United States Department of Labor
Employees' Compensation Appeals Board

W.V., Appellant	)	
and	)	**Docket No. 14-1608**
	)	**Issued: November 19, 2014**
U.S. POSTAL SERVICE, POST OFFICE, Islandia, NY, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 15, 2014 appellant filed a timely appeal from a May 15, 2014 nonmerit decision of the Office of Workers' Compensation Programs (OWCP) denying his request for reconsideration. Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the nonmerit decision by OWCP. The last merit decision of record was OWCP's July 11, 2013 decision. Because more than 180 days elapsed between the last merit decision to the filing of this appeal, the Board lacks jurisdiction to review the merits of this case.[2]

ISSUE

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

[1] 5 U.S.C. § 8101 *et seq.*

[2] An appeal of OWCP decisions issued on or after November 19, 2008 must be filed within 180 days of the decision. 20 C.F.R. § 501.3(e).

FACTUAL HISTORY

On May 7, 2013 appellant, then a 39-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that he sustained a lower back injury on that same date when he was off-loading mail from a container. He notified his supervisor and stopped work that same date. Appellant first sought medical treatment on May 8, 2013.

An OWCP Form CA-16, authorization for examination, dated May 8, 2013, indicated that appellant was authorized to visit Dr. Todd Goldman, a treating chiropractor.[3] On the second page of the form, Dr. Goldman reported that on May 7, 2013 appellant felt a pull in his lower back when he was carrying mail out of a container. He noted review of x-rays and diagnosed subluxation and contusion of back. Dr. Goldman checked the box marked "yes" when asked if he believed the condition was caused or aggravated by the employment injury.

Appellant submitted a May 8, 2013 duty status report (Form CA-17) which provided a diagnosis of lumbar sprain and an undated attending physician's report (Form CA-20) from Dr. Goldman.

By letter dated June 4, 2013, OWCP informed appellant that the evidence of record was insufficient to support his claim and requested additional factual and medical evidence.

In a May 8, 2013 medical report, Dr. Goldman provided a history of the May 7, 2013 injury noting that appellant was off-loading mail from a container and felt pain in his lower back. He provided findings on physical examination and reviewed a May 8, 2013 x-ray of the lumbar spine which revealed subluxation at L4-5. Dr. Goldman diagnosed lumbar subluxation and opined that appellant's injury was causally related to the May 7, 2013 accident.

By decision dated July 11, 2013, OWCP denied appellant's claim finding that the evidence of record failed to establish that his diagnosed conditions were causally related to the accepted May 7, 2013 employment incident.

By letter dated February 10, 2014, appellant requested reconsideration of OWCP's decision. He argued that his injury was employment related and his assignment for the last six years was very physically demanding.

A May 30, 2013 Family and Medical Leave Act (FMLA) Certification of Health Care Provider Form was provided by Dr. Goldman which noted a diagnosis of lumbar subluxation and severe lumbar spine pain. Appellant was provided with work restrictions.

In an undated letter of medical necessity, Dr. Goldman reported that appellant was being treated for spinal pain due to an auto or work-related injury. As a result of appellant's injury, he

[3] A properly completed Form CA-16 authorization may constitute a contract for payment of medical expense to a medical facility or physician, when properly executed. The form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. *See* 20 C.F.R. § 10.300(c); *Tracy P. Spillane*, 54 ECAB 608 (2003).

argued that it was medically necessary to obtain computerized physical performance and neuro muscular testing.

In a May 22, 2013 neuromuscular diagnostic procedure, Dr. S. Matrangolo, a treating chiropractor, provided examination findings.

By decision dated May 15, 2014, OWCP denied appellant's request for reconsideration finding that he neither raised substantive legal questions nor included new and relevant evidence.[4]

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under FECA section 8128(a), OWCP 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.[5] Section 10.608(b) of OWCP regulations provides 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.[6]

ANALYSIS

The Board finds that the refusal of OWCP to reopen appellant's case for further consideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a), did not constitute an abuse of discretion.

