

ISSUE

The issue is whether OWCP properly denied appellant's May 30, 2013 request for reconsideration pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On March 21, 2013 appellant, then a 54-year-old parcel post machine distribution operator, filed a traumatic injury claim alleging that on March 15, 2013 he sustained a back injury when he keyed mail in the performance of duty. He stopped work on March 18, 2013 and filed for disability compensation.⁴

In a March 27, 2013 letter, the employing establishment controverted appellant's claim contending that insufficient evidence was submitted to establish that he experienced the employment incident in the manner alleged. Further, it noted the lack of medical evidence and that he sustained a diagnosed condition causally related to the alleged employment incident.

In a report dated March 15, 2013, Dr. W. Kent Soderstrum, Board-certified in internal and occupational medicine, related a history that on December 23, 2012 appellant felt a pull in his lower back when he pulled a cage full of mail packages out of the sorter machine. Appellant's condition improved and he returned to regular work on February 15, 2013. When at work the prior evening, he again experienced discomfort but denied an identifiable incident associated with his pain. Upon examination of appellant's lower back, Dr. Soderstrum observed tenderness over the right paralumbar musculature at the L4-5 level. Deep tendon reflexes were normal in both the patella and Achilles tendon bilaterally. Dr. Soderstrum diagnosed lumbar strain and recommended appellant remain off work. He submitted additional treatment notes. Dr. Soderstrum prescribed physical therapy.

By letter dated April 18, 2013, OWCP advised appellant that the evidence submitted was insufficient to establish his claim and requested additional evidence.

In May 6 and 7, 2013 reports, Dr. Soderstrum stated that on March 15, 2013 appellant was examined for complaints of a recurrence of low back pain. He noted that appellant sustained an injury on December 23, 2012, received medical treatment and returned to work on February 15, 2013. Dr. Soderstrum related that on March 15, 2013 appellant experienced twinges of discomfort and severe back pain at work in the same place as his previous injury. Appellant denied any identifiable incident associated with exacerbations of his pain. Dr. Soderstrum initially attributed appellant's condition as a continuation of his previous injury but was later advised by OWCP that it should be considered a new injury. Accordingly, he reported that the correct date of injury was March 15, 2013 unless OWCP considered this to be a recurrence of his previous December 23, 2012 low back injury. Upon examination of the lower back, Dr. Soderstrum observed no tenderness or alteration in sensitivity to light touch. Deep

⁴ The record reveals that appellant had filed three previous traumatic injury claims for an August 22, 2000 injury (File No. xxxxxx025), a December 4, 2007 injury (File No. xxxxxx740) and a December 23, 2012 injury (File No. xxxxxx845).

tendon reflexes were normal and range of motion demonstrated no discomfort. Dr. Soderstrum recommended two more weeks of physical therapy.

In a decision dated May 28, 2013, OWCP denied appellant's traumatic injury claim. It accepted that the March 15, 2013 incident occurred as alleged but denied the claim finding insufficient medical evidence to establish that the back condition was causally related to the accepted incident.

By appeal request form dated May 30, 2013, appellant requested reconsideration.

In an April 30, 2013 report, Dr. Randy Plona, an osteopath, who specializes in manipulative therapy, stated that on April 30, 2013 appellant had an appointment with Dr. Soderstrum, who was unavailable. He advised appellant to reschedule his appointment.

In a June 7, 2013 report, Dr. Soderstrum described appellant's previous December 23, 2012 injury and medical treatment. He related that on March 15, 2013 appellant was keying mail and pulling packages when he felt pain in his lower back that radiated into his upper back. It was similar to the back pain appellant previously experienced. Dr. Soderstrum initially attributed appellant's condition as a continuation of the previous injury but OWCP advised him that it was considered a new injury.

By decision dated August 9, 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 irrelevant or immaterial to the claim.

LEGAL PRECEDENT

Section 8128(a) of FECA vests OWCP with discretionary authority to determine whether to review an award for or against compensation.⁵ OWCP's regulations provide that it may review an award for or against compensation at any time on its own motion or upon application. The employee shall exercise his or her right through a request to the district Office.⁶

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.⁷

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

⁶ 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).

⁷ *Id.* at § 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).

A request for reconsideration must be submitted within one year of the date of OWCP's decision for which review is sought.⁸ A timely request for reconsideration may be 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.⁹ 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.¹⁰

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 decision dated May 28, 2013, OWCP denied appellant's traumatic injury claim finding that the medical evidence did not establish that his back condition was causally related to the accepted March 15, 2013 employment incident. In an appeal request form dated May 30, 2013, appellant requested reconsideration.

Appellant submitted an April 30, 2013 report by Dr. Plona, who advised appellant to reschedule a medical appointment. He also submitted a June 7, 2013 report by Dr. Soderstrum. Although the reports were not previously considered by OWCP, they do not provide any new or relevant evidence to the underlying medical issue of whether appellant's back condition resulted from the March 15, 2013 employment incident. Dr. Plona merely advised appellant to reschedule an appointment. This is not relevant to the underlying issue of causal relation. In addition, Dr. Soderstrum repeated his previous reports that appellant experienced back pain at work on March 15, 2013. The Board notes that the submission of evidence that is duplicative of prior reports does not constitute a basis for reopening a case.¹¹ The Board finds that Dr. Soderstrum's and Dr. Plona's reports do not constitute relevant or pertinent evidence with respect to the medical issue.

Appellant did not meet any requirements of 20 C.F.R. § 10.606(b)(2). He 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 advances a relevant legal argument not previously considered by OWCP. Pursuant to 20 C.F.R. § 10.608(b), OWCP properly declined to reopen the case for review of the merits.

⁸ *Id.* at § 10.607(a).

⁹ *Id.* at § 10.608(a); *see also M.S.*, 59 ECAB 231 (2007).

¹⁰ *Id.* at § 10.608(b); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

¹¹ *Alan G. Williams*, 52 ECAB 180 (2000); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

CONCLUSION

The Board finds that OWCP properly denied appellant's May 30, 2013 request for reconsideration pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the August 9, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 16, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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