

FACTUAL HISTORY

On May 21, 2012 appellant, then a 42-year-old fire fighter, filed a traumatic injury claim alleging that on May 15, 2012 he felt a nerve pinch and pop in his left shoulder when he used a pry bar to repair a heavy equipment trailer. He did not stop work.

In a May 21, 2012 report, Dr. Dilaawar J. Mistry, a Board-certified internist, related that on May 15, 2012 appellant experienced pain in his left upper back radiating to his left arm and finger tips that resulted from lifting and twisting at work. He opined that a preliminary read of plain radiographs revealed degenerative joint disease at C6-7.

After reviewing a May 24, 2012 x-ray of the thoracic spine, Dr. Craig Lastine, a Board-certified family practitioner and diagnostic radiologist, diagnosed mild degenerative disc disease at multiple levels in the thoracic spine.

Dr. Sally Gaglione, a radiologist, reviewed a May 24, 2012 magnetic resonance imaging (MRI) scan of the cervical spine. She reported that there appeared to be significant degenerative disc disease at C6-7, which caused compromise of the neural foramina bilaterally, worse on the left than on the right. Dr. Gaglione also noted mild degenerative disc disease at C5-6.

In July 9 and 30, 2012 reports, Dr. Mistry noted appellant's complaints of left upper back pain that radiated to his left arm and fingers that was related to a May 15, 2012 incident at work. He related that appellant felt better and had reduced numbness in the middle finger. Dr. Mistry reviewed appellant's history and reported that a May 24, 2012 MRI scan demonstrated significant degenerative disc disease at C6-7 and mild degenerative disc disease at C5-6.

In a decision dated July 23, 2012, OWCP denied appellant's traumatic injury claim. It accepted that the May 15, 2012 incident occurred as alleged but denied the claim finding that the medical evidence did not establish a back condition causally related to the accepted incident.

In an undated appeal request form received by OWCP on September 17, 2012, appellant requested reconsideration.

In an August 24, 2012 x-ray report of the thoracic spine, Dr. Lastine diagnosed degenerative disc disease at C6-7.

In a September 7, 2012 completed questionnaire form, appellant stated that the immediate effect of the injury was that he felt a pop in his shoulder and pain in his upper back. He indicated that he immediately contacted his boss after the incident occurred. Appellant noted that he did not have any similar disability or symptoms before the injury.

In a September 14, 2012 report, Dr. Joel M. Dean, a Board-certified neurologist, related appellant's complaints of numbness in the left index finger since May 2012. He reviewed appellant's history and noted that on or about May 12, 2012 appellant was working on a ramp when he used a large metal bar to lift and straighten something out and felt a pop in his left shoulder and pain down his back. He opined that appellant had a cervical root injury that was improving and probable cervical disc herniation.

In an October 9, 2012 report, Dr. Mistry related that appellant suffered a work-related back injury on May 15, 2012 as a result of lifting and twisting. He reviewed appellant's history and noted that appellant had complied with all recommendations. Dr. Mistry observed normal alignment and head position of the cervical spine and no crepitus on range of motion. He opined that appellant reached maximum medical improvement.

By decision dated December 5, 2012, OWCP denied modification of the July 23, 2012 denial decision, finding that the medical evidence failed to establish that he sustained a back condition as a result of the May 15, 2012 employment incident.

In a February 4, 2013 appeal request form, appellant submitted a request for reconsideration. He described the May 15, 2012 incident at work and stated that he felt a severe pop and jolt in his left shoulder and across the trapezius muscles. Appellant indicated that a coworker witnessed the incident and that he informed his supervisor about the incident. He noted that when he was examined by Dr. Mistry he was informed that the pain and numbness he experienced was related to the C6 and C7 vertebra in his neck. Appellant reported that Dr. Mistry stated that his injury on the job was related to his present condition. He resubmitted two copies of Dr. Mistry's May 21, 2012 reports.

In a decision dated May 2, 2013, OWCP denied appellant's request for reconsideration finding that the evidence did not warrant further merit review under 5 U.S.C. § 8128(a). It found that the evidence submitted was duplicative of evidence previously reviewed.

