

FACTUAL HISTORY

On January 4, 2011 appellant, then a 56-year-old project manager/senior staff officer, filed a traumatic injury claim alleging that on October 25, 2010 she sustained a back injury. She alleged that she fell while she was turning away from a copy machine, landing on her back. Appellant did not stop work.

By letter dated November 11, 2011, OWCP notified appellant that evidence was insufficient to establish her claim because no medical evidence had been received. It advised her of the type of evidence required and advised her to complete a questionnaire to establish the factual basis of her claim.

In a November 16, 2010 report, Dr. Steven Hughes, a Board-certified orthopedic surgeon, noted that appellant complained of left arm and hand numbness, tingling, and weakness. On physical examination of the cervical spine, he found no palpitation tenderness, no malalignment, and 75 percent restricted active range of motion. Dr. Hughes advised that an x-ray of the cervical spine revealed moderate osteoarthritis and he diagnosed displaced cervical disc. He opined that appellant's condition was possibly related to an incident occurring when she lost her balance and fell flat on her back.

In a January 26, 2011 report, Dr. Hughes noted that appellant complained of upper back, neck, and left shoulder pain. He further noted that appellant described her pain as moderately severe, intermittent, dull, and aching. Dr. Hughes advised that a magnetic resonance imaging (MRI) scan of the cervical spine revealed multilevel degenerative disc disease with associated disc bulges, disc osteophyte complex and formation, severe left side impingement at C3-4, C4-5, and C5-6 levels with moderate central canal stenosis at C5-6.

In a November 28, 2011 statement, appellant advised that she was at a work sponsored course in West Virginia when she fell on her back as she turned away from a copy machine. She stated that she did not take a step and that there was nothing in her path on the floor that caused her fall. Appellant noted that she had continued to work, despite her condition, with only intermittent absences.

By decision dated December 12, 2011, OWCP denied appellant's claim because the medical evidence was insufficient to establish that the work incident caused appellant's diagnosed condition.

By letter dated October 25, 2012, appellant requested reconsideration. She provided an October 22, 2012 report from Dr. Suzanne Wittig, Board-certified in internal medicine, who noted that appellant complained of neck pain and stiffness that radiated to her shoulder. Dr. Wittig advised that appellant's injury occurred following a fall at work in October 2010. She advised that appellant did not have a neck problem prior to the incident and diagnosed cervical abnormality.

By decision dated December 17, 2012, OWCP denied modification of its December 12, 2011 decision. It found that Dr. Wittig's report did not contain medical rationale regarding causal relationship. OWCP advised appellant that to establish her claim, she must submit reasoned medical evidence establishing causal relationship.

By letter dated December 8, 2013, appellant requested reconsideration through her attorney. Her attorney argued that OWCP's decision was in error because the medical evidence referenced an MRI scan that showed nerve impingement and also because the medical evidence indicated that appellant had no neck pain prior to the injury date. Counsel argued that these two facts taken together showed that appellant's symptoms were caused by the work incident.

By decision dated March 14, 2014, OWCP denied appellant's request for reconsideration without a merit-review because appellant failed to submit any new relevant evidence or legal contentions warranting further merit review.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a) of FECA, the evidence or argument submitted by 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.² 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.³ 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.⁴

ANALYSIS

In a December 17, 2012 merit decision, OWCP denied appellant's request for reconsideration finding that the medical evidence did not establish that the October 25, 2010 employment incident caused or aggravated her back and neck condition. Appellant submitted a timely request for reconsideration on December 8, 2013, which was denied without a merit review.

The Board finds that OWCP properly denied appellant's request for reconsideration without further merit review. On reconsideration, her attorney argued that causal relationship was established by medical evidence that showed nerve impingement and the fact that appellant's physician noted that she had no neck pain prior to the injury. The Board has also held that an opinion that a condition is causally related to an employment injury because the employee was asymptomatic before the injury, but symptomatic after, it is insufficient without supporting rationale to establish causal relationship.⁵ Consequently, this assertion does not show that OWCP erroneously applied or interpreted a specific point of law, nor does it advance a relevant legal argument not previously considered.

² 20 C.F.R. § 10.606(b)(2).

³ *Id.* at § 10.607(a).

⁴ *Id.* at § 10.608(b).

⁵ *Thomas D. Petrylak*, 39 ECAB 276 (1987).

Furthermore, appellant did not submit relevant evidence not previously considered by OWCP. OWCP explained in its December 17, 2012 merit decision that additional medical evidence was needed to establish the claim. However, appellant did not submit any new medical evidence. While she offered her argument for why she believed her claim should be accepted, the underlying issue in the claim, causal relationship, is medical in nature. Because appellant failed to satisfy any of the three regulatory criteria for reopening a claim, she was not entitled to further merit review of her claim.

Appellant's attorney contends on appeal that OWCP's decision was in error because the medical evidence was sufficient to establish the claim. However, the Board does not have jurisdiction over the merits of the claim. As explained above, appellant's argument on reconsideration was insufficient to warrant a merit review of the claim. Therefore, OWCP properly denied her application for reconsideration.

CONCLUSION

The Board finds that OWCP properly refused to reopen appellant's case for further merit review.

ORDER

IT IS HEREBY ORDERED THAT the March 14, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 19, 2015
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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