

FACTUAL HISTORY

On May 23, 2014 appellant, then a 39-year-old letter carrier, filed a Form CA-2 claim for occupational disease or illness as a result of her federal employment. She identified job duties of bending, stooping, loading, lifting, pushing, pulling, and carrying of cased mail as contributing to a back injury. The nature of the condition was described as an L4-5 herniated disc with radiculopathy, and thoracic or lumbosacral neuritis or radiculitis. The reverse of the claim form indicated that appellant had stopped working on April 29, 2014.

With respect to medical evidence, appellant submitted a report dated April 28, 2014 from Dr. David Callaghan, an osteopath, providing results on examination and diagnosing lumbar radiculopathy and thoracic or lumbosacral neuritis or radiculitis. Dr. Callaghan also provided a note indicating that appellant should be off work commencing April 29, 2014. In an attending physician's report (Form CA-20) dated May 28, 2014, he diagnosed L4-5 herniated disc with radiculopathy, and thoracic or lumbosacral neuritis or radiculitis. Dr. Callaghan checked a box "yes" that the diagnosed conditions were employment related. Appellant also submitted reports from Dr. Callaghan dated May 5 through July 9, 2014 providing results on examination.

By decision dated August 22, 2014, OWCP denied the claim for compensation. It found that the medical evidence was insufficient to establish her claim.

On November 11, 2014 OWCP received a request for reconsideration. In a letter dated November 7, 2014, appellant stated that she had gone to an orthopedic surgeon and had undergone x-ray examination, as well as a magnetic resonance imaging (MRI) scan. She stated that the tests showed disc degeneration, herniation, and bulging discs. Appellant report that she was enclosing copies of her office visits. The record does not contain any additional medical evidence.

By decision dated January 30, 2015, OWCP found the reconsideration request was insufficient to warrant a review of the merits of the claim for compensation.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,² OWCP regulations provide that a claimant may obtain review of the merits of the claim by submitting a written application for reconsideration that sets forth arguments and contains evidence that either "(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 evidence not previously considered by OWCP."³ 20 C.F.R. § 10.608(b) states that any application for review that does not meet at least one of the

² 5 U.S.C. § 8128(a) (providing that "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application").

³ 20 C.F.R. § 10.606(b)(3).

requirements listed in 20 C.F.R. § 10.606(b)(3) will be denied by OWCP without review of the merits of the claim.⁴

ANALYSIS

In the present case, OWCP denied appellant's occupational claim, finding that the medical evidence did not establish a diagnosed condition causally related to the identified employment activities. Appellant submitted a November 7, 2014 letter requesting reconsideration, stating that she had been treated by an orthopedic surgeon and had undergone diagnostic testing. She did not show that OWCP erroneously applied or interpreted a specific point of law, or advance a relevant legal argument not previously considered by OWCP.

Although appellant stated that she was submitting additional medical evidence, the record does not contain any additional medical evidence submitted on reconsideration. As noted above, the basis for the denial of the claim was the lack of probative medical evidence on causal relationship between a diagnosed condition and employment activity as a letter carrier. The Board finds that appellant did not submit relevant and pertinent evidence not previously considered by OWCP. As appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(3), OWCP properly denied the request for reconsideration without reviewing the merits of the claim for compensation.

On appeal, appellant states that she did enclose additional medical evidence with her reconsideration request. She states that her claim has been handled by several claims examiners and some of her medical evidence may not have been properly handled. The Board, however, can only review the evidence of record.⁵ There is no additional medical evidence contained in this case record. Appellant may submit evidence to OWCP with a request for reconsideration. On this appeal, however, the Board finds that the January 30, 2015 OWCP decision properly denied merit review of the claim.

CONCLUSION

The Board finds that OWCP properly denied the application for reconsideration without merit review of the claim.

⁴ *Id.* at § 10.608(b); *see also Norman W. Hanson*, 45 ECAB 430 (1994).

⁵ The Board reviews evidence that was before OWCP at the time of the decision an appeal. 20 C.F.R. § 501.2(c)(1).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 30, 2015 is affirmed.

Issued: August 13, 2015
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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