

ISSUE

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

On appeal counsel contends that OWCP's decision was contrary to fact and law.

FACTUAL HISTORY

On March 25, 2013 appellant, then a 54-year-old health technician, filed a traumatic injury claim alleging that on that date she sustained back and bilateral knee pain when she slipped on icy pavement.

In a May 3, 2013 report, Dr. Mauricio Garcia, a treating physician, diagnosed cervical radiculopathy, unspecified joint shoulder region disorders, pain in neck, and loose body in shoulder joint region. Appellant was seen for complaints of left shoulder and neck pain. Dr. Garcia provided physical and neurologic findings and noted aggravating factors of shoulder use and all overhead activities.

On May 17, 2013 Dr. Garcia reported seeing appellant for neck and left shoulder pain complaints. He provided physical and neurologic examination findings. Dr. Garcia noted that her pain had not changed since appellant slipped and fell on ice on March 25, 2013. Diagnoses included left cervical radiculopathy and shoulder joint region pain.

In a letter dated June 14, 2013, OWCP informed appellant that the evidence of record was insufficient to establish her claim. It advised her as to the medical and factual evidence required to support her claim and gave her 30 days to provide this evidence.

On June 7, 2013 appellant was seen by Dr. Garcia for back pain complaints and reported that on March 25, 2013 appellant slipped and fell on ice while walking to work. The status of appellant's pain in her shoulder and back was unchanged from the last visit. Dr. Garcia provided physical and neurologic examination findings. Diagnoses included left unspecified joint shoulder region disorder, neck pain, left loose body in the shoulder joint region, left low back pain, and left sciatica. He stated that appellant's cervical pain with radicular symptoms occurred following the March 2013 slip and fall.

Dr. Garcia, in a June 24, 2014 report, stated appellant's chief complaints were neck, left shoulder, and back pain and that the pain was more severe. He related that the episodes of pain followed the March 25, 2013 incident when appellant slipped and fell on ice while going to work. Physical examination findings were provided. Under impression, Dr. Garcia reported left shoulder weakness and pain and cervical pain with radicular symptoms status post the March 2013 fall.

By decision dated July 16, 2013, OWCP denied her claim. It found that the evidence was insufficient to establish that there was a diagnosed condition causally related to the accepted March 25, 2013 employment incident.

In a July 5, 2013 report, Dr. Robert Trout, an examining Board-certified physiatrist, diagnosed mild left carpal tunnel syndrome and left low back pain. He provided physical examination findings and the results from the electromyograph test performed.

A July 5, 2013 cervical spine magnetic resonance imaging (MRI) scan revealed no acute osseous abnormalities, mild C4-5 and C5-6 disc bulge, mild C2-3 central canal stenosis due to disc bulging, and mild-to-moderate C3-4 right lateral spinal stenosis and foraminal stenosis due to disc bulging and posterolateral right spur formation. The left shoulder x-ray interpretation showed intact rotator cuff, moderate diffuse rotator cuff tendinopathy, and moderate arthrosis of the acromioclavicular joint.

In a July 19, 2013 report, Dr. Brian N. Jones, an examining physician, stated that appellant was seen for complaints of low back, left leg, and left shoulder pain. He stated that her episodes of pain followed the March 25, 2013 incident when she slipped and fell on ice while going to work. Dr. Jones provided examination findings and diagnosed sciatica, left low back pain, left shoulder joint region pain, herniated lumbar disc, and left cervical radiculopathy.

On July 29, 2013 appellant requested a telephone hearing before an OWCP hearing representative, which was held on January 16, 2014.

In reports dated September 4 and November 21, 2013, Dr. Jones diagnosed sciatica, left low back pain, left shoulder joint region pain, herniated lumbar disc, and left cervical radiculopathy. He reported that the pain occurred after appellant slipped and fell on March 25, 2013 and provided physical examination findings.

In reports dated January 23 and February 27, 2014, Dr. Daniel J. Coy, an examining physician, diagnosed cervicalgia, cervical herniated disc, left cervical radiculopathy, left low back pain, and lumbar herniated disc. He reported that the pain occurred following a March 25, 2013 incident when appellant slipped and fell on ice while going to work. Dr. Coy provided physical examination findings.

By decision dated April 3, 2014, OWCP hearing representative affirmed the July 16, 2013 denial of appellant's claim.

On April 4, 2014 OWCP received medical evidence as set forth below.

In a March 27, 2014 report, Dr. Coy diagnosed cervicalgia, cervical herniated disc, left cervical radiculopathy, left low back pain, and lumbar herniated disc and provided physical examination findings. He reported that the pain occurred following a March 25, 2013 incident when appellant slipped and fell on ice while going to work.

