

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

D.A., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Kansas City, MO, Employer**

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**Docket No. 14-208
Issued: July 3, 2014**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 5, 2013 appellant filed a timely appeal of a September 10, 2013 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Because over 180 days elapsed between the most recent merit decision, of April 4, 2013, to the filing of this appeal the Board lacks jurisdiction to review the merits of appellant's case, pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3.²

ISSUE

The issue is whether OWCP properly denied appellant's request for reconsideration on the merits pursuant to 5 U.S.C. § 8128(a).

¹ 5 U.S.C. § 8101 *et seq.*

² Appellant requested an oral argument. The Clerk of the Board mailed a letter to appellant on February 27, 2014 to confirm the oral argument in Washington, DC. No written confirmation was received within the time allotted; thus, the Board, in its discretion, has decided the appeal on the record.

FACTUAL HISTORY

On September 12, 2011 appellant, then a 49-year-old mail handler, filed a traumatic injury claim alleging that on that date he sustained a hernia on the right side of his body pushing a box container with a manual walk along. His supervisor, Dan Tarwarch, submitted a statement dated September 12, 2011 noting that on September 12, 2011 appellant was pushing a loaded box of third class mail tubs on a machine and felt a sharp pain in his groin while turning the box onto the mail aisle. Dr. Tarwarch stated that appellant was turning while pushing a loaded pallet and that he should have moved his feet instead.

The employing establishment provided appellant with an authorization for examination Form CA-16 on September 12, 2011 for a hernia in the mid-section of his abdomen. Appellant returned to work on September 28, 2011 performing a modified assignment for eight hours a day.

Dr. Brett Hailey, a physician Board-certified in emergency medicine, examined appellant on September 12, 2011 due to abdominal pain. He diagnosed an inguinal hernia and abdominal pain. Dr. Hailey referred appellant to Dr. Bettina Lowe, a Board-certified surgeon. In a note dated September 22, 2011, Dr. Lowe diagnosed right groin hernia and indicated that appellant's condition was related to activity at work. She recommended a surgical repair. On October 18, 2011 Dr. Lowe performed a right inguinal hernia repair with a mesh plug and extensive adhesiolysis.

In a letter dated October 25, 2011, OWCP requested additional factual and medical information in support of appellant's claim. Dr. Lowe released appellant to return to work with no restrictions on November 14, 2011.

By decision dated November 29, 2011, OWCP denied appellant's claim on the grounds that he had not established a causal relationship between his diagnosed inguinal hernia and his employment activities.

Appellant requested a review of the written record by an OWCP hearing representative on December 16, 2011 and resubmitted Dr. Hailey's notes and Dr. Lowe's surgical report. He also submitted a statement describing his employment duties of lifting up to 70 pounds, moving pallets weighing up to 1,000 pounds and pushing a machine weighing up 1,100 pounds with a hand jack. Appellant attributed his hernia to heavy lifting and pushing on hard surfaces.

Dr. Kristine Freyaldenhoven, a Board-certified surgeon, completed a form report on October 31, 2011 diagnosing right inguinal hernia. She stated that appellant's condition was caused or aggravated by his employment as he lifted on a regular basis. Dr. Lowe submitted a report dated December 12, 2011 and stated that appellant's inguinal hernia was most likely caused by extreme heavy lifting and other work activities. She completed an attending physician's report, Form CA-20, on December 12, 2011 and diagnosed right inguinal hernia. Dr. Lowe indicated with a checkmark "yes" that appellant's condition was caused or aggravated by an employment activity. She noted that he lifted boxes weighing up to 70 pounds daily and pushed heavy items weighing up to 1,100 pounds. Dr. Lowe stated, "Injured while lifting on September 12, 2011. Inguinal hernia caused by lifting at work."

In a decision dated July 10, 2012, OWCP's hearing representative reviewed the written record and found that appellant had not met his burden of proof as he failed to provide sufficiently detailed medical evidence to establish that the September 12, 2011 pushing incident caused his right inguinal hernia. The hearing representative found that the medical evidence did not contain a sufficiently detailed history of injury and opinion that the specific incident alleged on September 12, 2011 caused or contributed to appellant's diagnosed condition. The hearing representative further noted that if appellant felt that his inguinal hernia was caused by working conditions over a period longer than one workday, he should file an occupational disease claim.

