

FACTUAL HISTORY

On July 20, 2012 appellant, then a 48-year-old pharmacy specialist, filed an occupational disease claim (Form CA-2) alleging neck and back injuries as a result of repetitive activity in her federal employment. She identified bending, stooping, kneeling, sitting, carrying and twisting as activity that contributed to her condition.

The medical evidence submitted by appellant in support of her claim included reports from Dr. Tejpal Pannu, a neurosurgeon. In a report dated June 6, 2011, Dr. Pannu indicated that appellant was seen for chronic neck and back pain. He diagnosed cervical and lumbosacral spondylosis. On January 19, 2012 appellant underwent an anterior cervical discectomy and fusion at C3-5. She underwent lumbar surgery on May 25, 2012.

In a form report (CA-20) dated May 31, 2012, Dr. Pannu checked a box “yes” that lumbar and cervical spondylosis were employment related, stating that appellant’s job required bending, twisting and heavy lifting. By report dated August 21, 2012, he reported that she had been treated since 2011 for neck and back pain and that she stated her pain was exacerbated on the job. Dr. Pannu stated that appellant’s job involved frequent lifting and bending.

By decision dated October 17, 2012, OWCP denied the claim for compensation. It found that the medical evidence was insufficient to establish the claim.

On November 28, 2012 appellant requested reconsideration of her claim. She submitted an undated report from Dr. Pannu diagnosing lumbar and cervical spondylosis without myelopathy. With respect to each diagnosis, Dr. Pannu opined that appellant’s work exposure aggravated the condition. He described her job as: “Frequent bending, stooping, kneeling, sitting, carrying, twisting and lifting/carrying 5 to 100 pounds several times a day. Also transporting heavy case items (20 to 60 pounds) to replenish stock.” Dr. Pannu stated, with respect to both diagnoses, that appellant “will have permanent aggravation of her symptoms and her active residuals from the work injury preclude her from performing the duties of her job.” He noted that objective findings of decreased range of motion in the lumbar and cervical spine and difficulties with axial loading.

Additional medical evidence submitted on reconsideration included reports of psychiatric treatment and an August 24, 2012 report from Dr. Pannu. In the August 24, 2012 report, Dr. Pannu reported that appellant stated that her work exacerbated her condition.

By decision dated March 8, 2013, OWCP determined that appellant’s application for reconsideration was insufficient to warrant merit review of the claim. It noted receipt of an August 24, 2012 report from Dr. Pannu, but did not refer to the undated report. According to OWCP, the medical evidence submitted was cumulative or irrelevant to the claim for compensation.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,² OWCP's regulations provide that a claimant may obtain review of the merits of the claim by submitting a written application for reconsideration that sets forth arguments and contains evidence that either: "(i) shows that OWCP erroneously applied or interpreted a specific point of law; (ii) advances a relevant legal argument not previously considered by OWCP; or (iii) constitutes relevant and pertinent evidence not previously considered by OWCP."³ 20 C.F.R. § 10.608(b) states that any application for review that does not meet at least one of the requirements listed in 20 C.F.R. § 10.606(b)(2) will be denied by OWCP without review of the merits of the claim.⁴

ANALYSIS

With her application for reconsideration, appellant submitted a new, undated report from Dr. Pannu, her treating neurosurgeon. OWCP did not discuss the report in its March 8, 2013 decision. In his reports submitted prior to the October 17, 2012 merit decision, Dr. Pannu had only checked a box "yes" as to causal relationship with employment, or noted that appellant had stated that her condition was exacerbated by work, without further detail. In his new report, he provides an affirmative opinion on causal relationship between the diagnosed cervical and lumbar spondylosis and federal employment. Dr. Pannu provided a more detailed discussion of the actual work duties, discussed the nature of causal relationship with employment (permanent aggravation) and disability for work.

The Board finds that the undated report from Dr. Pannu submitted on reconsideration is "relevant and pertinent evidence not previously considered by OWCP" under 20 C.F.R. § 10.606(b)(2)(iii). To require OWCP to review the merits of the claim does not require submission of evidence sufficient to establish the claim, but evidence that meets one of the requirements of 20 C.F.R. § 10.606(b)(2). The Board finds the evidence submitted was sufficient to require OWCP to review the merits of the claim. The case will be remanded to OWCP for a proper decision on the merits of the claim for compensation.

CONCLUSION

The Board finds that appellant was entitled to a merit review of her claim.

² 5 U.S.C. § 8128(a) (providing that "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application").

³ 20 C.F.R. § 10.606(b)(2).

⁴ *Id.* at § 10.608(b); *see also Norman W. Hanson*, 45 ECAB 430 (1994).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 8, 2013 is set aside and the case remanded for further action consistent with this decision of the Board.

Issued: December 13, 2013
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