

FACTUAL HISTORY

On June 24, 2004 appellant, then a 39-year-old laborer, injured her back while lifting a garbage can lid. OWCP accepted the claim for lumbar strain. Appellant did not stop work but returned to a full-time light-duty position.

Appellant underwent an electromyogram (EMG) on December 4, 2008 which revealed no lumbar radiculopathy or peripheral neuropathy. She came under the treatment of Dr. W. Brandt Bede, a Board-certified orthopedic surgeon, from February 18, 2009 to October 20, 2011, for back pain which developed after the June 24, 2004 work injury. In reports dated February 18, 2009 to October 20, 2011, Dr. Bede noted that appellant continued to experience increased low back pain with radiation into the right buttock, thigh and leg. He noted limited range of motion of the spine, intact motor and sensory findings and symmetrical reflexes. Dr. Bede diagnosed degenerative disc disease, lumbosacral strain, facet arthropathy at L4-5 and L5-S1 without evidence of disc herniation. He opined that appellant was disabled from work.

On November 7, 2011 appellant filed a CA-7, claim for compensation for total disability, beginning September 11, 2004.

Appellant submitted reports from Dr. Bede dated November 9, 2011 to February 3, 2012. Dr. Bede treated her for increased back pain with radiation into the groin and right thigh. He noted findings of normal gait, intact motor and sensory findings and intact reflexes. Dr. Bede diagnosed degenerative disc disease of the lumbar spine and plantar fasciitis of the bilateral feet. He recommended anti-inflammatory medication and weight loss.

In a letter dated November 21, 2011, OWCP requested that appellant submit medical evidence establishing that she was totally disabled due to the accepted condition for the period claimed.

Appellant submitted a magnetic resonance imaging (MRI) scan of the lumbar spine dated December 7, 2011. It revealed mild lumbar disc and facet degeneration without central canal or neural foraminal stenosis and mild levoconvex lumbar scoliosis.

In a decision dated March 7, 2012, OWCP denied appellant's claim for compensation for total disability for the period beginning September 11, 2004. It found that the medical evidence of record failed to support total disability commencing that date.

Appellant requested an oral hearing which was held on June 29, 2012. She submitted reports from Dr. Bede dated May 10 to July 27, 2012 who treated her for a work-related low back injury. Dr. Bede noted a history of appellant's low back injury on June 24, 2004. He stated that she was treated with anti-inflammatory medications and physical therapy without success. Dr. Bede opined that more likely than not appellant had lumbosacral strain and facet strain directly related to the work injury of June 24, 2004. He opined that she could not return to her previous job or other work due to her industrial injury.

In a decision dated September 20, 2012, an OWCP hearing representative affirmed the March 7, 2012 decision.

On July 9, 2013 appellant through her attorney requested reconsideration. She submitted reports from Dr. Bede dated September 13, 2012 to June 5, 2013. Dr. Bede treated appellant for persistent low back pain. He noted limited range of motion of the spine, normal gait and intact motor and sensory examination. Dr. Bede diagnosed degenerative disc disease of the lumbar spine and opined that the L1-L2 and L3-L4 disc protrusions were related to appellant's work injury and other degenerative changes were aggravated by the industrial injury. In reports dated July 18 and August 29, 2013, he noted her complaints of low back pain. Dr. Bede noted no change in the physical examination and diagnosed degenerative disc disease of the lumbar spine.

In a decision dated October 7, 2013, OWCP denied modification of the decision dated September 20, 2012.

On January 15, 2014 appellant through her attorney requested reconsideration. She asserted that OWCP erred in concluding that she did not submit sufficient medical evidence to support her claim for compensation. Appellant referenced a December 4, 2013 report from a Dr. Douglas Seiler; however, this report is not of record. She submitted an MRI scan of the lumbar spine dated December 7, 2011 performed by Dr. Seiler, previously of record. Also submitted were reports dated October 25 and December 4, 2013 and January 30, 2014 from Dr. Bede who treated appellant in follow-up for lower back pain. He noted her complaints of aching pain in her lower back which increased with standing and sitting. Dr. Bede noted findings of full range of motion of the lumbar spine, normal gait, intact sensory and motor examination and symmetrical reflexes. He diagnosed degenerative disc disease of the lumbar spine. Dr. Bede opined that more likely than not the disc protrusions on the MRI scan of December 7, 2011 were related to the industrial injury and that the industrial injury aggravated the preexisting degenerative disc disease.

