue with her former active lifestyle and probable right

³ OWCP has accepted three other claims for employment injuries sustained by appellant, which are currently closed. Under claim File No. xxxxxx705, it accepted that she sustained a thoracic strain on October 22, 2002. OWCP accepted that she sustained a right shoulder strain due to a traumatic injury sustained on September 28, 2006, which was assigned claim File No. xxxxxx782. Under claim File No. xxxxxx762, it accepted a left shoulder strain as the result of a March 3, 2008 traumatic injury. OWCP accepted a thoracic strain as the result of an October 22, 2002 traumatic injury under claim File No. xxxxxx705.

piriformis syndrome. Dr. Bertrand stated that due to appellant's current flare up, she was unable to work. She opined that appellant would be unable to return to full-duty work consistently.

On June 29, 2010 Dr. Bertrand recommended physical therapy five days a week. Diagnoses included low back pain, asymmetrical pelvis, lumbar degenerative disc disease and facet arthropathy as revealed by a magnetic resonance imaging (MRI) scan.

By decision dated August 30, 2010, OWCP denied appellant's claim for 720 hours of wage-loss compensation from February 14 to June 19, 2010.

On September 10 and October 22, 2010 Dr. Bertrand reiterated findings and history found in her prior reports. Under assessment for September 10, 2010, she reported worsening lumbosacral neuritis, soft tissue tumors and improved pelvic obliquity. On October 22, 2010 Dr. Bertrand diagnosed low back pain radiating into the right lower extremity, lumbosacral neuritis and mild right hip abductor weakness.

In an April 19, 2011 report, Dr. Bertrand reiterated the medical and employment injury history found in her prior reports. She provided physical findings and noted appellant had not worked since February 2010. Dr. Bertrand related that appellant's date-of-injury job required moderate stress and extreme physical exertion. Diagnoses included low back pain, SI joint pain, facet arthropathy, lumbosacral neuritis and mild-to-moderate lumbar degenerative disc disease.

On June 13, 2011 OWCP received a September 20, 2010 report from Dr. Bertrand which included physical findings, medical history and employment injury history. Under assessment, Dr. Bertrand noted diagnoses of lumbosacral neuritis, low back pain radiating into the right hip and mild hip abductor weakness due to pain inhibition.

In a July 14, 2011 statement, Karen Fortier, appellant's supervisor, provided a work history for appellant and the impact the August 27, 2008 employment injury had on her return to work and subsequent inability to perform the duties of her job.

On August 24, 2011 appellant requested reconsideration and submitted a report from Dr. Bertrand and her statement in support of her request. In an October 20, 2010 report, Dr. Bertrand opined that appellant never recovered from the August 27, 2008 employment injury. She noted that she had stated that appellant would have flare-ups of disability in her December 4, 2009 chart notes. Dr. Bertrand opined that appellant's symptoms returned due to an exacerbation caused by appellant's return to full duty on January 15, 2010.

By decision dated September 21, 2011, OWCP denied reconsideration. It found the statements by appellant and Ms. Fortier irrelevant to the underlying issue, which was medical in nature. OWCP found the medical evidence she submitted was insufficient to warrant a merit review as it did not address the period for which disability was claimed.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,⁴ OWCP's regulations provide that 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

ANALYSIS

By decision dated August 30, 2010, OWCP denied appellant's claim for compensation for total disability for the period February 14 to June 19, 2010 on the grounds that the evidence did not establish that her total disability was due to her accepted employment injury. On September 21, 2011 it denied her August 24, 2011 reconsideration request, without a merit review and she appealed this decision to the Board. The issue presented on appeal is whether appellant 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.

Appellant has not shown that OWCP erroneously applied or interpreted a point of law. Moreover, she did not advance a relevant legal argument not previously considered by OWCP.

The underlying issue is primarily medical in nature, whether appellant was disabled for the period February 18 to June 29, 2010 as a result of her accepted employment injury. However, the Board finds that appellant did not provide any relevant or pertinent new evidence to the issue of whether she was disabled during these time frames due to her accepted employment-related conditions.

In this regard, the statements from appellant and Ms. Fortier are irrelevant to the underlying medical issue of causal relationship and are insufficient to reopen appellant's case for a merit review.⁸

⁴ 5 U.S.C. §§ 8101-8193. Section 8128(a) of FECA provides that the Secretary of Labor may review an award for or against payment of compensation at anytime on his own motion or on application.

⁵ 20 C.F.R. § 10.606(b)(2). See *J.M.*, Docket No. 09-218 (issued July 24, 2009); *Susan A. Filkins*, 57 ECAB 630 (2006).

⁶ *Id.* at § 10.607(a). See *S.J.*, Docket No. 08-2048 (issued July 9, 2009); *Robert G. Burns*, 57 ECAB 657 (2006).

⁷ *Id.* at § 10.608(b). See *Y.S.*, Docket No. 08-440 (issued March 16, 2009); *Tina M. Parrelli-Ball*, 57 ECAB 598 (2006).

⁸ See *Ronald A. Eldridge*, 53 ECAB 218 (2001).

Additionally, in her September 10 and 29, October 22 and 30, 2010 and April 19, 2011 reports, Dr. Bertrand reiterated findings found in her prior reports and noted that appellant had not worked since February 18, 2010. None of these reports are relevant as they did not address whether appellant's employment caused any disability for the period February 14 to June 19, 2010 as a result of her accepted August 27, 2008 work injury. In an October 20, 2010 report, Dr. Bertrand, stated that appellant never recovered from her August 27, 2008 employment injury and that she had flare-ups of disability following her return to full-duty work on January 15, 2010. However, she offered no opinion as to why appellant's claimed period of disability was due to her accepted August 27, 2008 employment injury or why she had not worked since February 18, 2010. The submission of evidence that does not address the particular issue involved does not constitute a basis for reopening a case.⁹ In addition, Dr. Bertrand's reports were duplicative of reports previously submitted and reviewed by OWCP. The Board has held that evidence which is duplicative or repetitive of evidence existing in the record is not sufficient to warrant further merit review.¹⁰ Thus, these reports are not pertinent new and relevant and are thus insufficient to require OWCP to reopen appellant's case for further review of the merits.

The Board accordingly finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(2).

CONCLUSION

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

⁹ *R.M.*, 59 ECAB 690 (2008); *Betty A. Butler*, 56 ECAB 545 (2005).

¹⁰ *L.T.*, Docket No. 09-1798 (issued August 5, 2010); *L.H.*, 59 ECAB 253 (2007); *Jennifer A. Guillary*, 57 ECAB 485 (2005).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 21, 2011 is affirmed.

Issued: November 5, 2012
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board