

**United States Department of Labor
Employees' Compensation Appeals Board**

S.O., Appellant)	
)	
and)	Docket No. 16-0973
)	Issued: August 4, 2016
U.S. POSTAL SERVICE, POST OFFICE,)	
Palatine, IL, Employer)	
)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On April 6, 2016 appellant filed a timely appeal from an October 22, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP) and a November 18, 2015 nonmerit decision. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

ISSUES

The issues are: (1) whether appellant met his burden of proof to establish a recurrence of total disability for the period August 17 to 21, 2015 due to the conditions related to his June 27, 1995 work injury; and (2) whether OWCP properly denied appellant's request for further review of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that appellant submitted additional evidence, including medical evidence, after OWCP rendered its November 18, 2015 decision. The Board's jurisdiction is limited to reviewing the evidence that was before OWCP at the time of its final decision. Therefore, this additional evidence cannot be considered by the Board. 20 C.F.R. § 501.2(c)(1).

FACTUAL HISTORY

On July 6, 1995 appellant, then a 35-year-old mail carrier, filed a traumatic injury claim (Form CA-1) alleging that on June 27, 1995 he sustained multiple injuries due to bending over a cart, picking up a tray of mail, and putting a tray of mail into a truck. He stopped work on July 3, 1995 and later returned to light-duty work for the employing establishment.

OWCP accepted appellant's claim for a lumbosacral strain, thoracic/lumbosacral neuritis or radiculitis, intervertebral disc disorder at L4-5 with myelopathy, and closed rib fracture.

Appellant periodically stopped work and, beginning in October 2003, he received compensation for these intermittent periods of disability on the daily rolls.

On May 20, 2005 appellant underwent OWCP-authorized back surgery in the form of hemilaminotomy and discectomy at L4-5. In an August 31, 2006 decision, OWCP granted appellant a schedule award for one percent permanent impairment of his left lower extremity.

In November 2008 appellant returned to work for the employing establishment as a modified letter carrier. In a May 12, 2009 decision, OWCP determined that the position of modified letter carrier fairly and reasonably represented his wage-earning capacity.

Appellant stopped work for the period August 17 to 21, 2015 and, on August 26, 2015, he filed a claim for compensation (Form CA-7) alleging that he sustained a recurrence of disability from August 17 to 21, 2015 due to the conditions related to his June 27, 1995 work injury.

In an August 18, 2015 report, Dr. Khalida A. Anwar, an attending Board-certified physical medicine and rehabilitation physician, indicated that appellant was under her care and treatment for back pain and radiculitis of the lumbar spine. She noted that he reported increased pain and she recommended performing a lumbar epidural magnetic resonance imaging (MRI) scan. Dr. Anwar indicated, "He will be off work indefinitely. At the next appointment [on September 1, 2015] he will be reevaluated to see if he can resume work."

In a September 3, 2015 letter, OWCP requested that appellant submit additional factual and medical evidence in support of his claim.

Appellant submitted July 6 and 29, 2015 reports in which Dr. Anwar indicated that MRI scan testing showed arachnoiditis at L4-5 and mild degenerative facet changes at T12-L1 through L5-S1. Dr. Anwar diagnosed arachnoiditis, lumbar laminectomy at L4-5, and lumbar radiculopathy. In a September 8, 2015 report, she added thoracic degenerative disc disease and pain to the list of diagnoses. In a duty status report (Form CA-17) dated September 8, 2015, Dr. Anwar listed June 27, 1995 as the "date of injury" and listed clinical findings of lumbar/thoracic radiculitis and arachnoiditis. She marked "yes" to the box on the form for "diagnosis due to injury." Dr. Anwar noted that appellant was totally disabled from work.

By decision dated October 22, 2015, OWCP denied appellant's claim because he did not submit sufficient medical evidence to establish a recurrence of disability for the period August 17 to 21, 2015 due to the conditions related to his June 27, 1995 work injury.

In a November 3, 2015 letter and form, both received by OWCP on November 9, 2015, appellant requested reconsideration of the October 22, 2015 decision. In his letter, appellant indicated that he would be submitting medical evidence of Dr. Anwar which supported his claim for a work-related recurrence of total disability. The medical evidence was not received.

By decision dated November 18, 2015, OWCP denied appellant's request for further review of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

LEGAL PRECEDENT -- ISSUE 1

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that he or she can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative, and substantial evidence a recurrence of total disability and show that he or she cannot perform such light duty. As part of this burden the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.³

ANALYSIS -- ISSUE 1

OWCP accepted that on June 27, 1995 appellant sustained a lumbosacral strain, thoracic/lumbosacral neuritis or radiculitis, intervertebral disc disorder at L4-5 with myelopathy, and closed rib fracture. On May 20, 2005 appellant underwent OWCP-authorized back surgery in the form of hemilaminotomy and discectomy at L4-5. In November 2008 he returned to work for the employing establishment as a modified letter carrier.

Appellant stopped work for the period August 17 to 21, 2015 and alleged that he sustained a recurrence of total disability from August 17 to 21, 2015 due to the conditions related to his June 27, 1995 work injury.

The Board finds that appellant did not submit sufficient medical evidence to establish a recurrence of disability for the period August 17 to 21, 2015 due to the conditions related to his June 27, 1995 work injury.

