

from Dr. Dean L. Carlson, a Board-certified orthopedic surgeon and an impartial medical specialist, and a January 27, 2014 report from Dr. Richard J. Schaller, Board-certified in emergency medicine, reveals that appellant never recovered from her work-related thoracic outlet syndrome and March 12, 2004 authorized surgery.

FACTUAL HISTORY

This case has previously been before the Board. In a February 7, 2013 decision,³ the Board affirmed OWCP's May 1, 2012 decision under File No. xxxxxx163, finding that appellant failed to establish that she had any disability causally related to her accepted employment-related aggravation of bilateral traumatic thoracic outlet syndrome. The relevant facts are set forth below.

Under File No. xxxxxx523, OWCP accepted that on April 15, 2000 appellant, then a 33-year-old part-time flexible city carrier, sustained neck and lumbar strains due to a motor vehicle accident while in the performance of duty.

In appellant's subsequent claim, under File No. xxxxxx163, OWCP accepted that she sustained contusions of the left hip and bilateral knees, cervical and lumbar strains, and a right knee meniscus tear as a result of a motor vehicle accident on January 10, 2001 while in the performance of duty. It authorized right knee arthroscopic surgery performed on December 27, 2001. On July 7, 2003 and April 6, 2006 OWCP accepted that appellant sustained a recurrence of disability on May 24 and 29, 2001, respectively, causally related to her January 10, 2001 employment injuries. In a January 24, 2005 decision, it terminated her wage-loss compensation and medical benefits effective January 25, 2005 on the grounds that she no longer had any residuals or disability causally related to her January 10, 2001 employment-related injuries. By decision dated February 14, 2006, an OWCP hearing representative affirmed the January 24, 2005 termination decision. Appellant appealed this decision to the Board.

In a May 4, 2007 decision,⁴ the Board affirmed OWCP's January 24, 2005 termination decision. The Board found that appellant no longer had any residuals or disability causally related to her January 10, 2001 employment-related injuries. The Board also found that she did not establish any continuing employment-related residuals or disability after January 25, 2005.

By decision dated January 18, 2012, OWCP accepted that appellant sustained an aggravation of bilateral traumatic thoracic outlet syndrome. In an October 12, 2012 decision, it denied her claim for a recurrence of disability as of March 29, 2011. OWCP noted that appellant had submitted a January 7, 2009 report from Dr. Stuart M. Hochron, a Board-certified internist, who advised that appellant's April 15, 2000 and January 10, 2001 work-related car accidents significantly contributed to the development of her chronic medical conditions and resultant surgeries, and caused significant physical impairment rendering her to only perform part-time work with restrictions. OWCP found that Dr. Hochron provided no rationale explaining whether appellant's work restrictions were due to her accepted aggravation of thoracic outlet syndrome and whether these restrictions were permanent. In a March 28, 2013 decision, an OWCP hearing representative affirmed the October 12, 2012 decision. She noted that appellant had submitted a

³ Docket No. 12-1532 (issued February 7, 2013).

⁴ Docket No. 06-1640 (issued May 4, 2007).

February 21, 2013 report from Dr. Hochron under File No. xxxxxx523. In this report, Dr. Hochron advised that appellant could work with restrictions. OWCP hearing representative found that he did not provide a diagnosis or specific findings on examination.

On July 3, 2013 appellant, through her attorney, appealed the March 28, 2013 OWCP hearing representative's decision to the Board. By order dated February 24, 2014,⁵ the Board dismissed the appeal as appellant wished to submit new or additional evidence to OWCP in support of a request for reconsideration of the denial of her recurrence of disability claim.

On reconsideration appellant submitted additional medical evidence. In a June 11, 2009 report, Dr. Hochron advised that appellant's accepted April 15, 2000 and January 10, 2001 employment-related injuries contributed to the development of her current medical conditions which required surgery, pain and ongoing symptoms. He reiterated his prior opinion that her conditions rendered her capable of only performing part-time work with restrictions. In a January 27, 2014 report, Dr. Schaller advised that appellant was permanently injured as a direct result of her accepted April 15, 2000 and January 10, 2001 employment injuries and that she would never be able to fully perform the duties outlined in her job description. In a March 13, 2014 decision, OWCP denied modification of the March 28, 2013 decision. It found that the reports of Dr. Hochron and Dr. Schaller provided no medical rationale to support their opinion that appellant was disabled due to her accepted employment-related bilateral thoracic outlet syndrome. The claims under File Nos. xxxxxx163 and xxxxxx523 have been combined with File No. xxxxxx523 serving as the master file.