The issue presented 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 his February 10, 2014 application for reconsideration, appellant did not show that OWCP erroneously applied or interpreted a specific point of law. He did not advance a new and relevant legal argument. Appellant's sole argument is that his injury was employment-related to the May 7, 2013 employment incident. That is a medical issue which must be addressed by relevant medical evidence.[7]

While appellant submitted new reports from Dr. Goldman and Dr. Matrangolo, these reports are not relevant to establishing a causal relationship between appellant's lumbar condition and the May 7, 2013 employment incident. Dr. Goldman's undated letter of medical

[4] The Board notes that appellant submitted additional evidence after OWCP rendered its May 15, 2014 decision. The Board's jurisdiction is limited to reviewing the evidence that was before OWCP at the time of its final decision. Therefore, this additional evidence cannot be considered by the Board. 20 C.F.R. § 510.2(c)(1); *Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35, 36 n.2 (1952).

[5] *D.K.*, 59 ECAB 141 (2007).

[6] *K.H.*, 59 ECAB 495 (2008).

[7] *See Bobbie F. Cowart*, 55 ECAB 746 (2004).

necessity argued the need for computerized physical performance and neuro muscular testing. His letter failed to provide a subluxation diagnosis or any opinion on causation. While Dr. Goldman's May 30, 2013 FMLA form noted a subluxation diagnosis, he failed to provide any medical rationale that the diagnosed condition was caused by the May 7, 2013 employment incident.[8] Dr. Matrangolo's May 22, 2013 neuromuscular diagnostic report is also insufficient to reopen the case for review of the merits of appellant's claim. There is no indication that Dr. Matrangolo, a chiropractor, diagnosed subluxation based on the results of an x-ray.[9] As Dr. Matrangolo does not meet the statutory definition of a physician, his reports lacks probative value.[10]

While these reports were not previously of record, they are irrelevant to the grounds upon which OWCP denied appellant's claim. Appellant's claim was denied because the medical evidence lacked a rationalized opinion from a physician, with a physiological description of how his claimed injury resulted from the May 7, 2013 employment incident and a full and accurate factual and medical history, on the issue of causal relationship. As the reports of Dr. Goldman and Dr. Matrangolo do not contain such an opinion, they are not relevant and are therefore insufficient to require a merit review of appellant's claim.[11]

The Board has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.[12] Claimant may obtain a merit review of an OWCP decision by submitting new and relevant evidence. In this case, while appellant submitted new evidence, it was not relevant in the issue in this case.

The Board notes that the employing establishment properly issued a Form CA-16 which authorized medical treatment as a result of the employee's claim for an employment-related injury. The Form CA-16 creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim.[13] The period for which treatment is authorized by a Form CA-16 is limited to 60 days from the date of issuance, unless terminated earlier by OWCP. On return of the record, OWCP should adjudicate whether appellant's examination or treatment is reimbursable under the form.

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[8] A chiropractor is not considered a physician under FECA unless it is established that there is a spinal subluxation as demonstrated by x-ray to exist. 5 U.S.C. § 8101(2). As Dr. Goldman diagnosed lumbar subluxation confirmed by x-ray, he is considered to be a "physician" under FECA with this specific diagnosis only. *See Kathryn Haggerty*, 45 ECAB 383 (1994).[8]

[9] 5 U.S.C. § 8101(2) of FECA provides as follows: (2) physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law. The term physician includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist and subject to regulation by the secretary. *See Merton J. Sills*, 39 ECAB 572, 575 (1988).

[10] *T.G.*, Docket No. 13-76 (issued March 22, 2013).

[11] *M.N.*, Docket No. 14-245 (issued May 2, 2014).

[12] *Jimmy O. Gilmore*, 37 ECAB 257 (1985); *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

[13] *L.E.*, Docket No. 14-684 (issued July 29, 2014); *see Tracy P. Spillane*, *supra* note 3.

The Board accordingly finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(2). 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 evidence not previously considered. Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

CONCLUSION

The Board finds that OWCP properly refused to reopen appellant's case for further review of the merits pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the May 15, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 19, 2014
Washington, DC

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

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

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