In a March 31, 2014 decision, OWCP denied appellant's request for reconsideration on the grounds that the evidence submitted was insufficient to warrant a merit review.

LEGAL PRECEDENT

Under section 8128(a) of FECA,² OWCP has the discretion to reopen a case for review on the merits. It must exercise this discretion in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations, which provide that a claimant may obtain review of the merits of his or her written application for reconsideration, including all supporting documents, sets forth arguments and contain evidence which:

“(i) Shows that OWCP erroneously applied or interpreted a specific point of law;
or

“(ii) Advances a relevant legal argument not previously considered by OWCP; or

² 5 U.S.C. § 8128(a).

“(iii) Constitutes relevant and pertinent new evidence not previously considered by OWCP.”³

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by OWCP without review of the merits of the claim.⁴

ANALYSIS

OWCP denied appellant’s claim for wage-loss compensation for the period beginning September 11, 2004. It found that the evidence of record failed to support total disability. Thereafter, OWCP denied appellant’s reconsideration request, without a merit review. As noted, the Board does not have jurisdiction over the October 7, 2013 merit decision.

The issue on appeal is whether appellant met any of the requirements of 20 C.F.R. § 10.606(b)(2), requiring OWCP to reopen the case for review of the merits of the claim. In her request for reconsideration, appellant did not establish that OWCP erroneously applied or interpreted a specific point of law. Appellant, through her attorney, asserted that she submitted sufficient medical evidence to support her claim for compensation and referenced a report from Dr. Douglas Seiler dated December 4, 2013. As noted, the record on appeal does not contain this report. Appellant’s assertions do not show a legal error by OWCP or a new and relevant legal argument. The underlying issue in this case is whether appellant submitted medical evidence establishing that she was totally disabled due to the accepted condition for the period commencing September 11, 2004. That is a medical issue which must be addressed by relevant new medical evidence.⁵ Appellant did not submit any new and relevant medical evidence in support of her claim.

Appellant submitted an MRI scan of the lumbar spine dated December 7, 2011 performed by Dr. Seiler. However, this report is duplicative of evidence previously submitted and was considered by OWCP in its March 7, 2012 decision. Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.⁶ Therefore, this report is insufficient to require OWCP to reopen the claim for a merit review.

Appellant submitted reports from Dr. Bede dated October 25 and December 4, 2013 and January 30, 2014. Dr. Bede noted an essentially normal physical examination and diagnosed degenerative disc disease of the lumbar spine. He opined that more likely than not the disc protrusions on the MRI scan of December 7, 2011 were related to the industrial injury and the injury aggravated the preexisting degenerative disc disease. However, these reports are similar

³ 20 C.F.R. § 10.606(b)(2).

⁴ *Id.* at § 10.608(b).

⁵ *See Bobbie F. Cowart*, 55 ECAB 746 (2004).

⁶ *See Daniel Deparini*, 44 ECAB 657 (1993); *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984).

to Dr. Bede's previous reports dated July 27, 2012 and July 18 and August 29, 2013 which were previously submitted and considered by OWCP in its decision dated September 20, 2012 and October 7, 2013 and found insufficient. Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.⁷ Therefore, these reports are insufficient to require OWCP to reopen the claim for a merit review.

The Board finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(2). She did not establish 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.

Appellant did not submit any evidence or argument in support of her reconsideration request that warrants reopening of her claim for a merit review under 20 C.F.R. § 10.606(b)(2).

CONCLUSION

The Board finds that OWCP properly denied appellant's request for reconsideration.

ORDER

IT IS HEREBY ORDERED THAT the March 31, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 6, 2014
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

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

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

⁷ *Id.*