



## **FACTUAL HISTORY**

On August 11, 2011 appellant, then a 43-year-old painter, filed a traumatic injury claim alleging a back injury on July 29, 2011 in the performance of duty. On the claim form, he indicated that he was in the bathroom and as he pushed his trousers to the floor he felt severe back pain. By letter dated August 17, 2011, OWCP requested additional factual and medical evidence. Appellant submitted an August 3, 2011 statement describing the July 29, 2011 incident. In an August 17, 2011 report, Dr. Jason Potocki, a Board-certified orthopedic surgeon, noted that appellant reported back pain at work while getting ready to use the bathroom. He provided results on examination and noted that thoracic and lumbar spine x-rays were essentially normal.

By decision dated September 21, 2011, OWCP denied the claim for compensation. It found an incident occurred as alleged, but the medical evidence was insufficient to establish causal relation.

Appellant requested reconsideration. He submitted a September 27, 2011 report from Dr. Potocki who reported that appellant had a thoracic magnetic resonance imaging (MRI) scan but he was unable to review the images.

By decision dated January 9, 2012, OWCP reviewed the case on its merits and denied modification. It found the medical evidence was insufficient to establish the claim.

In a letter dated September 18, 2012, appellant requested reconsideration. The evidence submitted with the request included the August 3, 2011 factual statement as to the July 29, 2011 incident. In a February 7, 2011 statement, appellant described a January 25, 2011 incident in which he was operating a forklift and was struck by a motor vehicle. In a report dated September 23, 2011, Dr. Shane Kudela, a radiologist, reported that a thoracic MRI scan showed mild posterior disc protrusions at T4-5 and T7-8. Appellant also submitted a November 28, 2011 report from Dr. Mark Wolgin, a Board-certified orthopedic surgeon, who stated that appellant had undergone an anterior cervical discectomy and fusion approximately eight months earlier. Dr. Wolgin noted that appellant continued to complain of left leg weakness, neck and shoulder pain. In a report dated September 5, 2012, he provided a history that appellant was involved in a forklift injury at work on January 25, 2011. Dr. Wolgin noted that appellant underwent C5-6 surgery on March 21, 2011. He provided results on examination and reviewed x-rays. In a form report dated September 5, 2012, Dr. Wolgin noted a forklift injury on January 25, 2011 and indicated that the diagnosed condition of thoracic disc herniation was causally related to the incident.

By decision dated September 28, 2012, OWCP determined the application for reconsideration was insufficient to further warrant merit review of the claim.

## LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,<sup>2</sup> 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."<sup>3</sup> 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.<sup>4</sup>

## ANALYSIS

Appellant, through his attorney, requested reconsideration by letter dated September 18, 2012. He did not show that OWCP erroneously applied or interpreted a specific point of law or advance a relevant legal argument not previously considered by OWCP.

The claim for compensation was denied on the grounds that the medical evidence was insufficient to establish that appellant sustained a back injury on July 29, 2011 as alleged. OWCP accepted that an incident occurred in a bathroom on July 29, 2011 when he felt back pain. Appellant did not submit new and relevant medical evidence as to establish whether he sustained injury causally related to the July 29, 2011 incident. The medical evidence submitted on reconsideration is not relevant to the claim for compensation in this case. The MRI scan report does not discuss the July 29, 2011 bathroom incident. Appellant submitted evidence from Dr. Wolgin that referred to a January 25, 2011 forklift incident and a diagnosis of thoracic disc herniations. Dr. Wolgin did not address the July 29, 2011 bathroom incident or otherwise provide any new and relevant evidence as to this claim. A claim for injury on January 25, 2011 is not before the Board on this appeal.

The Board finds appellant has not met any of the requirements of 20 C.F.R. § 10.606(b)(2) for reopening the case for merit review. 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 by OWCP. The Board accordingly finds that OWCP properly declined to reopen the case for merit review of the claim for compensation.

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<sup>2</sup> 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.")

<sup>3</sup> 20 C.F.R. § 10.606(b)(2).

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

**CONCLUSION**

The Board finds that OWCP properly determined that the application for reconsideration was insufficient to warrant merit review of the claim for compensation.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated September 28, 2012 is affirmed.

Issued: March 12, 2013  
Washington, DC

Richard J. Daschbach, Chief Judge  
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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