Following the issuance of the Board's February 7, 2013 decision under File No. xxxxxx523, appellant, through her counsel, requested reconsideration before OWCP in a February 22, 2013 letter. She submitted medical evidence, including reports dated February 9 and 21, 2013 from Dr. Hochron. In the February 9, 2012 report, Dr. Hochron advised that appellant suffered from bilateral thoracic outlet syndrome which prohibited her from performing certain physical activities. He noted that these activities caused pain and numbness in her neck, arms, hips, and lower extremities. Dr. Hochron advised that appellant could perform duties that involved mail sorting without the need to raise her arms above shoulder level only if she could frequently change her position and avoid upward gazing and lifting weight. In the February 21, 2013 report, he advised that her medical condition and her work limitations had not improved. They had worsened since January 2009. Dr. Hochron reported his findings from his examination of appellant on January 22, 2013 and advised that she was severely limited in her ability to perform identified functions that were normally required in workplaces. He concluded, however, that she could work in an environment where she was not required to perform certain physical activities.

In a May 7, 2013 decision, OWCP denied modification of the February 22, 2013 request. It found that the medical evidence submitted failed to establish that appellant had any disability commencing January 25, 2005 due to her accepted thoracic outlet syndrome condition.

By letter dated February 11, 2014, appellant, through her attorney, requested reconsideration. She resubmitted Dr. Hochron's January 7 and June 11, 2009 and February 9 and 21, 2013 reports and Dr. Schaller's January 27, 2014 report.

⁵ Docket No. 13-1664 (issued February 24, 2014).

In a May 13, 2014 decision, OWCP denied merit review of appellant's claim. It found that her attorney did not argue that it had erroneously applied or interpreted a point of law or provide a new legal argument or point of law not previously considered. OWCP further found that Dr. Schaller's January 27, 2014 report was repetitious and duplicative of his prior report.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128 of the FECA,⁶ OWCP 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.⁷ 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.⁸ Section 10.608(b) of the implementing regulations state that any application for review that does not meet at least one of the requirements listed in 20 C.F.R. § 10.606(b)(2) will be denied by OWCP without review of the merits of the claim.⁹

ANALYSIS

On February 11, 2014 appellant disagreed with OWCP's May 7, 2013 decision, which found that she failed to establish any disability causally related to her accepted April 15, 2000 and January 10, 2001 employment-related injuries. She requested reconsideration. The underlying issue on reconsideration is medical in nature.

The Board finds that appellant did not show that OWCP erroneously applied or interpreted a specific point of law. Moreover, appellant did not advance a relevant legal argument not previously considered.

The Board further finds that appellant did not submit relevant or pertinent new evidence not previously considered. Appellant submitted duplicate copies of Dr. Hochron's January 7 and June 11, 2009 and February 9 and 21, 2013 reports, and Dr. Schaller's January 27, 2014 report. This evidence was previously of record and considered by OWCP. The Board has held that evidence which repeats or duplicates evidence already in the case record is insufficient to warrant reopening a claim for merit review.¹⁰ The Board finds, therefore, that the reports of Dr. Hochron and Dr. Schaller are insufficient to reopen appellant's claim for a merit review.

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

⁶ 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).

⁷ 20 C.F.R. § 10.606(b)(3).

⁸ *Id.* at § 10.607(a).

⁹ *Id.* at § 10.608(b); *see also Norman W. Hanson*, 45 ECAB 430 (1994).

¹⁰ *A.F.*, Docket No. 11-1297 (issued December 20, 2011).

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 counsel requests the Board to reverse OWCP's decision as OWCP abused its discretion in failing to review the medical evidence and argument appellant submitted in support of her request for reconsideration. He contends that Dr. Carlson's October 18, 2011 report and Dr. Schaller's January 27, 2014 report revealed that appellant never recovered from her work-related thoracic outlet syndrome and March 12, 2004 authorized surgery. As noted, the Board does not have jurisdiction over the merits of appellant's claim, only whether appellant submitted sufficient evidence to warrant reopening of her claim for a merit review under 20 C.F.R. § 10.606(b)(3). Appellant did not submit Dr. Carlson's report in support of her February 11, 2014 request for reconsideration. Further, as found by OWCP and the Board, Dr. Schaller's report does not provide a sufficient basis to reopen her claim for merit review as it is duplicative of his prior report of record.¹¹

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 May 13, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 23, 2015
Washington, DC

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

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

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

¹¹ *Id.*