

FACTUAL HISTORY

On December 6, 2012 appellant, then a 44-year-old letter carrier filed a traumatic injury claim alleging that on December 5, 2012 she injured her back, right leg, and right knee. She alleged that the extension of her delivery route and heavier volume of mail in her satchel caused her injury. Appellant stated that she heard a pop and felt pain in her back which radiated down to her leg and her right knee. She stopped work on December 5, 2012.

By letter dated December 10, 2012, the manager of customer service at the employing establishment controverted appellant's claim. He alleged that her claim was an attempt to challenge a change in her route. The manager disputed appellant's claim that her route had been extended and noted that her route was only resequenced to make it more efficient. He also disputed that her satchel was too heavy; arguing that when her satchel was weighed after the incident it only weighed 20 pounds and 14 ounces and that adding mail to account for what had already been delivered, would have only brought the satchel to 24 pounds and six ounces. The manager specified that mail carriers are required to lift at least 35 pounds. He also claimed that when emergency personnel arrived on the scene, appellant was able to twist her back without any inclination of pain.

Also submitted to OWCP was a December 10, 2012 statement from a supervisor of customer service who witnessed the alleged incident. He alleged that appellant complained about her route being reconfigured and how some stops caused her satchel to be too heavy before she began her route. The supervisor advised that he accompanied her on her route to supervise her. He stated that appellant dropped her satchel at every stop and that when she grabbed her satchel from the ground and lifted it she stated that she was in pain and could not continue. The supervisor advised that he called the ambulance and that when he returned to the office he weighed the satchel and it was 20 pounds and 14 ounces.

In a December 21, 2012 report, Dr. Vincent McInerney, a Board-certified orthopedic surgeon, advised that appellant was injured when she was asked to carry 35 pounds. He stated that she had severe neck and low back pain that radiated to her right knee as well as pain radiating into the interscapular area down her arms to the fingers. Dr. McInerney also noted that appellant had paracervical spasms. On examination, he found paracervical tenderness, good neck range of motion, and pain at the extremes of lateral bending and rotation. A back x-ray was consistent with mild scoliosis. Dr. McInerney diagnosed cervical sprain and interscapular myofascitis.

In a January 4, 2013 report, Dr. McInerney advised that appellant complained of severe neck pain, left shoulder pain, and lower back pain that radiated to the right knee. He noted that she had some improvement, but she was still experiencing bilateral cervical radiculopathy more significant on the left. Dr. McInerney further noted that appellant had limited neck range of motion with pain especially on lateral bending and rotation. He stated that this was related to a work injury where she was asked to lift a 35-pound bag.

In a January 8, 2013 statement, appellant advised that, on the date of her injury, there was an excessive amount of mail in her satchel and mail in both hands. She stated that she was struggling and straining to carry the mail and that she repeatedly asked her supervisor if she

could deliver some then come back for the rest. Appellant noted that as she was walking she heard a pop followed by sharp pain in her back that shot down to her legs. She stated that she collapsed to the ground and her supervisor called an ambulance that took her to the hospital.

In a February 14, 2013 decision, OWCP denied appellant's claim because the medical evidence failed to establish that the diagnosed condition was causally related to the alleged work incident.

Appellant submitted additional evidence from Dr. McInerney. In a January 31, 2013 report, Dr. McInerney advised that she was having left side neck and arm pain as well as right arm discomfort. Appellant had limited neck range of motion with paracervical spasms. Dr. McInerney advised that a January 7, 2013 magnetic resonance imaging (MRI) scan revealed no significant findings. He opined that appellant's injury was related to the December 5, 2012 work incident where she had to carry a 35-pound bag. Dr. McInerney stated that the incident was capable of causing the paracervical spasm and the pain that she described because lifting something heavy in the position that she was in caused traction on the left shoulder and neck area which irritated the brachial plexus and nerve roots emanating from the cervical spine area. He stated that the type of traction injury appellant had was plausibly and was most likely the reason for her continued cervical radiculopathy.

Appellant's counsel requested a telephone hearing which was held on July 16, 2013. Appellant advised that her satchel had a greater volume of mail on the date of the incident because she had to deliver several magazines. She stated that she believed her injury occurred as a result of bending to pick up her satchel and throwing it over her shoulder.

