

of this case pursuant to the Federal Employees' Compensation Act³ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3⁴ but has jurisdiction over the nonmerit issue.

ISSUE

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

On appeal, appellant contends that neither she nor her physicians were given a fair chance to address her work-related claims in a timely fashion. She also contends that she never received a request to submit the claimed relevant evidence, including clarification of a witness statement or her medical treatment prior to October 19, 2012.

FACTUAL HISTORY

On October 12, 2012 appellant, then a 45-year-old human resources compensation specialist, filed a traumatic injury claim alleging that she experienced a sharp stinging pain in her head and left arm when a metal bin above her desk fell on her head and left arm on September 21, 2012.⁵

In an e-mail dated September 21, 2012, Rita A. Lunsford, an employee, stated that she witnessed the September 21, 2012 incident. She related that shelving dividers and documents from the shelving in appellant's cubicle did not strike appellant. Ms. Lunsford stated that she did not demonstrate any signs of physical harm.

By letter dated October 12, 2012, OWCP advised appellant that the evidence submitted was insufficient to establish her claim. It requested factual and medical evidence. OWCP also requested that the employing establishment submit medical evidence if appellant was treated at its medical facility. The letter was sent to appellant's address of record.

On October 31, 2012 appellant stated that she took files from her top left file drawer while waiting for her computer to upload on September 21, 2012. She stated that she delayed in filing her claim because she could not access the electronic system and she was not allowed to enter her office building by her supervisor and administration. Appellant related that the immediate effects of her injury included a throbbing chronic migraine headache, and sharp pain and bruising on the left arm and hand.

³ 5 U.S.C. § 8101 *et seq.*

⁴ *See* 20 C.F.R. § 501.3(e).

⁵ The Board notes that appellant had separate claims under OWCP File Nos. xxxxxx954, xxxxxx901 and xxxxxx008 for an emotional condition. These claims were previously before the Board and denied in decisions dated January 12, 2012 and April 1 and June 6, 2013, respectively. Docket Nos. 11-796 (issued January 12, 2012), 12-1238 (issued April 1, 2013) and 12-1899 (issued June 6, 2013). Appellant also had a separate claim under OWCP File No. xxxxxx459 for a bilateral wrist condition. This claim was previously before the Board and denied in an August 15, 2014 decision. Docket No. 14-707 (issued August 15, 2014).

In a September 28, 2012 letter, Dr. R. Anthony Moore, a Board-certified psychiatrist and neurologist, stated that appellant had been off work since September 21, 2012. He advised that she would be off work for one month due to depression. In a November 19, 2012 letter, Dr. Moore advised that appellant would be off work until January 1, 2013.⁶

In a medical report dated October 19, 2012, Dr. Les Benson, a general practitioner, obtained a history that appellant was sitting at her desk getting files from a top file drawer when some of the overhead files fell and struck her on the arm between the elbow and shoulder and then fell to her wrist. Appellant told Dr. Benson that she had a contusion and scratches on her arm and that she went to an emergency room. Dr. Benson provided her medical, family and employment background. He noted appellant's left upper extremity symptoms and listed findings on physical and neurological examination. Dr. Benson diagnosed contusion of the left arm with laceration, sprain of the left arm, and cervical and shoulder strain. He opined that the diagnosed conditions were caused by the September 21, 2012 incident. In an October 19, 2012 letter, Dr. Benson advised that appellant sustained left shoulder strain and sprain, brachium contusion, left wrist and hand contusion and brachium laceration due to the September 21, 2012 incident. He opined that appellant was totally disabled from September 22 through November 16, 2012. In a November 20, 2012 letter, Dr. Benson reiterated his opinion that appellant's diagnosed left shoulder and wrist conditions were caused by the September 21, 2012 incident. He advised that appellant was totally disabled from September 22, 2012 through January 18, 2013.

In magnetic resonance imaging scan left shoulder and wrist reports dated November 9, 2012, Dr. Paul Marsh, a Board-certified radiologist, listed appellant's diagnoses.

