

FACTUAL HISTORY

On September 24, 2010 appellant, then a 49-year-old nursing assistant, filed a traumatic injury claim (Form CA-1) alleging that on September 19, 2010 she slipped on a wet floor in a hallway, causing her legs to move into a split position and pulling her right groin.

On October 7, 2010 OWCP requested additional factual and medical evidence from appellant and to respond to its inquiries, on the grounds that she had not submitted any factual or medical evidence apart from her Form CA-1. It afforded appellant 30 days to submit additional evidence.

In a narrative statement dated October 24, 2010, appellant described the events alleged to have caused her injury. She stated that, when exiting a room in the medical center after washing its bed, she slipped on a puddle of water, causing her right leg to slide in front and the left one to slide back, in a split position. Appellant noted that she grabbed onto a railing so that her split did not reach the floor but that it came close. After the incident, she stated that her coworkers helped her to the emergency room, where she was given a shot for the pain and a crutch.

In a report of employee treatment dated September 19, 2010, Dr. Wanda Pons, an internist, checked a box indicating that appellant was being treated or examined for a work-related injury and recommended a work restriction of no weight bearing. An unsigned report from the same day from Pittsburgh, Pennsylvania Veterans Administration Medical Center, described very mild degenerative changes present within the inferomedial aspect of each hip and no evidence of a fracture or dislocation.

Appellant submitted records containing illegible signatures dated September 29, October 6, 19 and 29 and November 12, 2010. In a report dated October 6, 2010, the author diagnosed sciatica of the right gluteus and noted that appellant had reached maximum medical improvement. In a report dated October 19, 2010, the author notes under the heading "history" that appellant slipped and fell, injuring her right groin and hip. In a report dated October 29, 2010, the author recommended that appellant be off work until further notice.

By decision dated December 13, 2010, OWCP denied appellant's claim. On January 7, 2011 appellant requested an oral hearing by an OWCP hearing representative.

In a trauma report from the department of emergency medicine at University of Pittsburgh Medical Center dated November 21, 2010, Dr. Alain Corcos, a Board-certified surgeon, described an event that occurred on the same night in which appellant presented to the emergency department with acute onset of shortness of breath at home after a fall in which she hit the side of the stairs to her right side with her right chest wall. He noted that a chest x-ray revealed a large right-sided pneumothorax with a probable component of tension and extensive subcutaneous emphysema. In a radiology report dated November 21, 2010, Dr. Martin Gill Christian, M.D., stated that he found no traumatic abnormalities as a result of a computerized tomography scan with regard to appellant's pelvis and abdomen.

On December 21, 2010 Dr. Irina E. Vinarski, a Board-certified physician of internal medicine, stated that her impression from the magnetic resonance imaging (MRI) scan of

appellant's lumbar spine was degenerative change with multiple disc bulges, most prominent at L4-5, and that there was no evidence of significant spinal stenosis or disc herniation.

In a report dated January 27, 2011 bearing an illegible signature, the author opined that appellant was involved in a work-related fall with pain in the right hip that radiated to the low back as well as the right leg. The author stated that he or she had a "strong suspicion that appellant had a herniated disc of the left spine" and that this was causing radiculopathy of the right leg. The author further stated that "the cause of her fall at home could certainly have been linked to her low back issues," but that he or she could not say that it was the direct cause.

By letter dated March 11, 2011, Dr. Vinarski stated that appellant had been under her care since December 20, 2010. She noted that appellant had fallen at work on September 19, 2010, and stated "The fall on November 21, 2010 was due to a previous accident at work [of] September 19, 2010, which caused lower back pain and right leg and foot numbness.

In a form report dated March 16, 2011, Dr. Vinarski related that appellant's condition commenced on September 19, 2011. She also noted that appellant had fallen at work on September 19, 2011, and stated that appellant began treatment on December 21, 2011.

In a report dated March 27, 2011, Dr. D. A. Provenzano, a Board-certified anesthesiologist and physician of pain medicine, stated that appellant had a fall at work in September 2010 that resulted in a back injury, and that she had been dealing with progressively worsening back and leg symptoms since the fall. Furthermore, he noted that appellant had an episode of numbness and weakness in the right leg in November 2010 that resulted in a second fall at home. Dr. Provenzano diagnosed appellant with chronic obstructive pulmonary disease exacerbation, lumbar disc displacement most significant at L4-5 with right lower extremity radicular symptoms in an L5 and S1 dermatomal distribution and cervicalgia.

On a medical slip dated December 13, 2010, Dr. Vinarski stated that appellant had been under her care for a medical condition and should be off work from November 21, 2010 until further notice.

In a telephonic hearing held on April 20, 2011, appellant stated that her injury occurred on September 19, 2010, and described the mechanism alleged to cause her condition in substantially the same terms as in her narrative statement dated October 24, 2010. She further described the event occurring on November 21, 2010, stating that she got up to go to the bathroom in the middle of the night, her right leg and groin went numb, and her foot dropped, causing her to fall down about six steps, hitting her right side on a railing and puncturing a lung. Appellant stated that she missed an appointment to get an MRI scan due to this event. She stated that the fall at home on November 21, 2010 was related to the original fall at work on September 19, 2010 and that she had no history of low back problems prior to the September 19, 2010 fall. The hearing representative informed appellant that she would need a written statement from a doctor confirming that the November 21, 2010 injury was a consequential injury.