LEGAL PRECEDENT

Section 8128(a) of FECA vests OWCP with discretionary authority to determine whether to review an award for or against compensation.³ OWCP's regulations provide that OWCP may review an award for or against compensation at any time on its own motion or upon application. The employee shall exercise his right through a request to the district Office.⁴

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or an argument that: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.⁵

A request for reconsideration must also be submitted within one year of the date of OWCP's decision for which review is sought.⁶ A timely request for reconsideration may be

³ 5 U.S.C. § 8128(a); *see also D.L.*, Docket No. 09-1549 (issued February 23, 2010); *W.C.*, 59 ECAB 372 (2008).

⁴ 20 C.F.R. § 10.605; *see also R.B.*, Docket No. 09-1241 (issued January 4, 2010); *A.L.*, Docket No. 08-1730 (issued March 16, 2009).

⁵ 20 C.F.R. § 10.606(b); *see also L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

⁶ 20 C.F.R. § 10.607(a).

granted if OWCP determines that the employee has presented evidence or provided an argument that meets at least one of the requirements for reconsideration. If OWCP chooses to grant reconsideration, it reopens and reviews the case on its merits.⁷ If the request is timely but fails to meet at least one of the requirements for reconsideration, OWCP will deny the request for reconsideration without reopening the case for review on the merits.⁸

ANALYSIS

The Board finds that appellant has not shown that OWCP erroneously applied or interpreted a specific point of law; he has not advanced a relevant legal argument not previously considered by OWCP; and he has not submitted relevant and pertinent new evidence not previously considered by OWCP.

By decisions dated July 23 and December 5, 2012, OWCP denied appellant's traumatic injury claim finding that the evidence did not establish that he sustained a diagnosed condition as a result of an accepted May 15, 2012 employment incident. In an appeal request form dated February 4, 2013, appellant requested reconsideration. He described the May 15, 2012 incident at work and stated that he felt a severe pop and jolt in his left shoulder and across the trapezius muscles. Appellant noted that he sought medical treatment and reported that Dr. Mistry informed him that his injury on the job was related to his present cervical condition.

The Board notes that submission of this statement did not require reopening his case for merit review. Although appellant stated that a physician reported that his present condition was job related, but he did not submit any new medical evidence with his reconsideration request that addressed the relevant issue of causal relationship. The only medical evidence that appellant submitted with his reconsideration request were two copies of Dr. Mistry's May 21, 2012 report. The Board notes that this medical report was previously submitted and reviewed by OWCP. The Board has found that the submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.⁹ Accordingly, this medical report is insufficient to warrant further merit review of appellant's case.

On appeal, appellant contends that Dr. Mistry provided an opinion explaining the mechanism of injury and resubmitted Dr. Mistry's May 21, 2012 report with an addendum note dated May 14, 2013. As noted above, however, this evidence was previously reviewed by OWCP and does not constitute a basis for a new merit review of the claim. Appellant did not submit any evidence along with his request for reconsideration to show that OWCP erroneously applied or interpreted a specific point of law, or advance a relevant legal argument not previously considered by OWCP. Because appellant did not meet any of the necessary requirements under 20 C.F.R. § 10.606, he is not entitled to further merit review.

⁷ *Id.* at § 10.608(a); *see also M.S.*, 59 ECAB 231 (2007).

⁸ *Id.* at § 10.608(b); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

⁹ *E.M.*, Docket No. 09-39 (issued March 3, 2009); *D.K.*, 59 ECAB 141 (2007).

The Board finds that appellant failed to submit relevant and pertinent new evidence, a relevant legal argument not previously considered by OWCP or evidence or argument which shows that OWCP erroneously applied or interpreted a specific point of law. Therefore, OWCP properly refused to reopen his case for further consideration of the merits of his claim under 5 U.S.C. § 8128.

CONCLUSION

The Board finds that OWCP properly denied appellant's February 4, 2013 request for reconsideration pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the May 2, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 20, 2014
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

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