

severe pain and numbness from his arms to his fingertips while carrying mail. He stopped work and returned on October 21, 2013.

Appellant was initially treated in the emergency room by Dr. Jason T. Milk, an osteopath who specializes in emergency medicine. In a report dated September 28, 2013, Dr. Milk reported appellant's complaints of left arm numbness from the elbow to hand. He noted that appellant worked as a mail carrier and felt a "pop" in his elbow when he held a large stack of mail. Dr. Milk provided examination findings and diagnosed left elbow pain.

On September 28, 2013 appellant underwent an x-ray of the left elbow by Dr. Louise Milner, a Board-certified diagnostic radiologist, who reported no radiographic evidence of acute osseous injury.

Appellant submitted treatment notes dated September 28, 2013 by Ms. Angela G. Mardula, a physician assistant, who treated appellant for elbow strain. He also submitted a September 28, 2013 state workers' compensation claim form.

In a September 30, 2013 narrative report, Dr. Tim Nice, a Board-certified orthopedic surgeon, noted that appellant had vague symptoms in his left arm since April. He noted that appellant carried mail and explained that appellant's job irritated the radial nerve. Upon examination, Dr. Nice observed slight weakness in the brachioradialis and extensors of the wrist. Tinel's testing over the radial nerve was positive. X-rays were normal. Dr. Nice reported that appellant was not able to return to work. In a prescription note, he opined that appellant was totally disabled from work until October 21, 2013 due to a left elbow injury.

On October 1, 2013 Stephanie Pearson, branch manager at the employing establishment, wrote an e-mail controverting appellant's claim. She stated that appellant filed a traumatic injury claim in retaliation of a notice of removal that was issued to him on September 10, 2013.

In a letter dated October 4, 2013, OWCP advised appellant that the evidence submitted was insufficient to establish his claim. It requested additional medical evidence to demonstrate that he sustained a diagnosed condition as a result of the September 28, 2013 employment incident.

By letter dated October 17, 2013, David Mast, a human resource specialist at the employing establishment, stated that appellant filed a traumatic injury claim because he believed it would stop him from being removed from the employing establishment. He also pointed out that appellant initially provided conflicting information when he reported the injury.

In an October 17, 2013 treatment note, Dr. Matthew Keum, Board-certified in physical medicine and rehabilitation, related appellant's complaints of recent onset of worsening neck pain, on the left side, radiating to his left shoulder and upper trapezius area. Upon examination of the cervical spine, he observed mildly positive tenderness to palpation and limited range of motion on extension and rotation. Examination of the left shoulder demonstrated negative impingement and no tenderness. Dr. Keum diagnosed cervical radiculitis, medial epicondylitis of the elbow, wrist strain, elbow strain, cervical strain, and strain of unspecified shoulder and upper arm.

On October 22, 2013 appellant was treated again by Dr. Nice who reported that appellant was unable to work until November 18, 2013.

In a decision dated November 18, 2013, OWCP denied appellant's claim. It accepted that the September 28, 2013 incident occurred as alleged and that he sustained a diagnosed medical condition. OWCP denied the claim because the medical evidence was insufficient to establish that his condition was causally related to the accepted incident.

On December 9, 2013 OWCP received appellant's request for reconsideration. Appellant resubmitted the September 28, 2013 hospital records and Dr. Nice's medical reports.

Appellant continued to receive medical treatment from Dr. Nice who, in reports dated November 12 and 21, 2013, reported that appellant still had symptoms over the C6 dermatome pattern and had C6 radicular symptoms. Dr. Nice noted that a magnetic resonance imaging (MRI) scan examination of the cervical spine showed a disc herniation with osteophyte complex at C3-4 with neural foraminal narrowing at C4. He reported that appellant carried a mailbag, weighing approximately 25 pounds, for work. Dr. Nice recommended that appellant not be allowed to carry a mailbag.

On January 7, 2014 appellant resigned from his employment.

By letter dated February 11, 2014, Mr. Mast reiterated that the employing establishment controverted appellant's traumatic injury claim. The employing establishment submitted a December 9, 2013 memorandum of activity by Special Agent J.T. describing surveillance of appellant on Tuesday, November 5, 2013. It also submitted a January 23, 2014 investigation report by Assistant Special Agent S.B.

In a decision dated March 18, 2014, OWCP denied modification of the November 18, 2013 decision.

On April 23, 2014 OWCP received appellant's request for reconsideration. No additional evidence was received.

By decision dated June 3, 2014, OWCP denied appellant's request for reconsideration finding that his request did not meet any of the requirements for further merit review pursuant to 5 U.S.C. § 8128(a).

After the June 3, 2014 decision, OWCP received the duplicate copies of September 28, 2013 records and x-rays of the left elbow.

On March 16, 2015 OWCP received appellant's request, through counsel, for reconsideration. Counsel stated that he was submitting a new medical report by Dr. Nice.

