

FACTUAL HISTORY

On February 17, 2012 appellant, then a 40-year-old mail carrier, filed an occupational disease claim (Form CA-2) alleging that he sustained a rotated pelvis and pinched nerve as a result of carrying his bag on the right side of his body in the performance of duty. He first became aware of the condition's relationship to his federal employment on January 28, 2012.

By letter dated February 27, 2012, OWCP requested additional factual and medical evidence from appellant. It stated that he had not submitted factual or medical evidence in support of his claim and afforded him 30 days to submit additional evidence.

In a report dated March 16, 2012, Dr. John A. Bondra, Jr., a chiropractor, diagnosed appellant with lumbosacral sprain-strain and right sciatic neuralgia. He stated that appellant was temporarily disabled until April 2, 2012 and that his lower back pain had improved approximately 75 to 80 percent. On examination of x-rays, Dr. Bondra noted a significant lateral curve of the lumbar spine with concavity to the left, lateral flexion of L3 and L4 to the left and pelvic unleveling. He asserted that appellant carried a heavy bag in the performance of his duties as a mail carrier and that there was a direct causal relationship between the history of injury as described by appellant and his diagnoses.

In a statement dated March 27, 2012, appellant noted that he had been a mail carrier for three years. He stated that he walked six hours per day and five to six days per week and that he did not engage in sports or hobbies outside of his federal employment.

In notes dated February 13 and 27, 2012, Dr. Bondra stated that appellant was unable to work from February 13 through March 12, 2012. In notes dated April 16 and 30, 2012, he stated that appellant was unable to work from April 16 through May 21, 2012.

In a report dated April 14, 2012, Dr. Tod R. Podl, a Board-certified family physician, diagnosed appellant with sciatic pain. He noted that appellant's duty of carrying a mailbag for work led to irritation of a sacroiliac joint and the lower spine. Dr. Podl stated that appellant's back problem arose from the nature of his work. He recommended work restrictions of lifting no more than 10 pounds, no repetitive stooping or bending and no continuous standing for more than half-hour intervals every two hours.

In a statement dated February 17, 2012, appellant noted that he awoke on January 27, 2012 with pain in his lower back. He had experienced this pain for about a week before visiting a physician. On January 27, 2012 appellant visited a physician, who referred him to Dr. Bondra. In a statement of the same date, a supervisor noted that appellant had visited a physician before filing his claim.

By decision dated May 21, 2012, OWCP denied appellant's claim. It found that he had not submitted any medical evidence containing a diagnosis in connection with duties of his federal employment. OWCP stated that he had only provided evidence of sciatic pain from Dr. Podl, which was of little probative value in establishing his claim.

In a report dated July 16, 2012, Dr. Bondra noted that appellant was temporarily disabled until August 6, 2012 and that his lower back pain had improved approximately 90 percent.

In a statement dated September 26, 2012, appellant described the duties of his position as a mail carrier. He noted that there was no one particular incident that caused his condition, but that he had been taking an over-the-counter pain medication to deal with back pain. Appellant stated that he remained off work.

In a note dated November 12, 2012, Dr. Bondra stated that appellant was partially disabled and could begin working six hours per day from November 15 through 30, 2012. On December 4, 2012 he released appellant to work full time.

By letter dated December 3, 2012, appellant, through his representative, requested reconsideration of OWCP's May 21, 2012 decision. Appellant's representative again enclosed the April 14, 2012 report of Dr. Podl with the request, stating that it had not previously been considered.

By decision dated March 13, 2013, OWCP declined appellant's request for reconsideration. It noted that the only evidence received, the April 14, 2012 report of Dr. Podl, had been previously reviewed.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a), its 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.² Section 10.608(b) of its 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.³

The Board has found that evidence that repeats or duplicates evidence already in the case record has no evidentiary value.⁴ The Board also has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.⁵ While the reopening of a case may be predicated solely on a legal premise not previously considered, such reopening is not required where the legal contention does not have a reasonable color of validity.⁶

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

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

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

⁵ *P.C.*, 58 ECAB 405, 412 (2007); *Ronald A. Eldridge*, 53 ECAB 218, 222 (2001); *Alan G. Williams*, 52 ECAB 180, 187 (2000).

⁶ *Vincent Holmes*, 53 ECAB 468, 472 (2002); *Robert P. Mitchell*, 52 ECAB 116, 119 (2000).

ANALYSIS

OWCP issued a May 21, 2012 decision denying appellant's claim for compensation. On December 3, 2012 appellant requested reconsideration of this decision.

As noted above, the Board does not have jurisdiction over the merits of the May 21, 2012 decision. The issue presented on appeal is whether appellant met any of the requirements of 20 C.F.R. § 10.606(b)(3), requiring OWCP to reopen the case for review of the merits of the claim. In his December 3, 2012 request for reconsideration, appellant did not show that OWCP erroneously applied or interpreted a specific point of law, or advance a new and relevant legal argument not previously considered. Thus, he is not entitled to a review of the merits of his claim based on the first and second above-noted requirements under section 10.606(b)(2).

The relevant issue in this case is whether a medical condition has been diagnosed by a physician in connection with duties of appellant's federal employment.⁷ A claimant may be entitled to a merit review by submitting new and relevant evidence, but appellant did not submit any new and relevant evidence in this case. Appellant submitted the April 14, 2012 report from Dr. Podl, which had already been reviewed. Submitting additional evidence that repeats or duplicates information already in the record does not constitute a basis for reopening a claim.⁸ Dr. Podl's April 14, 2012 report was previously of record and was specifically considered in OWCP's May 21, 2012 decision. Therefore, this report, while relevant, was insufficient to require a merit review of appellant's claim.

Appellant also submitted a report from Dr. Bondra dated July 16, 2012. While this evidence was not previously of record, it is irrelevant to the grounds upon which OWCP denied appellant's claim. Section 8101(2) of FECA⁹ provides that the term "physician" includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist and subject to regulations by the Secretary.¹⁰ Dr. Bondra did not diagnose a spinal subluxation. Without a diagnosis of a spinal subluxation from x-ray, a chiropractor is not a physician under FECA and his opinion does not constitute competent medical evidence.¹¹ Therefore, his report is of no probative value on the issue of whether appellant has been diagnosed with a medical condition in connection with duties of appellant's federal employment. As the evidence submitted does not address the issue on which OWCP's decision was based, it is not relevant.¹² Dr. Bondra's notes dated November 12 and December 4, 2012, along with appellant's statement dated September 26, 2012, similarly do not address the issue on which

⁷ See *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

⁸ See *James W. Scott*, 55 ECAB 606, 608 n.4 (2004); *supra* note 4 at 659.

⁹ 5 U.S.C. § 8101(2).

¹⁰ See 20 C.F.R. § 10.311.

¹¹ See *Jay K. Tomokiyo*, 51 ECAB 361, 367-68 (2000).

¹² See *K.W.*, Docket No. 12-1590 (issued December 18, 2012).

OWCP's decision was based. A claimant may be entitled to merit review by submitting new and relevant evidence, but appellant did not submit any relevant factual evidence in this case.

On appeal, appellant's representative argues that a report from a Dr. Brown dated January 10, 2012 suffices to establish appellant's claim. As this report is not part of the case record, the Board cannot determine the validity of this argument.

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 submit 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 denied appellant's request for further review of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the March 13, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 6, 2014
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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