

FACTUAL HISTORY

On October 22, 2012 appellant, then a 55-year-old human resources specialist, filed a traumatic injury claim alleging that on October 12, 2012 she tripped over a yellow caution sign in the ladies restroom and fell on her lower back, bruising both legs, and her back, while in the performance of duty. She stopped work on October 12, 2012.

In an October 26, 2012 letter, the employing establishment controverted the claim and noted that the discharge notes revealed that appellant was treated for her preexisting conditions in addition to back pain, slip, and fall. It contended that the medical evidence did not support causal relationship.

OWCP received hospital records, out of work slips, and treatment records from Dr. Joseph T. Crowe, a Board-certified orthopedic surgeon.

By letter dated June 24, 2013, OWCP noted that appellant's claim initially appeared to be a minor injury that resulted in minimal or no lost time from work and the claim was administratively handled to allow limited medical expenses. However, appellant's claim was now being reopened as a wage-loss claim was received. OWCP informed her of the type of evidence needed to support her claim and requested that she submit such evidence. It explained that a physician's opinion was crucial to appellant's claim and allotted her 30 days within which to submit the requested information.

In response, OWCP received treatment records from Dr. Crowe. An October 17, 2012 magnetic resonance imaging (MRI) scan, read by Dr. German G. Tampe, a Board-certified diagnostic radiologist, revealed grade 1 anterolisthesis, L4-L5 with degenerative changes; L4-L5 spinal stenosis, left lateral recess stenosis; degenerative changes, L3-L4 as well as L5-S1 and a reduced caliber of neural foramina: bilaterally L4, bilaterally L5, with no direct nerve root distortion; and multiple renal cysts. It also received physical therapy notes, work restrictions, and a July 30, 2013 statement from appellant describing the incident.

By decision dated August 1, 2013, OWCP denied appellant's claim as the medical evidence was not sufficient to establish that a medical condition was diagnosed in connection with the claimed event and/or work factors.

OWCP received laboratory reports and physical therapy notes.

OWCP also received two reports dated May 9 and 30, 2013 from Dr. Crowe, who examined appellant and provided findings and prescribed physical therapy.

On July 8, 2014 appellant requested reconsideration. She argued that she was still having problems with her back and shoulder. Appellant explained that she was seeing a pain specialist at this time. She noted that she tried to make an appointment with Dr. Crowe for a diagnosis and his office would not see her under medical insurance due to the denial of her claim. Appellant also indicated that he was no longer in the office. She explained that she made a new appointment with another physician to address her back and shoulder injury. Appellant explained that she was on pain medication for over a year and some days she could not get up due to the pain. She indicated that she was waiting for a written diagnosis and would forward

the paperwork as soon as she was seen by the physician. Appellant also noted that she was trying to obtain a written diagnosis from Dr. Crowe, and requested that OWCP wait for her paperwork before making a decision.²

In a decision dated October 3, 2014, OWCP denied appellant's request for reconsideration finding that the evidence submitted was insufficient to warrant review of its prior decision.

LEGAL PRECEDENT

Under section 8128(a) of FECA,³ OWCP may reopen a case for review on the merits in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations, which provide that a claimant may obtain review of the merits if the written application for reconsideration, including all supporting documents, sets forth arguments, and contains evidence that:

“(i) Shows that [OWCP] erroneously applied or interpreted a specific point of law; or

“(ii) Advances a relevant legal argument not previously considered by OWCP; or

“(iii) Constitutes relevant and pertinent new evidence not previously considered by [OWCP].”⁴

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by OWCP without review of the merits of the claim.⁵

ANALYSIS

Appellant disagreed with the denial of her traumatic injury claim and timely requested reconsideration on July 8, 2014. The underlying issue on reconsideration is medical in nature, namely whether the October 12, 2012 work incident caused or contributed to an injury.

On reconsideration, appellant argued that she was still having problems with her back and shoulder and was seeing a pain specialist. She indicated that she had been on pain medication for over a year and that on some days she could not get up because of pain. Appellant explained that she had tried to make a diagnostic appointment with Dr. Crowe, but his office would not see her. She then made a new appointment with a different physician. Appellant told OWCP she

² On June 24, 2014 appellant noted that she was appealing the decision. However, in a July 8, 2014 telephone memorandum, OWCP inquired into what type of appeal, she wished to pursue. Appellant was advised that “time wise” a reconsideration was the only remaining option.

³ 5 U.S.C. § 8128(a).

⁴ 20 C.F.R. § 10.606(b).

⁵ *Id.* at § 10.608(b).

was waiting for a written diagnosis and send it as soon as she could. She asked OWCP to wait for her paperwork before making a decision. The issue on reconsideration is medical. OWCP denied the claim because it found the medical evidence insufficient to establish a diagnosed medical condition causally related to the claimed event and/or work factors.⁶

Appellant did not submit medical evidence on the question of whether her employment contributed to her claimed condition. OWCP also received reports dated May 9 and 30, 2013 from Dr. Crowe, who examined her, provided findings, and prescribed physical therapy. Dr. Crowe did not provide a diagnosis or offer an opinion on causal relationship. Likewise, the laboratory reports did not contain a diagnosis or an opinion on the relevant question of causal connection. The Board has held that the submission of evidence which does not address the particular issue involved in a reconsideration does not constitute a basis for reopening a case.⁷

OWCP also received physical therapy notes. However, physical therapists are not considered physicians as defined under FECA and thus their reports do not constitute competent medical evidence.⁸ Consequently, these reports do not constitute a basis for reopening a case because the relevant question involves a medical opinion provided by a physician.

Appellant did not show that OWCP erroneously applied or interpreted a specific point of law, did not advance a relevant legal argument not previously considered by OWCP, or submit new and relevant evidence not previously considered.

The Board notes that appellant submitted new evidence with her appeal to the Board. The Board cannot consider this evidence, however, as its review of the case is limited to the evidence of record which was before OWCP at the time of its final decision.⁹

CONCLUSION

The Board finds that OWCP properly refused to reopen appellant's case for further review of the merits of her claim under 5 U.S.C. § 8128(a).

⁶ See for example, *A.D.*, 58 ECAB 149 (2006).

⁷ *Ronald A. Eldridge*, 53 ECAB 218 (2001); *Alan G. Williams*, 52 ECAB 180 (2000).

⁸ Records from a physical therapist do not constitute competent medical opinion in support of causal relation. A physical therapist is not a physician as defined under FECA. *A.C.*, Docket No. 08-1453 (issued November 18, 2008). Medical opinion, in general, can only be given by a qualified physician. *S.E.*, Docket No. 08-2214 (issued May 6, 2009). See 5 U.S.C. § 8101(2) (defines the term "physician").

⁹ 20 C.F.R. § 501.2(c); see *Steven S. Saleh*, 55 ECAB 169 (2003).

ORDER

IT IS HEREBY ORDERED THAT the October 3, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 18, 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