



## **FACTUAL HISTORY**

On June 1, 2012 appellant, then a 48-year-old contact representative, filed a traumatic injury claim (Form CA-1) alleging that on May 30, 2012, she twisted her back while moving four chairs. She claimed a low back condition with sciatica.

In a report dated May 31, 2012, Dr. Braun diagnosed appellant with low back pain, sciatic radiculitis, pain of the thoracic spine and myospasm. He listed a history that she was trying to move her chair around another chair when she twisted and her mid and lower back no longer supported her.

In an excuse slip dated June 12, 2012, a physician's assistant noted that appellant would be off work from May 30, 2012 until further notice.

In an attending physician's report dated June 14, 2012, Dr. Zair Fiskin, an orthopedic surgeon, stated that appellant reinjured her back on May 30, 2012. He checked a box indicating that her condition was caused or aggravated by employment activity, explaining that the incident of May 30, 2012 had aggravated a previous condition.

In an e-mail dated June 21, 2012, the employing establishment noted that appellant had back surgery on May 15, 2012 to treat a nonwork-related injury of January 3, 2012. It advised that May 30, 2012 reflected the alleged date of reinjury.

By letter dated June 29, 2012, appellant noted that she had a chair as reasonable accommodation that she used at work. She needed to move another person's chair to put hers into place. While moving chairs to make room for her own, appellant twisted her back and felt something pop. The incident occurred on May 30, 2012 between 3:45 p.m. and 4:00 p.m. Appellant listed the physicians she had visited for treatment in the following days. She had a similar condition of low back herniation and sciatica and included magnetic resonance imaging (MRI) scan reports from 2011 and 2012.

In a report dated June 14, 2011, Dr. Stuart J. Rubin, a Board-certified radiologist, obtained an MRI scan of appellant's lumbar spine. He noted varying degrees of degenerative disc disease at L4-5 and L5-S1; a moderate broad-based right foraminal and far lateral disc protrusion at L4-5 with compression of the exiting right L4 nerve root; a small broad-based left lateral recess disc protrusion at L5-S1 in close proximity to the left S1 nerve root; varying degrees of bilateral facet joint osteoarthritis at L3-4, L4-5 and L5-S1; and a small broad-based right paracentral disc protrusion at T12-L1.

In a report dated June 15, 2012, Dr. Krish Kartha, a Board-certified radiologist, examined an MRI scan of appellant's lumbar spine. He noted a prior left laminotomy at L5-S1, along with a small left paracentral disc herniation and an effacement of the fat along the undersurface of the exiting left L5 nerve root; annular tears and small right foraminal disc herniation at L4-5; a small central to right paracentral disc herniation at T12-L1; and a moderate central disc herniation at T11-12.

In a report dated June 12, 2012, Dr. Kevin G. Cleary, a Board-certified internist, diagnosed back ache with sciatica. He noted that appellant had an L5-S1 discectomy on

May 15, 2012. On May 30, 2012 appellant was moving chairs when she developed pain of the lower back at the site of surgery. Dr. Cleary stated that she was unable to return to work.

By decision dated July 31, 2012, OWCP denied appellant's claim. It found that the May 30, 2012 incident occurred but denied the claim as the medical evidence did not sufficiently address causal relation.

By letter dated July 26, 2013, appellant, through her representative, requested reconsideration of OWCP's July 31, 2012 decision. She submitted records from Dr. Fishkin. On June 6, 2013 Dr. Fishkin diagnosed a herniated nucleus pulposus at L4-S1 and C5-6. He noted that appellant had a prior microdiscectomy at L5-S1. Based on appellant's history and the results of the diagnostic studies, it was Dr. Fishkin's opinion that a motor vehicle accident was the aggravating cause of her previous lumbar spinal conditions and the cause of her current complaint of cervical pain.

In a surgical report dated June 11, 2013, Dr. Fishkin performed an anterior retroperitoneal surgery on appellant's lumbar spine. He noted that she had a long history of low back pain with radiation to the left lower extremity. Dr. Fishkin stated that appellant had a previous microdiscectomy and was recovering well after surgery, until a motor vehicle incident had aggravated her symptoms.

By decision dated July 31, 2013, OWCP declined appellant's request for reconsideration.

### **LEGAL PRECEDENT**

To require OWCP to reopen a case for merit review under section 8128(a), 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 OWCP; or (3) constitute relevant and pertinent new evidence not previously considered by OWCP.<sup>2</sup> Section 10.608(b) of OWCP's 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.<sup>3</sup>

The Board has found that evidence that repeats or duplicates evidence already in the case record has no evidentiary value.<sup>4</sup> 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.<sup>5</sup> While the reopening of a case may be predicated solely on a legal premise not previously

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

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

<sup>4</sup> *See Daniel DeParini*, 44 ECAB 657, 659 (1993).

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

considered, such reopening is not required where the legal contention does not have a reasonable color of validity.<sup>6</sup>

### ANALYSIS

OWCP issued a July 31, 2012 decision denying appellant's claim for compensation. On July 26, 2013 appellant requested reconsideration of this decision.

The issue on appeal is whether appellant met any of the requirements of 20 C.F.R. § 10.606(b)(3), requiring OWCP to reopen her case for review of the merits. In her July 26, 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.

A claimant may be entitled to a merit review by submitting pertinent new and relevant evidence. Appellant submitted two reports from Dr. Fishkin dated June 6 and 11, 2013. The June 6, 2013 report of Dr. Fishkin addressed to Dr. Cleary diagnosed herniated nucleus pulposus at L4-S1 and C5-6. Based on appellant's history and the results of diagnostic studies, it was his opinion that a motor vehicle incident was the aggravating cause of her previous lumbar spinal conditions and the cause of her current complaint of cervical pain. In the June 11, 2013 surgical report, Dr. Fishkin stated that appellant had a previous microdiscectomy and was recovering well after surgery, until a motor vehicle incident had aggravated her symptoms.

The Board finds that the evidence submitted is not relevant to the July 31, 2012 denial of appellant's claim. The evidence from Dr. Fishkin failed to address the May 30, 2012 incident at work in which appellant moved chairs. Rather, Dr. Fishkin attributed appellant's lumbar and cervical conditions and need for surgery on June 11, 2013 to a motor vehicle accident on an unspecified date. The underlying issue in this case pertains to the causal relationship of appellant's low back condition to her federal employment. Dr. Fishkin did not mention the incident at work. His reports are insufficient to warrant reopening the case for further merit review, because they are not relevant to the underlying issue of causal relation.<sup>7</sup>

The Board 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. Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

### CONCLUSION

The Board finds that OWCP properly denied appellant's request to reopen her claim for further merit review under section 8128.

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

<sup>7</sup> *See J.P.*, 58 ECAB 289, 295 (2007); *Freddie Mosley*, 54 ECAB 255, 256-7 (2002).

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 31, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 23, 2014  
Washington, DC

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

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

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