

FACTUAL HISTORY

On August 30, 2012 appellant, then a 49-year-old customs and border protection officer, filed a traumatic injury claim (Form CA-1) alleging that on August 28, 2012 he sustained a lower back injury while lifting boxes for storage. He notified his supervisor and first sought medical treatment on the date of injury.

By letter dated October 3, 2012, OWCP informed appellant that the evidence of record was insufficient to establish his claim and requested additional factual and medical evidence.

Appellant submitted September 4 and 18, 2012 notes excusing him from work, a September 6, 2012 attending physician's report (Form CA-20) from Dr. Luis A. Perez, Board-certified in internal medicine and an October 16, 2012 Form CA-20 from Dr. Luis J. Goveo Ortiz, Board-certified in internal medicine.

By decision dated November 13, 2012, OWCP denied appellant's claim as he had failed to submit any medical evidence containing a medical diagnosis in connection with the accepted August 28, 2012 employment incident.

By letter dated January 11, 2013, appellant, through counsel, requested reconsideration of OWCP's decision and submitted additional evidence in support of his claim.

A November 15, 2011 and September 7, 2012 diagnostic report was provided from Dr. Luis Bonnet Alemar, a treating physician, who provided findings pertaining to a magnetic resonance imaging (MRI) scan of the left shoulder and lumbosacral spine.

In an October 25, 2012 report, Dr. Perez reported that he had been treating appellant for back pain from lifting boxes at work on August 28, 2012 which had since caused him major depression.

In a January 23, 2013 diagnostic report, Dr. Pablo Rodriguez Ryan, a treating physician, provided findings pertaining to an electromyograph (EMG) study. In his January 24, 2013 medical report, Dr. Ryan reported that appellant had a history of a low back injury from lifting heavy boxes at work on August 28, 2012. Upon physical examination and review of diagnostic testing, he diagnosed lumbar sprain, lumbar myositis, L5-S1 lumbosacral radiculopathy with active denervation of paraspinal musculature, L5-S1 disc protrusion aggravated by his injury, and disc bulging L3-L4 aggravated by this accident. Dr. Ryan opined that appellant's diagnosed conditions had a direct causal relationship to the August 28, 2012 employment incident.

The remaining evidence submitted included Dr. Ryan's treatment notes dated January 9, 1998 to September 28, 2011, Dr. Ryan's December 23, 2008 EMG study, a January 10, 2009 MRI scan of the lumbar spine, an April 19, 2010 MRI scan of the lumbosacral spine, hospital reports dated October 8 and 18, 2012, and medical reports dated October 6 and November 7, 2012 from Dr. Elias Jimenez Olivo, a treating psychiatrist.

By decision dated November 19, 2013, OWCP affirmed the November 13, 2012 decision, as modified, finding that the medical evidence of record failed to establish that appellant's diagnosed conditions were causally related to the accepted August 28, 2012 employment incident.

By letter dated February 28, 2014, appellant, through counsel, requested reconsideration of OWCP's decision and argued that the diagnosed conditions of bilateral L5-S1 radiculopathy, lumbosacral strain, L5-S1 disc protrusion, and L3-L4 disc bulge were caused by his employment duties.

In support of his claim, appellant resubmitted Dr. Ryan's December 23, 2008 and January 23, 2013 EMG scan study, Dr. Ryan's treatment notes dated February 25, 2010 to September 28, 2011, Dr. Alemar's November 15, 2011 MRI scan of the left shoulder, and Dr. Ryan's January 24, 2013 medical report.

By decision dated March 28, 2014, OWCP denied appellant's request for reconsideration finding that he neither raised substantive legal questions nor included new and relevant evidence.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under FECA section 8128(a), OWCP 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.³ Section 10.608(b) of OWCP 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 reconsideration without reopening the case for a review on the merits.⁴

ANALYSIS

The Board finds that the refusal of OWCP to reopen appellant's case for further consideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a), did not constitute an abuse of discretion.

The issue presented on appeal is whether appellant met any of the requirements of 20 C.F.R. § 10.606(b)(2), requiring OWCP to reopen the case for review of the merits of the claim. In his February 28, 2014 application for reconsideration, appellant did not show that OWCP erroneously applied or interpreted a specific point of law. He did not advance a new and relevant legal argument. Appellant's counsel argued that his injuries were employment related, but the underlying issue in this case was whether appellant's injury was causally related to the accepted August 28, 2012 employment incident. That is a medical issue which must be addressed by relevant medical evidence.⁵ Appellant, however, failed to submit new and relevant medical evidence in support of his claim.

Appellant resubmitted medical reports which were previously addressed and evaluated by OWCP in its November 19, 2013 merit decision. As the reports repeat evidence already in the case record, they are duplicative and do not constitute relevant and pertinent new evidence.

³ *D.K.*, 59 ECAB 141 (2007).

⁴ *K.H.*, 59 ECAB 495 (2008).

⁵ *See Bobbie F. Cowart*, 55 ECAB 746 (2004).

Material which is duplicative of that already contained in the case record does not constitute a basis for reopening a case. A claimant may obtain a merit review of an OWCP decision by submitting new and relevant evidence. In this case, appellant failed to submit any new and relevant evidence addressing causal relationship.⁶

The Board accordingly finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(2). 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 constitute relevant and pertinent evidence not previously considered. Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

CONCLUSION

The Board finds that OWCP properly refused to reopen appellant's case for further review of the merits pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the March 28, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 5, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

⁶ *M.H.*, Docket No. 13-2051 (issued February 21, 2014).