

FACTUAL HISTORY

On December 2, 2012 appellant, then a 47-year-old mail handler, filed a traumatic injury claim alleging that, on November 30, 2012, she developed sharp pain in her lower back in the performance of duty. She stopped work on that date.²

Appellant submitted medical evidence in support of her claim. This included a November 30, 2012 work status report as well as emergency room notes from Dr. Fred C. Bollhoffer, Board-certified in emergency medicine, who diagnosed low back pain and a lumbar sprain and recommended a follow-up appointment. Dr. Bollhoffer noted that appellant could return to light duty on December 1, 2012 with restrictions.

OWCP developed the claim and in a decision dated March 4, 2013, it denied appellant's claim on the grounds that the medical evidence did not establish causal relationship.

On March 20, 2013 appellant requested a hearing, which was held on July 19, 2013. During the hearing, OWCP's hearing representative noted that the record contained a treatment note dated November 7, 2012, which was prior to the November 30, 2012 work incident. Appellant confirmed that she received treatment for her back. She noted that her prior injury continued to require medical care. However, appellant confirmed that she had returned to work.

In a decision dated October 28, 2013, OWCP's hearing representative affirmed the March 4, 2013 decision. The hearing representative found that the medical evidence was insufficient to establish appellant's claim.

On March 1, 2014 appellant requested reconsideration and submitted additional evidence. She strongly disagreed with the October 28, 2013 decision. In a January 31, 2014 statement, Patricia Valentine, a coworker, noted that, on November 30, 2012, appellant was "looking very uncomfortable." She indicated that she asked appellant, "what was wrong?" Ms. Valentine noted that appellant responded that her back was "hurting me very badly." She noted that appellant then left and went to the restroom and did not return to work, as she was taken to the hospital.

In a November 6, 2013 note, Dr. Mohammad Ahsan, Board-certified in pain medicine and anesthesiology, advised that appellant received an epidural injection on that date. In a March 5, 2014 disability certificate, he noted that she was seen for an epidural injection. Dr. Ahsan requested that appellant be excused from work for the next two days. OWCP also received a copy of the November 30, 2012 reports from Dr. Bollhoffer.

In a decision dated April 1, 2014, OWCP denied appellant's request for reconsideration finding that the evidence submitted was insufficient to warrant review of its prior decision.

² The record reflects that appellant has a prior claim for a traumatic injury on October 27, 2007. OWCP accepted the claim for lumbago, thoracic or lumbosacral neuritis or radiculitis. Appellant filed a claim for a recurrence of total disability beginning January 1, 2009. However, the recurrence was denied. This claim is not before the Board on the present appeal.

LEGAL PRECEDENT

Under section 8128(a) of FECA,³ OWCP may reopen a case for review on the merits 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 the written application for reconsideration, including all supporting documents, sets forth arguments and contains evidence which:

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

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

“(iii) Constitutes relevant and pertinent new evidence not previously considered by OWCP.”⁴

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.⁵

ANALYSIS

Appellant disagreed with the denial of her traumatic injury claim and timely requested reconsideration on March 4, 2013. The underlying issue on reconsideration is medical in nature, whether the November 30, 2012 work incident caused or contributed to an injury.

OWCP denied appellant’s application on April 1, 2014, finding that no new evidence was offered warranting further merit review. The underlying issue on reconsideration is medical in nature. OWCP denied the claim because the medical evidence did not contain medical opinion evidence explaining how her back condition was caused or aggravated by the November 30, 2012 work incident.⁶ The Board finds that appellant did not make any arguments that supported a legal error by OWCP or advance a relevant legal argument not previously considered by OWCP. Appellant’s general disagreement with OWCP’s denial of her claim is insufficient to meet one of these two criteria.

Appellant submitted a statement from a coworker, who noted that appellant indicated that her back was hurting her. While this evidence is new, the Board notes that OWCP found that she had established the factual component of her claim. The claim was denied because appellant did not establish causal relationship, which is a medical issue. The Board notes that the statement from her coworker, which supports the factual component of appellant’s claim, is not relevant to the underlying medical issue and does not meet the third criteria.

³ 5 U.S.C. § 8128(a).

⁴ 20 C.F.R. § 10.606(b).

⁵ *Id.* at § 10.608(b).

⁶ *See for example, A.D.*, 58 ECAB 149 (2006).

With regard to medical evidence submitted with her reconsideration request, appellant provided a copy of the November 30, 2012 records from Dr. Bollhoffer. However, this evidence was previously considered by OWCP. Material which is cumulative or duplicative of that already in the record has no evidentiary value in establishing the claim and does not constitute a basis for reopening a case for further merit review.⁷

With regard to the November 6, 2013 note and March 5, 2014 disability certificate from Dr. Ahsan, he merely noted in each that appellant was seen for an epidural injection and, in the March 5, 2014 certificate, he excused her from work for two days. This evidence, while new, is not relevant, as Dr. Ahsan did not provide an opinion on causal relationship. For example, he did not address whether appellant's employment contributed to her claimed condition. 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.⁸

Appellant therefore 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 new and relevant evidence not previously considered. As she did not meet any of the necessary regulatory requirements, she is not entitled to further merit review.

The Board notes that appellant submitted evidence with her appeal to the Board. The Board cannot consider this evidence, however, as its review of the case is limited to the evidence of record which was before OWCP at the time of its final decision.⁹

CONCLUSION

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

⁷ *Betty A. Butler*, 56 ECAB 545 (2000).

⁸ *Ronald A. Eldridge*, 53 ECAB 218 (2001); *Alan G. Williams*, 52 ECAB 180 (2000).

⁹ 20 C.F.R. § 501.2(c); *see Steven S. Saleh*, 55 ECAB 169 (2003).

ORDER

IT IS HEREBY ORDERED THAT the April 1, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 24, 2014
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

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