Appellant requested reconsideration on January 24, 2013 and submitted additional evidence. Dr. Freyaldenhoven completed a report on September 28, 2012 and stated that appellant sought treatment at the emergency room on September 12, 2011 due to right lower abdominal pain. She noted that he had a history of left inguinal hernia in 1987 and an umbilical hernia in 2008. Dr. Freyaldenhoven determined that appellant sustained a right inguinal hernia on September 12, 2011 and that he lifted, pulled and pushed heavy equipment daily at work. She stated that his right inguinal hernia was "caused from work activities that involve heavy lifting, pushing and pulling of heavy items." Dr. Freyaldenhoven concluded, "Work injury occurring due to continued heavy lifting of heavy items and weakening of the inguinal sac over time causing an inguinal hernia."

OWCP issued a decision dated April 4, 2013 denying modification of the July 10, 2012 hearing representative's decision finding that Dr. Freyaldenhoven's report did not establish that appellant's right inguinal hernia was due to the September 12, 2011 employment incident.

Appellant requested reconsideration on June 25, 2013. In a note dated May 30, 2013, Dr. Freyaldenhoven stated that his hernia occurred at work while lifting heavy items. Appellant also resubmitted her September 28, 2012 report.

By decision dated September 10, 2013, OWCP declined to reopen appellant's claim for reconsideration of the merits on the grounds that the evidence he submitted was repetitious.

LEGAL PRECEDENT

FECA provides in section 8128(a) that OWCP may review an award for or against payment of compensation at any time on its own motion or on application by the claimant.³ Section 10.606(b)(3) of the Code of Federal Regulations provide that a claimant may obtain review of the merits of the claim by submitting in writing an application for reconsideration which sets forth arguments or evidence and shows that OWCP erroneously applied or interpreted a specific point of law; or advances a relevant legal argument not previously considered by OWCP or constitutes relevant and pertinent new evidence not previously considered by OWCP.⁴ Section 10.608(b) of OWCP's regulations provide that when a request for reconsideration is

³ *Id.* at §§ 8101-8193, 8128(a).

⁴ 20 C.F.R. § 10.606.

timely, but does meet at least one of these three requirements, OWCP will deny the application for review without reopening the case for a review on the merits.⁵

The Board has held that the submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case. The Board has also held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.⁶

ANALYSIS

OWCP denied appellant's claim on the grounds that he failed to submit the necessary medical opinion evidence to establish a causal relationship between his accepted employment incident on September 12, 2011 and his diagnosed right inguinal hernia. Appellant requested reconsideration and attempted to submit relevant and pertinent new medical evidence addressing whether his right inguinal hernia resulted from his accepted employment incident on September 12, 2011.

In support of his reconsideration request, appellant resubmitted Dr. Freyaldenhoven's September 28, 2012 report which OWCP has already considered prior to issuing its April 4, 2013 merit decision. As this report was previously considered by OWCP it is not new evidence and OWCP properly declined to reopen appellant's claim based on this report.⁷ Appellant also submitted Dr. Freyaldenhoven's May 30, 2013 note in which she opined that his hernia occurred at work while lifting heavy items. This statement does not add pertinent new and relevant medical opinion evidence to his claim. Dr. Freyaldenhoven's prior reports dated October 31, 2011 and September 28, 2012 included similar statements that appellant's heavy lifting at work caused or contributed to his hernia. The Board finds that the May 30, 2013 report does not constitute relevant and pertinent new evidence not previously considered by OWCP and, thus, did not require OWCP to reopen appellant's claim for consideration of the merits.

CONCLUSION

The Board finds that OWCP properly declined to reopen appellant's claim for consideration of the merits.

⁵ *Id.* at § 10.608.

⁶ *M.E.*, 58 ECAB 694 (2007).

⁷ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the September 10, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 3, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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