In a July 26, 2013 report, Dr. McInerney advised that appellant's neck and shoulder pain improved and that she returned to modified work. He reiterated that the work incident caused her pain and paracervical spasm and that the type of traction injury that she had was the plausible and likely reason for her continued cervical radiculopathy.

By decision dated September 30, 2013, an OWCP hearing representative denied appellant's claim because medical evidence did not establish that the diagnosed condition was causally related to the work incident.

On September 4, 2014 appellant's counsel requested reconsideration. He argued that medical evidence was sufficient to establish the claim. In particular, counsel pointed to Dr. McInerney's July 26, 2013 report, where he opined that it was plausible and likely that the incident caused appellant's neck pain. He also argued, in the alternative, that OWCP had an obligation to further develop the evidence. Counsel noted that OWCP did not write to Dr. McInerney to advise him of what was needed to approve the claim. He resubmitted Dr. McInerney's July 26, 2013 report and submitted a July 26, 2013 addendum report correcting his earlier January 31, 2013 report. The correction changed the phrase "capable of causing" to "is causing" and changed "plausible and most likely the reason" to "plausible and likely the reason."

By decision dated September 15, 2014, OWCP denied appellant's request for reconsideration without a merit review.²

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a) of FECA, OWCP's regulations provide that the evidence or argument submitted by a claimant must either: (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.³ Where the request from reconsideration fails to meet at least one of these standards, OWCP will deny the application for reconsideration without opening the case for a review of the merits.⁴

ANALYSIS

In a September 30, 2013 merit decision, an OWCP hearing representative denied appellant's claim because medical evidence did not establish that the diagnosed condition was causally related to the work incident. Appellant submitted a timely request for reconsideration on September 4, 2014, which was denied by OWCP without a merit review.

The Board finds that OWCP properly denied appellant's request for reconsideration without further merit review. In support of reconsideration, appellant's counsel argued that medical evidence should have been sufficient to establish the claim or, in the alternative, that OWCP had an obligation to develop the medical evidence. The Board has held that appellant's belief that the medical evidence supported causal relationship and a disagreement with OWCP's findings on the probative value of the medical evidence does not constitute a new and relevant legal argument sufficient to warrant merit review of the claim.⁵ Consequently, these assertions do not show that OWCP erroneously applied or interpreted a specific point of law and do not advance a relevant legal argument not previously considered by OWCP.

Appellant resubmitted Dr. McNerney's July 26, 2013 report. However, this report does not constitute relevant new evidence because it was previously considered by OWCP.⁶ She also

² On September 22, 2014 appellant again requested reconsideration. In a September 30, 2014 decision, OWCP denied her request for reconsideration without a merit review. As noted, the present appeal was filed on September 29, 2014. The Board finds that the September 30, 2014 OWCP decision is null and void. Following the docketing of an appeal with the Board, OWCP does not retain jurisdiction to render a further decision regarding a case on appeal until after the Board relinquishes its jurisdiction. Any decision rendered by OWCP on the same issues for which an appeal is filed is null and void. See *Douglas E. Billings*, 41 ECAB 880 (1990); see also *Linda D. Guerrero*, 54 ECAB 556 (2003).

³ *E.K.*, Docket No. 09-1827 (issued April 27, 2010). See 20 C.F.R. § 10.606(b)(2).

⁴ *L.D.*, 59 ECAB 648 (2008). See 20 C.F.R. § 10.606(b).

⁵ *P.J.*, Docket No. 13-376 (issued May 10, 2013).

⁶ See *James W. Scott*, 55 ECAB 606 (2004) (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).

submitted a July 26, 2013 addendum to Dr. McInerney's earlier January 31, 2013 report. However, this report does not constitute relevant and pertinent new evidence because Dr. McInerney's opinion on causal relation expressed in this addendum is essentially identical to that in his other July 26, 2013 report which, as noted, was previously considered by OWCP.

Because appellant failed to meet one of the standards enumerated under section 8128(a) of FECA, she was not entitled to further merit review of her claim.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the September 15, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 8, 2015
Washington, DC

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

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

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