

time of injury was unsafe. Counsel asserts that a May 2, 2012 medical report from Dr. Jay Y. Chun, an attending Board-certified neurosurgeon, and the statement from appellant are sufficient to establish that he sustained an employment-related neck injury.

FACTUAL HISTORY

On January 24, 2011 appellant, then a 31-year-old part-time flexible carrier, filed a traumatic injury claim alleging that on January 20, 2011 he sustained back, spine and neck injuries when he stepped out of his truck to deliver mail and fell on ice. In a January 20, 2011 statement, he related that there was a lot of ice and snow and he did not want to drive on the snow.

Appellant submitted medical records dated January 20 to March 30, 2011 which addressed his cervical and lumbar conditions, medical treatment and work capacity and causal relationship.

In a January 20, 2011 statement, Margaret Clyburn, a supervisor, controverted appellant's claim, contending that his decision to walk on a mound of snow was unsafe as his route involved curbside delivery.

In an April 5, 2011 decision, OWCP accepted that the January 20, 2011 incident occurred as alleged. It denied appellant's claim, however, finding that he did not submit sufficient medical evidence to establish that he sustained a neck injury causally related to the accepted employment incident.

On April 29, 2011 appellant requested a review of the written record by an OWCP hearing representative. He submitted medical records dated January 20 to March 29, 2011 that addressed his cervical conditions. In an undated letter, appellant described the January 20, 2011 incident, his symptoms and medical treatment.

In an August 17, 2011 decision, an OWCP hearing representative affirmed the April 5, 2011 decision. The hearing representative found that appellant failed to submit sufficient medical evidence to establish that he sustained a cervical injury causally related to the accepted January 20, 2011 employment incident.

By letter dated June 28, 2012, appellant, through his attorney, requested reconsideration. In a May 2, 2012 report, Dr. Chun opined within a degree of medical certainty that appellant's initial neck pain and weakness which had resolved with steroids were secondary to his January 20, 2011 fall. He also submitted medical records and diagnostic tests dated January 20, 21 and September 1, 2021 that addressed appellant's cervical, head, lumbar, pelvis and chest conditions.

In a September 28, 2012 decision, OWCP denied modification of its August 17, 2011 decision. It found that Dr. Chun failed to provide a rationalized opinion on the causal relationship between appellant's neck condition and the accepted employment incident.

By letter dated June 21, 2013, counsel requested reconsideration. He contended that neither he nor appellant received a copy of the September 28, 2012 decision until June 13, 2013.

It was only after a recent follow up with OWCP that he received a copy of the decision.² Counsel further contended that Dr. Chun's May 2, 2012 report was sufficient to establish appellant's claim.

In a July 20, 2013 narrative statement, appellant also contended that Dr. Chun's May 2, 2012 report was sufficient to establish his claim. He resubmitted a copy of Ms. Clyburn's January 20, 2011 statement.

By decision dated June 27, 2013, OWCP denied appellant's request for reconsideration without a merit review. It found that he did not submit any relevant evidence warranting further merit review of his claim.

On August 14, 2013 counsel requested reconsideration and resubmitted a copy of appellant's July 20, 2013 statement.

In an October 9, 2013 decision, OWCP denied further merit review of the case. It found that appellant did not show that it erroneously applied or interpreted a point of law or submit new and relevant evidence not previously considered.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a) of FECA³ 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 it; or (3) constitute relevant and pertinent new evidence not previously considered by OWCP.⁴ 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.⁵

ANALYSIS

On June 21 and August 14, 2013 appellant, through his attorney, disagreed with OWCP's decision, finding that he did not sustain a neck injury causally related to the accepted January 20, 2011 employment incident. He requested reconsideration.

The Board finds that appellant did not show that OWCP erroneously applied or interpreted a specific point of law. Appellant did not advance a relevant legal argument not previously considered. In a June 21, 2013 request for reconsideration and on appeal, counsel

² In a June 12, 2013 letter to OWCP, counsel inquired about the status of his June 28, 2012 request for reconsideration of the August 17, 2011 decision.

³ 5 U.S.C. §§ 8101-8193. Under section 8128 of FECA, the Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application. 5 U.S.C. § 8128(a).

⁴ 20 C.F.R. § 10.606(b)(3).

⁵ *Id.* at § 10.608(b).

contended that neither he nor appellant received a copy of the September 28, 2012 OWCP decision until June 13, 2013. Although he contended that there was a delay in receiving the decision, his argument is not supported by the record. The September 28, 2012 decision was sent to appellant's address of record together with a copy to counsel at his business address. Absent evidence to the contrary, the presumption arises that the decision was received in the ordinary course of business.⁶ Counsel did not submit sufficient evidence to rebut the presumption of receipt.⁷

Counsel further contended that Dr. Chun's May 2, 2012 report was sufficient to establish that appellant sustained a neck injury causally related to the January 20, 2011 employment incident. In a July 20, 2013 statement, appellant also contended that Dr. Chun's report was sufficient to establish that he sustained an employment-related neck injury on January 20, 2011. As noted, the Board does not have jurisdiction over the merits of the case. Dr. Chun's report was previously reviewed by OWCP and found deficient on the issue of causal relation.⁸ The Board finds, therefore, that appellant's argument does not establish a legal error by OWCP and has not submitted a new and relevant legal argument not previously considered by OWCP.

The Board further finds that appellant did not submit relevant or pertinent new evidence not previously considered. Appellant submitted a duplicate copy of Ms. Clyburn's January 20, 2011 statement. The submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case for further merit review.⁹

The Board finds that OWCP properly determined that appellant was not entitled to further review of the merits of his claim pursuant to the requirements under section 10.606(b)(3). OWCP properly denied his June 21 and August 14, 2013 requests for reconsideration.

CONCLUSION

The Board finds that OWCP properly denied appellant's requests for further merit review of his claim pursuant to 5 U.S.C. § 8128(a).

⁶ *Jeffrey M. Sagrecy*, 55 ECAB 724 (2004).

⁷ *See Nelson R. Hubbard*, 54 ECAB 156 (2002).

⁸ *Gloria J. McPherson*, 51 ECAB 441 (2000).

⁹ *See A.K.*, Docket No. 09-2032 (issued August 3, 2010); *M.E.*, 58 ECAB 694 (2007); *Betty A. Butler*, 56 ECAB 545 (2005).

ORDER

IT IS HEREBY ORDERED THAT the October 9 and June 27, 2013 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: April 23, 2014
Washington, DC

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

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

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