

On appeal, appellant contends that she submitted sufficient medical evidence to establish that she sustained employment-related left shoulder, hip, and neck injuries.

FACTUAL HISTORY

This case has previously been before the Board. The facts and circumstances set forth in the Board's prior decision are incorporated herein by reference. The facts relevant to this appeal are set forth below.

On February 17, 2012 appellant, then a 43-year-old rural carrier associate, filed a traumatic injury claim (Form CA-1) alleging that on February 16, 2012 she slipped on the ice while loading trays of mail into her long life vehicle (LLV) and sustained left shoulder and hip injuries. She stopped work on the date of injury.

An unsigned and undated authorization for examination and/or treatment (Form CA-16), bearing the stamp of the employing establishment, provided a history that on February 16, 2012 appellant injured her left hip when she fell while loading a tray of mail into her LLV.

In an April 13, 2012 decision, OWCP accepted that the February 16, 2012 incident occurred as alleged. However, it denied appellant's claim and determined that she failed to submit rationalized medical evidence from a qualified physician as defined under FECA establishing a diagnosis causally related to the accepted employment incident.

In a December 28, 2012 decision, the Board affirmed the April 13, 2012 decision, but remanded the case to OWCP for consideration of whether appellant's expenses incurred for medical treatment received immediately following the accepted February 16, 2012 employment incident should be reimbursed pursuant to the Form CA-16.³ The facts and circumstances of the case as set forth in that decision are incorporated herein by reference.

On remand, OWCP, in a March 12, 2013 decision, denied authorization for reimbursement of appellant's medical expenses, with the exception of expenses related to treatment she received in an emergency room on February 16, 2012 and diagnostic testing performed on March 14, 2013.

On March 18, 2013 appellant, through counsel, requested a telephone hearing with an OWCP hearing representative regarding the March 12, 2013 decision.

By letter dated July 1, 2013, counsel requested reconsideration before OWCP and submitted medical evidence.

In a September 9, 2013 decision, an OWCP hearing representative affirmed the March 12, 2013 decision denying reimbursement for appellant's medical expenses. He found that beyond the emergency room treatment and evaluation, the remainder of appellant's treatment did not fall under the limited umbrella of emergency or other unusual circumstances.

³ Docket No. 12-1091 (issued December 28, 2012), *Order Denying Petition for Reconsideration*, Docket No. 12-1091 (issued April 29, 2013).

In a September 16, 2013 decision, OWCP denied modification of the denial of appellant's traumatic injury claim, finding that the medical evidence submitted did not contain either a medical opinion or medical rationale explaining whether the diagnosed conditions were causally related to the accepted February 16, 2012 employment incident.

On February 18, 2014 appellant requested reconsideration of the September 16, 2013 decision and submitted additional evidence.

In a May 29, 2014 decision, OWCP denied modification of the September 16, 2013 decision. It found that the factual evidence submitted was irrelevant to the underlying medical issue in the case and the medical evidence submitted was duplicative and previously considered.

On July 16, 2014 appellant requested reconsideration of the May 29, 2014 decision.

In a September 16, 2014 decision, OWCP denied modification of the May 29, 2014 decision, again finding that causal relationship had not been established.

By appeal request form and letter dated September 4, 2015, appellant requested reconsideration of the September 16, 2014 decision. She contended that she had submitted sufficient medical evidence to establish causal relationship as this evidence contained her diagnosed conditions and history of injury as requested by OWCP. Appellant further contended that there was a contradiction as OWCP had agreed to pay some of her medical bills, but had not accepted that the February 16, 2012 incident occurred. She did not submit any additional evidence.

In a February 8, 2016 decision, OWCP denied further merit review of appellant's claim. It found that her request for reconsideration did not contain a relevant legal argument not previously considered. OWCP also found that the request was irrelevant or immaterial to the medical issue of causal relationship.

LEGAL PRECEDENT

Section 8128 of FECA vests OWCP with a discretionary authority to determine whether it will review an award for or against compensation, either under its own authority or on application by a claimant.⁴ Section 10.608(b) of OWCP's regulations provide that a timely request for reconsideration may be granted if OWCP determines that the claimant has presented evidence and/or argument that meet at least one of the standards described in section 10.606(b)(3).⁵ This section provides that the application for reconsideration must be submitted in writing and set forth arguments and contain evidence that either: (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.⁶ Section 10.608(b) provides that when a request for

⁴ 5 U.S.C. § 8128(a).

⁵ 20 C.F.R. § 10.608(a).

⁶ *Id.* at § 10.606(b)(3).

reconsideration is timely but fails to meet at least one of these three requirements, OWCP will deny the application for reconsideration without reopening the case for a review on the merits.⁷

ANALYSIS

On September 4, 2015 appellant requested reconsideration of the September 16, 2014 decision that denied modification of the denial of her traumatic injury claim. The underlying issue on reconsideration is medical in nature, whether appellant had a medical condition causally related to the accepted February 16, 2012 employment incident.

The Board finds that appellant did not show that OWCP erroneously applied or interpreted a specific point of law. Moreover, she did not advance a relevant legal argument not previously considered. In a September 4, 2014 request for reconsideration, appellant contended that she had submitted sufficient medical evidence to establish causal relationship as this evidence provided her diagnosed conditions and history of injury. As noted, the Board does not have jurisdiction over the merits of the case. Appellant further contended that there was a contradiction as OWCP had agreed to pay some of her medical bills, yet it had not accepted that the February 16, 2012 incident occurred. The Board notes, however, that OWCP's April 13, 2012 decision, as affirmed by the Board's prior decision, accepted that the February 16, 2012 work-related incident had occurred as alleged, but further found that the medical evidence was insufficient to establish that the accepted incident caused an injury.⁸ These assertions do not show that OWCP erroneously applied or interpreted a specific point of law and they also do not advance a relevant legal argument.

A claimant may also be entitled to a merit review by submitting relevant and pertinent new evidence not previously considered. The underlying issue is medical in nature. However, appellant did not submit any relevant and pertinent new medical evidence to support that the February 16, 2012 work incident caused or aggravated an injury.

The Board finds, therefore, that appellant's arguments do not establish legal error on a specific point of law or advance a relevant legal argument not previously considered. Furthermore, appellant also did not submit any relevant or pertinent new evidence not previously considered.

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

On appeal, appellant argues the merits of her claim. As noted above, the Board lacks jurisdiction to review the merits of this case.

⁷ *Id.* at § 10.608(b).

⁸ The Board also notes that the limited payment of medical expenses by OWCP was based on the employing establishment's issuance of a Form CA-16 authorization of treatment, pursuant to OWCP regulations at 20 C.F.R. § 10.300 for emergency medical care.

CONCLUSION

The Board finds that OWCP properly denied appellant's request for further merit review of her claim pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the February 8, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 17, 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