In an October 15, 2012 memorandum, the employing establishment controverted appellant's claim based on Ms. Lunsford's September 21, 2012 statement. It also stated that, at the time of the claimed injury, appellant was to begin a two-week suspension on September 24, 2012. The employing establishment noted that the suspension had been served, but she was currently on 30 days of administrative leave. In a September 25, 2012 e-mail, JoAnn Murrell, a management and program analyst, stated that appellant reported an injury to her on September 21, 2012. She told Ms. Murrell that pieces of her cubicle fell and indicated that her arm and forehead were hurt.

By decision dated January 9, 2013, OWCP denied appellant's claim. It found that the evidence did not establish that the September 21, 2012 incident occurred as alleged.

On January 12, 2013 appellant requested a review of the written record by an OWCP hearing representative.

In a May 20, 2013 decision, an OWCP hearing representative affirmed the January 9, 2013 decision. She found that the evidence was insufficient to establish that the September 21, 2013 incident occurred as alleged.

⁶ The Board notes that it appears that Dr. Moore incorrectly stated that appellant would be off work until January 1, 2012 rather than January 1, 2013 as his report is dated November 19, 2012.

On August 27, 2013 appellant requested reconsideration. She resubmitted Dr. Benson's October 19, 2012 report, which was annotated as an "Addendum."

In a November 25, 2013 decision, OWCP denied merit review of appellant's claim on the grounds that the medical evidence submitted was cumulative and repetitious of Dr. Benson's prior October 19, 2012 report.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128 of the FECA,⁷ OWCP's regulation provide that 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.⁸ To be entitled to a merit review of an OWCP decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.⁹ Section 10.608(b) of the implementing regulation states that any application for review that does not meet at least one of the requirements listed in 20 C.F.R. § 10.606(b)(3) will be denied by OWCP without review of the merits of the claim.¹⁰

ANALYSIS

On August 27, 2013 appellant disagreed with OWCP's May 20, 2013 decision, denying her traumatic injury claim on the grounds that she failed to establish that the September 21, 2012 incident occurred as alleged. She requested reconsideration. The Board finds that appellant did not establish that OWCP erroneously applied or interpreted a specific point of law, or advance a relevant legal argument not previously considered.

Appellant submitted Dr. Benson's October 19, 2012 report, which was previously of record. The history of injury that she was sitting at her desk getting files from a top file drawer when several of the overhead files fell and struck her on the arm between the elbow and shoulder and then to her wrist. Dr. Benson opined that she had a contusion of the left arm with laceration, sprain of the left arm, and cervical and shoulder strain caused by the September 21, 2012 incident. This report is identical to the October 19, 2012 report, with the exception of being captioned as an "Addendum." The Board has held that evidence which is cumulative or duplicative of material already in the case record is insufficient to warrant reopening a claim for merit review.¹¹ The Board finds, therefore, that Dr. Benson's report is insufficient to reopen appellant's claim for a merit review.

⁷ 5 U.S.C. §§ 8101-8193. Under section 8128 of FECA, the Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application. 5 U.S.C. § 8128(a).

⁸ 20 C.F.R. § 10.606(b)(3).

⁹ *Id.* at § 10.607(a).

¹⁰ *Id.* at § 10.608(b); *see also Norman W. Hanson*, 45 ECAB 430 (1994).

¹¹ *A.F.*, Docket No. 11-1297 (issued December 20, 2011).

The Board accordingly finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(3). 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 new evidence not previously considered by OWCP. Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

On appeal, appellant contended that neither she nor her physicians were given a fair chance to address her work-related claims in a timely fashion. She further contended that she never received a request to submit the claimed relevant evidence, including clarification of a witness statement or her medical treatment prior to October 19, 2012. As noted, the Board does not have jurisdiction over the merits of appellant's claim, only whether she submitted sufficient evidence to warrant reopening of her claim for a merit review under 20 C.F.R. § 10.606(b)(3). The evidence submitted in support of appellant's request for reconsideration is insufficient to warrant reopening her claim for merit review.

CONCLUSION

The Board finds that OWCP properly denied appellant's request for further merit review of her claim pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the November 25, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 11, 2014
Washington, DC

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

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

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