A March 27, 2014 x-ray interpretation of the cervical spine revealed no subluxation or fracture and mild straightening of normal cervical lordosis.

In a letter dated June 12, 2014, appellant's counsel requested reconsideration and resubmitted evidence previously considered by OWCP which included reports dated January 23 and February 27, 2014 from Dr. Coy, a September 4, 2013 report by Dr. Jones, and a July 5, 2013 MRI scan. Counsel also submitted additional evidence.

In an April 23, 2013 report, Dr. William Thomas, a chiropractor, diagnosed lumbago, disc degeneration, acquired postural kyphosis, and nonallopathic lumbar region lesions. He related that appellant was seen following a March 25, 2013 work incident. Appellant related having neck, left shoulder, and back pain since the March 25, 2013 incident. Dr. Thomas provided physical findings and noted cervical, lumbar, and thoracic subluxations. He stated that appellant had reduced cervical, thoracic, and lumbar range of motion with pain. Under treatment, Dr. Thomas noted two to three views of lumbosacral and cervical radiologic examinations.

A June 9, 2014 x-ray interpretation showed a C3-4 posterior disc protrusion and C5-6 incomplete bridging anterior osteophyte or anterior disc calcification. Under indication the report noted cervicgia and herniated cervical disc.

A June 9, 2014 computerized tomography (CT) scan reported right mild central neural forminal narrowing and C3-4 right posterior lateral disc protrusion “with asymeric narrowing of the right lateral recess where there is a mass effect upon the ventral nerve root.”

By decision dated September 17, 2014, OWCP denied reconsideration.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,³ OWCP’s regulations 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.⁴ 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.⁵ When a claimant fails to meet one of the above standards, OWCP will deny the application for reconsideration without reopening the case for review on the merits.⁶

ANALYSIS

The issue presented on appeal is whether appellant met any of the requirements of 20 C.F.R. § 10.606(b)(3), requiring OWCP to reopen the case for review of the merits of the claim. In her June 12, 2014 request for reconsideration, appellant did not show that OWCP erroneously applied or interpreted a specific point of law. She did not identify a specific point of

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

⁴ 20 C.F.R. § 10.606(b)(3). See *J.M.*, Docket No. 09-218 (issued July 24, 2009); *Susan A. Filkins*, 57 ECAB 630 (2006).

⁵ *Id.* at § 10.607(a). See *S.J.*, Docket No. 08-2048 (issued July 9, 2009); *Robert G. Burns*, 57 ECAB 657 (2006).

⁶ *Id.* at § 10.608(b). See *Y.S.*, Docket No. 08-440 (issued March 16, 2009); *Tina M. Parrelli-Ball*, 57 ECAB 598 (2006).

law or show that it was erroneously applied or interpreted. Appellant did not advance a new and relevant legal argument not previously considered by OWCP.

A claimant may be entitled to a merit review by submitting pertinent new and relevant evidence. In her request, appellant failed to submit any pertinent new and relevant evidence or argument in this case. She resubmitted the January 23 and February 27, 2014 reports by Dr. Coy, a September 4, 2013 report by Dr. Jones, and a July 5, 2013 MRI scan. OWCP, however, had previously considered this evidence in its April 3, 2014 hearing representative's decision. Evidence which repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.⁷

The Board finds that the submission of the reports from Drs. Coy and Thomas and the diagnostic evidence did not require reopening appellant's case for merit review. The reports are repetitive of their prior reports and offer no opinion as to the cause of her conditions. Similarly, Dr. Thomas offered no opinion as to the cause of appellant's diagnosed condition. OWCP denied her claim finding that none of the medical evidence contained any rationale explaining how the diagnosed conditions were causally related to the accepted March 25, 2013 incident. The reports from Dr. Coy, Dr. Thomas, a June 9, 2014 CT scan, and June 9, 2014 x-ray interpretation are not relevant or pertinent to the underlying issue in this case, *i.e.* causal relationship, as neither provides any explanation as to how her diagnosed conditions had been caused or aggravated by the March 25, 2013 incident and, thus, are not sufficient to require OWCP to reopen her claim for consideration of the merits.⁸

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

On appeal counsel contends that OWCP's decision was contrary to fact and law. Based on the findings and reasons stated above, the Board finds his arguments are not substantiated.

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).

⁷ See *J.P.*, 58 ECAB 289 (2007); *Richard Yadron*, 57 ECAB 207 (2005).

⁸ See *James W. Scott*, 55 ECAB 606 (2004).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 17, 2014 is affirmed.

Issued: April 6, 2015
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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