

FACTUAL HISTORY

On January 20, 2012 appellant, then a 43-year-old letter carrier, filed a recurrence of disability claim asserting that on December 29, 2011, while exiting his work vehicle and changing mail trays, he experienced low back pain. He listed the date of original injury as April 17, 2010. OWCP developed this claim as a new traumatic injury. Appellant stopped work on January 14, 2012.

Appellant submitted a January 19, 2012 report from Dr. Wei Xu, a Board-certified physiatrist, who treated him for back and right lower limb pain which began three weeks prior at work. Dr. Xu noted findings of tenderness with spasm of the right lumbar fascia muscles and limited range of motion of the lumbar spine. He diagnosed new onset of back pain and right lower limb pain secondary to lumbar strain and sprain, possible aggravation of a disc herniation and right-sided L3-L4 nerve root compression. Dr. Xu noted a causal relationship between appellant's pain and injury sustained at work three weeks prior. He returned appellant to work at limited duty. In a February 2, 2012 report, Dr. Xu noted improvement in appellant's symptoms after physical therapy. He noted decreased range of motion of the lumbar spine and diagnosed improved back pain and recommended physical therapy. On March 1, 2013 Dr. Xu advised that appellant reported his symptoms were significantly improved with physical therapy. Physical examination was unchanged. Dr. Xu diagnosed improving back pain with physical therapy and increased appellant's work hours with limited lifting. In reports dated April 5 and May 3, 2012, he noted that appellant's back pain improved with physical therapy. During this time period, appellant reported radiating pain involving the right lower limb and decreased lumbar range of motion. Dr. Xu diagnosed improving lower back pain with radiating pain to the right lower limb.

Appellant submitted a February 10, 2012 magnetic resonance imaging scan of the lumbar spine which revealed severe multilevel degenerative disc and facet changes with central stenosis and neural foraminal narrowing at L3-4, L5-S1 and L4-5. He also submitted physical therapy notes.

On July 24, 2013 OWCP advised appellant that his claim was originally received as a simple, uncontroverted case which resulted in minimal or no time loss from work. It was administratively handled to allow limited medical payments. Because he sought further medical treatment, appellant's claim would be formally adjudicated. OWCP requested that appellant submit a comprehensive medical report from his treating physician which included a reasoned explanation as to how the specific work factors or incidents identified by him contributed to his claimed lumbar condition. Appellant did not respond.

In a decision dated August 29, 2013, OWCP denied appellant's claim. It found that the December 29, 2011 incident occurred as alleged but the medical evidence was insufficient to establish that appellant's claimed back condition was causally related to the work incident.

In an appeal request form dated September 30, 2013, appellant through his attorney requested reconsideration. He submitted an October 8, 2013 letter and requested reconsideration asserting that OWCP wrongly denied his benefits. Appellant believed the factual and medical evidence demonstrated that his injury was accepted by OWCP. He requested that OWCP

confirm the prior claim approval, and comply with an offer of modified assignment dated March 2, 2012, pay all wage loss and provide for all necessary medical treatment. Appellant submitted reports from Dr. Xu dated January 19 to April 5, 2012 and a notice of recurrence of disability dated January 20, 2012, all previously of record. He also submitted an OWCP letter accepting his claim for lumbar sprain in claim number xxxxxx655.² Also submitted was a light-duty job offer dated March 2, 2012.

In a December 10, 2013 decision, OWCP denied appellant's request for reconsideration. It found that the evidence submitted was insufficient to warrant a merit review.

LEGAL PRECEDENT

Under section 8128(a) of FECA,³ 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 provides 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 that:

“(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

“(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

OWCP denied appellant's claim for a traumatic injury on the grounds that the medical evidence was insufficient to establish that appellant's claimed conditions were causally related to work events.⁶ Thereafter, it denied appellant's reconsideration request, without a merit review.

² Claim number xxxxxx655 is not presently before the Board.

³ 5 U.S.C. § 8128(a).

⁴ 20 C.F.R. § 10.606(b)(2).

⁵ *Id.* at § 10.608(b).

⁶ The Board's jurisdiction is limited to the evidence that was before OWCP at the time it issued its final decision; therefore, the Board is unable to review evidence submitted by appellant on appeal.

The issue presented is whether appellant met any of the requirements of 20 C.F.R. § 10.606(b)(2), for OWCP to reopen his case for review of the merits. In his request for reconsideration, appellant did not contend that OWCP erroneously applied or interpreted a specific point of law. In his October 8, 2013 statement, appellant asserted that factual and medical evidence demonstrated that his work injury claim was accepted by OWCP. He requested that OWCP confirm its prior approval of his claim and comply with the offer of modified assignment dated March 2, 2012, pay all wage loss and provide for all necessary medical treatment. Appellant's contention does not establish a legal error by OWCP in the adjudication of his claim. The underlying issue in this case is whether appellant's diagnosed lumbar condition was causally related to the December 29, 2011 work incident. That is a medical issue which must be addressed by relevant medical evidence.⁷ A claimant may be entitled to a merit review by submitting new or relevant evidence, but appellant did not submit any new or relevant medical evidence in support of his request for reconsideration.

Appellant submitted reports from Dr. Xu dated January 19 to April 5, 2012 and the notice of recurrence of disability dated January 20, 2012. However, this evidence is duplicative of evidence previously submitted and considered by OWCP in its decision dated August 29, 2013. 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.⁸ Therefore, these reports are insufficient to require OWCP to reopen the claim for a merit review.

Appellant submitted an OWCP letter accepting his claim for lumbar sprain in claim number xxxxxx655 and a light-duty job offer dated March 2, 2012. As noted, this evidence notes that appellant has a separate claim accepted for a lumbar sprain and was on limited duty. It was not accompanied by any new medical evidence. As explained, the underlying issue in this claim is whether the medical evidence establishes that appellant's back condition in the present claim was caused or aggravated by the December 29, 2011 incident. The letter of acceptance from OWCP on a separate claim and the job offer are not relevant to this issue. Therefore, this evidence is insufficient to warrant reopening the case 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). 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 constitute relevant and pertinent evidence not previously considered. Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

On appeal, appellant's counsel asserts that he submitted sufficient evidence to establish that he developed a lumbar condition causally related to his employment duties and that OWCP improperly denied his reconsideration request. As discussed, the Board does not have jurisdiction to review the merits of his claim. Appellant did not submit any evidence or argument in support of his reconsideration request that warrants reopening of his claim for a merit review under 20 C.F.R. § 10.606(b)(2).

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

⁸ See *Daniel Deparini*, 44 ECAB 657 (1993); *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984).

CONCLUSION

The Board finds that OWCP properly denied appellant's request for reconsideration under 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the December 10, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 26, 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