

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

J.H., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Jackson, MI, Employer**

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**Docket No. 14-1038
Issued: August 6, 2014**

Appearances:

*Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA HOWARD FITZGERALD, Acting Chief Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On March 25, 2014 appellant, through her attorney, filed a timely appeal from a March 4, 2014 nonmerit decision of the Office of Workers' Compensation Programs (OWCP) denying her request for reconsideration. The Board lacks jurisdiction to review the merits of the case pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3.

ISSUE

The issue is whether OWCP properly denied appellant's request for further merit review of her claim pursuant to 5 U.S.C. § 8128(a).

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This case has previously been before the Board. In decisions dated August 26, 2009,² September 22, 2011³ and December 2, 2013,⁴ the Board affirmed OWCP's decisions dated January 23, 2008, October 4, 2010 and June 4, 2013, finding that appellant did not sustain an injury in the performance of duty. The Board accorded special weight to the medical opinion of Dr. Emmanuel N. Obianwu, a Board-certified orthopedic surgeon and an impartial medical specialist, who found that appellant's back and neck conditions were not causally related to her accepted employment duties.⁵ The Board also found that the additional medical evidence submitted from attending physicians who were on one side of the conflict was insufficient to outweigh the special weight accorded to Dr. Obianwu's impartial medical opinion or to create a new conflict.⁶ The facts relevant to the current appeal are set forth below.

By letter dated December 13, 2013, appellant, through her attorney, requested reconsideration before OWCP and submitted medical evidence. In an undated report, Dr. Strzoda stated that she supported appellant's claim that her work duties caused her neck and back conditions. She also supported appellant's pursuit of a medical disability given her exposures during the time she worked as a rural mail carrier. A job description showed that appellant had to lift repeatedly up to 70 pounds on her job daily. The required daily tasks of loading and distributing mail required a minimum of one and one-half to two hours of continuous standing, twisting, turning, reaching above the shoulder and lifting and carrying mail up to eight hours a day. Dr. Strzoda advised that such repeated movements, day after day, year after year, lead to degenerative changes in a person's spine. She advised that appellant's employment was the underlying cause of degenerative disc disease in her lumbar and cervical spines. Dr. Strzoda stated that she had not found any other significant contributing factor for appellant's suffering at a young age other than the daily work she performed as a rural mail carrier.

² Docket No. 09-431 (issued August 26, 2009).

³ Docket No. 11-143 (issued September 22, 2011).

⁴ Docket No. 13-1702 (issued December 2, 2013).

⁵ In the August 26, 2009 decision, the Board found that OWCP properly referred appellant to Dr. Obianwu to resolve the conflict in the medical opinion evidence between Dr. Cheryl Strzoda, an attending Board-certified family practitioner, Dr. Allen G. Clague, an attending neurologist, and Dr. Bruce D. Abrams, a Board-certified orthopedic surgeon and OWCP referral physician, regarding whether appellant's cervical and lumbosacral spine conditions were causally related to the accepted employment factors.

⁶ In an April 26, 2012 medical report, Dr. Strzoda reviewed Dr. Obianwu's December 21, 2007 report. She stated, among other things, that his finding that appellant's cervical and lumbosacral spine conditions had no connection to her federal employment was fallacious. Dr. Strzoda related that Dr. Obianwu examined appellant at a time when she was no longer performing her job duties and, therefore, she had a paucity of physical findings. She stated that the chronic nature of the problem in appellant's spine was caused by her job after many years performing required movements. Dr. Strzoda noted that rural mail carriers perform multiple movements during their work shifts, including repetitive bending, twisting and lifting up to 70 pounds. These movements increased her risk of back injury due to improper body mechanics. Dr. Strzoda strongly recommended that appellant no longer perform her repetitive work.

Dr. Strzoda disagreed with Dr. Obianwu's finding that appellant's conditions were due to age and not to any post-traumatic pathology. Appellant suffered every day that she tried to perform activities similar to those she performed as a rural mail carrier, such as repeated bending, lifting, turning, *etc.* She developed radicular symptoms of pain and paresthesias into her arms and right lower extremity when she tried to perform such activities. Dr. Strzoda stated that this most certainly was caused from the years appellant performed her duties as a rural mail carrier with repetitive lifting of mail tubs and packages weighing 70 pounds, lifting, bending and sitting for prolonged periods of time on her daily route. She advised that all of this contributed to her current pathology and could not be refuted. Dr. Strzoda stated that Dr. Obianwu's argument refuting this did not account for the episodic nature of appellant's pain and paresthesias. Dr. Obianwu only saw and examined her once, and given that she was not working during the time of his evaluation, her symptoms had improved, and of course he did not find anything on his clinical examination on that day. Dr. Strzoda concluded that, if appellant had been performing her everyday duties as a rural mail carrier, certainly she would have been symptomatic during Dr. Obianwu's evaluation.

In a March 4, 2014 decision, OWCP denied merit review of appellant's claim on the grounds that the medical evidence submitted was cumulative and repetitious of Dr. Strzoda's prior reports.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128 of FECA,⁷ 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.⁸ 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.⁹ Section 10.608(b) of the implementing regulations state that any application for review that does not meet at least one of the requirements listed in 20 C.F.R. § 10.606(b)(3) will be denied by OWCP without review of the merits of the claim.¹⁰

ANALYSIS

Following the Board's December 2, 2013 decision affirming OWCP's finding that she did not sustain an injury in the performance of duty, appellant requested reconsideration before OWCP. She submitted an additional undated report from Dr. Strzoda, a Board-certified family practitioner and attending physician, who was on one side of the conflict in medical opinion that Dr. Obianwu resolved.

⁷ 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).

⁸ 20 C.F.R. § 10.606(b)(3).

⁹ *Id.* at § 10.607(a).

¹⁰ *Id.* at § 10.608(b); *see also Norman W. Hanson*, 45 ECAB 430 (1994).

Dr. Strzoda reiterated her opinion that appellant's work duties, which included repetitive lifting of tubs and packages weighing 70 pounds, loading and distributing mail which required continuous standing, twisting, turning and reaching above the shoulder for a minimum of one and one-half to two hours a day, lifting and carrying mail up to eight hours a day and sitting for prolonged periods on her daily route caused her neck and back conditions. She stated that Dr. Obianwu's argument refuting her opinion did not take into account the episodic nature of appellant's pain or paresthesias. Dr. Strzoda noted that Dr. Obianwu only saw and examined appellant once, she was not working at the time of his examination, her symptoms had improved and he did not find anything on clinical examination. Her most recent report is repetitive of her April 26, 2012 opinion that appellant's daily repetitive work duties which included bending, twisting and lifting up to 70 pounds caused her neck and back conditions. Dr. Strzoda again contended that Dr. Obianwu's opinion was fallacious as he examined appellant at a time when she was not working and, therefore, she had paucity of physical findings. The Board has held that evidence which is cumulative or duplicative of material already in the record is insufficient to warrant reopening a claim for merit review.¹¹ The Board finds, therefore, that Dr. Strzoda's report is insufficient to reopen appellant's claim for a merit review.

The Board accordingly finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(3). 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 new evidence not previously considered by OWCP. Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

CONCLUSION

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

¹¹ A.F., Docket No. 11-1297 (issued December 20, 2011).

ORDER

IT IS HEREBY ORDERED THAT the March 4, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 6, 2014
Washington, DC

Patricia Howard Fitzgerald, Acting Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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