In a February 20, 2015 treatment note, Dr. Nice noted that appellant had known disc and osteophyte foraminal narrowing disease at C3 and at C4 in his neck. He reported that appellant originally carried a mailbag at the employing establishment for five years that weighed 40 pounds. Dr. Nice noted that appellant currently complained of symptoms in his arms and neck with radiation to the superior medial angle of the left scapula with exquisite tenderness over the

scapulae. He noted that appellant now worked as a truck driver but continued to be symptomatic and also suffered from headaches. Upon examination, Dr. Nice observed excellent range of motion of his cervical spine with tenderness in the extremities. He stated that neurologic examination of both upper extremities was normal. Dr. Nice opined that appellant had disc disease at C3 and C4.

Appellant submitted a November 20, 2013 MRI scan report by Dr. Marc Mellion, a diagnostic radiologist, who stated that appellant had left paracentral and lateral disc osteophyte complex at C3-4 causing moderate focal left paracentral and anterolateral thecal sac effacement, moderate left lateral recess, and left neural foraminal stenosis with exiting nerve root impingement not excluded. He also resubmitted Dr. Keum's October 17, 2013 report.

By decision dated May 13, 2015, OWCP denied appellant's request for reconsideration finding that his request did not meet any of the requirements for further merit review pursuant to 5 U.S.C. § 8128(a).

LEGAL PRECEDENT

Section 8128(a) of FECA grants OWCP discretionary authority to determine whether to review an award for or against compensation.² OWCP's regulations provide that it may review an award for or against compensation at any time on its own motion or upon application. The employee shall exercise his right through a request to the district office.³

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or an argument that: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.⁴

A request for reconsideration must also be submitted within one year of the date of OWCP's decision for which review is sought.⁵ A timely request for reconsideration may be granted if OWCP determines that the employee has presented evidence or provided an argument that meets at least one of the requirements for reconsideration. If OWCP chooses to grant reconsideration, it reopens and reviews the case on its merits.⁶ If the request is timely but fails to

² 5 U.S.C. § 8128(a); *see also D.L.*, Docket No. 09-1549 (issued February 23, 2010); *W.C.*, 59 ECAB 372 (2008).

³ 20 C.F.R. § 10.605; *see also R.B.*, Docket No. 09-1241 (issued January 4, 2010); *A.L.*, Docket No. 08-1730 (issued March 16, 2009).

⁴ *Id.* at § 10.606(b); *see also L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

⁵ *Id.* at § 10.607(a).

⁶ *Id.* at § 10.608(a); *see also M.S.*, 59 ECAB 231 (2007).

meet at least one of the requirements for reconsideration, OWCP will deny the request for reconsideration without reopening the case for review on the merits.⁷

ANALYSIS

The Board finds that appellant has not established that OWCP erroneously applied or interpreted a specific point of law, has not advanced a relevant legal argument not previously considered by OWCP, and has not submitted relevant and pertinent new evidence not previously considered by OWCP. Appellant has failed to meet one of the three requirements necessary to justify a merit review of his claim.

OWCP had previously denied appellant's claim finding that the evidence did not establish that his diagnosed medical condition was causally related to the September 28, 2013 employment incident.

On March 16, 2015 OWCP received appellant's request, through counsel, for reconsideration.

Along with his reconsideration request, counsel submitted a February 20, 2015 treatment note by Dr. Nice, which stated that appellant had known disc and osteophyte foraminal narrowing disease at C3 and at C4 in his neck. He reported that appellant originally carried a mailbag at the employing establishment for five years that weighed 40 pounds. Dr. Nice provided findings on examination and opined that appellant had disc disease at C3 and C4. The Board notes that, prior to the last merit decision on March 18, 2014, he submitted a series of reports stating that appellant sustained a cervical and left arm condition and discussing that appellant carried a heavy mailbag at work. Accordingly, the Board finds that Dr. Nice's February 20, 2015 report does not provide any new, relevant, and pertinent evidence on the issue of whether appellant sustained an injury causally related to the September 28, 2013 incident. Dr. Nice merely reiterates that his previous findings regarding appellant's conditions and work duties. The Board has found that evidence which is duplicative or cumulative of evidence already submitted is insufficient to warrant reopening a claim for merit review.⁸ Similarly, Dr. Mellion's November 20, 2013 report also does not provide any new, relevant, and pertinent evidence as he does not provide any opinion on causal relationship.

OWCP also received duplicate copies of reports from September 28, 2013, and another copy of Dr. Keum's October 17, 2013 report. Evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.⁹

On appeal counsel alleges that the May 13, 2015 decision was contrary to fact and law. He does not, however, provide any evidence to demonstrate that OWCP erroneously denied appellant's March 16, 2015 request for reconsideration.

⁷ *Id.* at § 10.608(b); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

⁸ *Joseph A. Brown, Jr.*, 55 ECAB 542 (2004).

⁹ *See D.K.*, 59 ECAB 141 (2007).

Appellant did not submit any evidence along with his request for reconsideration to show that OWCP erroneously applied or interpreted a specific point of law, or advances a relevant legal argument not previously considered by OWCP. Because he did not meet any of the necessary requirements, he is not entitled to further merit review.

The Board finds that appellant failed to submit relevant and pertinent new evidence, a relevant legal argument not previously considered by OWCP, or evidence or argument which shows that OWCP erroneously applied or interpreted a specific point of law. Therefore, OWCP properly refused to reopen his case for further consideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

CONCLUSION

The Board finds that OWCP properly denied appellant's March 16, 2015 request for reconsideration pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the May 13, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 22, 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