In reports dated May 11, 2011, Dr. Vinarski relayed appellant's history of treatment. She stated that appellant sustained a work injury hurting her groin area, and stated that appellant fell at home on November 21, 2010 when her foot became numb causing her to fall down the stairs,

which caused her to hit her right side on the railing and punctured a lung. In one letter, Dr. Vinarski stated, “It is unclear at this time, if the fall on September 19, 2010 is the direct cause of the fall on November 21, 2010.” In the other letter, she stated, “In my professional opinion, the fall on September 19, 2010 might be the direct cause of the fall on November 21, 2010.” In the fax cover sheet for the second letter, Dr. Vinarski wrote that there was a medical terminology error in the previous copy.

By decision dated June 17, 2011, the hearing representative denied appellant’s claim, finding that the medical evidence was not sufficient to support her claim for compensation because it did not establish that her medical conditions were causally related to a work-related event. The hearing representative noted that no physician had given a firm diagnosis or medical opinion relating any condition to the employment incident on September 19, 2010. Furthermore, the hearing representative noted that, while Dr. Vinarski initially stated that the November 21, 2010 fall was a consequence of the earlier fall, in her later report she stated that it was unclear.

By letter dated May 25, 2012, appellant, through her representative, requested reconsideration of OWCP’s June 17, 2011 decision. In support of her request, appellant submitted a duplicate of Dr. Vinarski’s March 11, 2011 report and a narrative statement dated October 20, 2010. The narrative statement dated October 20, 2010 was almost identical to appellant’s narrative statement dated October 24, 2010. The only difference was that the following sentences were missing from the letter dated October 20, 2010 but present in the letter dated October 24, 2010: “Now I have missed three more days of work due to my fall. I have contacted the Union. I spoke with Larry the PA today October 29th and he has set up an x-ray and a MRI for today.”

By decision dated April 24, 2013, OWCP declined appellant’s request for reconsideration on the grounds that she had not provided any new argument or evidence in support of her claim. It noted that she submitted only a duplicate of the March 11, 2011 report from Dr. Vinarski and a narrative statement dated October 20, 2010 that was almost identical to another statement dated October 24, 2010, containing no new arguments in support of her claim.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a), OWCP’s regulations provide that the evidence or argument submitted by 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.² Section 10.608(b) of OWCP’s regulations provide that when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), OWCP will deny the application for

² 20 C.F.R. § 10.606(b)(2); *D.K.*, 59 ECAB 141, 146 (2007).

reconsideration without reopening the case for a review on the merits.³ The Board has found that evidence that repeats or duplicates evidence already in the case record has no evidentiary value.⁴

ANALYSIS

On May 25, 2013 appellant requested reconsideration of OWCP's June 17, 2011 decision, which affirmed the decision denying her claim for compensation of December 13, 2010, on the grounds that she had not provided sufficient evidence to demonstrate a causal relationship between a work-related event and a diagnosed condition. Her request for reconsideration neither alleged nor demonstrated that OWCP erroneously applied or interpreted a specific point of law. Appellant did not advance a relevant legal argument not previously considered by OWCP. The narrative statement dated October 20, 2010 that was submitted along with her request for reconsideration was almost identical to a narrative statement dated October 24, 2010 that had already been received by OWCP on November 2, 2010 and April 18, 2011, and the difference between the two statements did not contain an argument that OWCP erroneously applied or interpreted a specific point of law or a legal argument not previously considered by OWCP. Thus, appellant is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(2).

Appellant also did not submit relevant and pertinent new evidence not previously considered by OWCP. Dr. Vinarski's report dated March 11, 2011 was previously of record, having been first received on April 18, 2011. Submitting additional evidence that repeats or duplicates information already in the record does not constitute a basis for reopening a claim.⁵ Therefore, this report is insufficient to require a merit review of appellant's claim.

The evidence submitted did not show that OWCP erroneously applied or interpreted a specific point of law; advance a relevant legal argument not previously considered; or constitute relevant and pertinent new evidence not previously considered by OWCP. As appellant did not meet any of the necessary regulatory requirements, the Board finds that she is not entitled to further merit review.⁶

CONCLUSION

The Board finds that OWCP properly denied appellant's request for further review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

³ *Id.* at § 10.608(b); *K.H.*, 59 ECAB 495, 499 (2008).

⁴ *See Daniel Deparini*, 44 ECAB 657, 659 (1993).

⁵ *Id.*; *James W. Scott*, 55 ECAB 606, 608 n.4 (2004).

⁶ *M.E.*, 58 ECAB 694, 698 (2007) (when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), OWCP will deny the application for reconsideration without reopening the case for a review on the merits).

ORDER

IT IS HEREBY ORDERED THAT the April 24, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 5, 2013
Washington, DC

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

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

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