In support of his recurrence of disability claim, appellant submitted an August 18, 2015 report in which Dr. Anwar indicated that he was under her care and treatment for back pain and radiculitis of the lumbar spine and that he had reported increased pain. She indicated, "He will be off work indefinitely. At the next appointment [on September 1, 2015] [appellant] will be reevaluated to see if he can resume work." This Board notes that this report does not establish that appellant sustained a work-related recurrence of total disability for the period August 17

³ *S.F.*, 59 ECAB 525 (2008); *Terry R. Hedman*, 38 ECAB 222 (1986). 20 C.F.R. § 10.5(x) provides, "Recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness. This term also means an inability to work that takes place when a light-duty assignment made specifically to accommodate an employee's physical limitations due to his or her work-related injury or illness is withdrawn (except when such withdrawal occurs for reasons of misconduct, nonperformance of job duties or a reduction-in-force), or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations."

to 21, 2015. Dr. Anwar did not identify the cause of appellant's disability or otherwise provide a rationalized opinion relating his disability to the accepted June 27, 1995 work conditions. The Board has held that medical evidence which does not offer a clear opinion regarding the cause of an employee's condition or disability is of limited probative value on the issue of causal relationship.⁴

In July 6 and 29, 2015 reports, Dr. Anwar diagnosed arachnoiditis, lumbar laminectomy at L4-5, and lumbar radiculopathy. In a September 8, 2015 report, she added thoracic degenerative disc disease and pain to the list of diagnoses. The Board notes that these reports do not establish appellant's claim for a work-related recurrence of total disability because the reports do not provide any opinion on disability.

In a form report dated September 8, 2015, Dr. Anwar listed clinical findings of lumbar/thoracic radiculitis and arachnoiditis. She checked "yes" to the box on the form for "diagnosis due to injury," but she did not provide any diagnosis in this box. Although Dr. Anwar listed June 27, 1995 as the "date of injury" and indicated that appellant was totally disabled from work, her report is of limited probative value on the relevant issue of this case because she did not indicate that this opinion on disability included any part of the period August 17 to 21, 2015. Moreover, she did not provide a clear opinion, with medical rationale, that appellant's disability was related to the medical conditions caused by his June 27, 1995 injury. The Board has held that a claimant must submit a rationalized medical opinion in order to establish a causal connection between a given work-related condition and a claimed period of disability.⁵

None of the medical reports contained a rationalized medical opinion showing that appellant's work-related condition worsened such that he suffered a recurrence of total disability for the period August 17 to 21, 2015.⁶

On appeal, appellant asserts that the medical evidence of record established his claim for work-related disability from August 17 to 21, 2015, but the Board has explained why this evidence does not establish his claim.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

LEGAL PRECEDENT -- ISSUE 2

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,⁷ OWCP's regulations provide that 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

⁴ See *Charles H. Tomaszewski*, 39 ECAB 461 (1988).

⁵ *E.R.*, Docket No. 15-1046 (issued November 12, 2015).

⁶ Appellant also did not show a change in the nature and extent of the light-duty job requirements. See *supra* note 3.

⁷ Under section 8128 of FECA, "[t]he 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).

relevant legal argument not previously considered by OWCP; or (3) constitute relevant and pertinent new evidence not previously considered by OWCP.⁸ To be entitled to a merit review of an OWCP decision denying or terminating a benefit, a claimant's application for review must be received within one year of the date of that decision.⁹ 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.¹⁰ The Board has held that the submission of evidence or argument which repeats or duplicates evidence or argument already in the case record¹¹ and the submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.¹² While a reopening of a case may be predicated solely on a legal premise not previously considered, such reopening is not required where the legal contention does not have a reasonable color of validity.¹³

ANALYSIS -- ISSUE 2

OWCP issued a decision on October 22, 2015. Appellant requested reconsideration of this decision in a November 3, 2015 letter and form, both received by OWCP on November 9, 2015. In his letter, appellant indicated that he would be submitting medical evidence of Dr. Anwar which supported his claim for a work-related recurrence of total disability.

The Board finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(3) which would require OWCP to reopen the case for review of the merits of his claim. In his application for reconsideration, appellant did not show that OWCP erroneously applied or interpreted a specific point of law. He did not identify a specific point of law or show that it was erroneously applied or interpreted. Nor did appellant advance a new and relevant legal argument not previously considered by OWCP. The underlying issue in this case is whether appellant established a recurrence of total disability for the period August 17 to 21, 2015 due to his accepted work conditions. That is a medical issue which must be addressed by relevant medical evidence.¹⁴ A claimant may be entitled to a merit review by submitting pertinent new and relevant evidence,¹⁵ but appellant did not submit any such evidence in this case. In his November 3, 2015 reconsideration letter, appellant indicated that he would be submitting medical evidence of Dr. Anwar which supported his claim for a work-related recurrence of total disability. However, he did not submit such medical evidence to OWCP.

⁸ 20 C.F.R. § 10.606(b)(3).

⁹ *Id.* at § 10.607(a).

¹⁰ *Id.* at § 10.608(b).

¹¹ *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Jerome Ginsberg*, 32 ECAB 31, 33 (1980).

¹² *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

¹³ *John F. Critz*, 44 ECAB 788, 794 (1993).

¹⁴ *See Bobbie F. Cowart*, 55 ECAB 746 (2004).

¹⁵ *See supra* note 8.

The Board accordingly finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(3). Therefore, pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish a recurrence of total disability for the period August 17 to 21, 2015 due to the conditions related to his June 27, 1995 work injury. The Board further finds that OWCP properly denied appellant's request for further review of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the November 18 and October 22, 2015 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: August 4, 2016
Washington, DC

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

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board