

ISSUE

The issue is whether OWCP properly denied appellant's request for reconsideration of the merits of her claim under 5 U.S.C. § 8128(a).

On appeal, appellant, through counsel, contends that OWCP's decision is contrary to fact and law.

FACTUAL HISTORY

This case has previously been before the Board.⁴ The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On December 2, 2013 appellant, then a 57-year-old clerk, filed a traumatic injury claim (Form CA-1) alleging that on November 15, 2013 she fell on the floor at work after tripping over carts in the walkway, causing injury to her right hand, right wrist, and her left ankle. OWCP denied her claim by decision dated January 16, 2014.

On January 24, 2014 appellant requested a hearing before an OWCP hearing representative. By decision dated October 17, 2014, the hearing representative affirmed the denial of the claim. The hearing representative noted that appellant failed to submit medical evidence to establish a medical condition causally related to the accepted November 15, 2013 employment incident.

Appellant appealed to the Board on January 29, 2015. By decision dated May 20, 2015, the Board affirmed the denial of the claim and found that appellant failed to meet her burden of proof to establish an injury causally related to the November 15, 2013 employment incident. In reviewing the evidence of record, the Board specifically found that the evidence of record included notes by physical therapists and nurse practitioners, as well as hospital records which were not signed by a physician, and a December 20, 2013 attending physician's report containing an illegible signature. The Board concluded that the documents submitted in support of appellant's claim did not constitute rationalized medical evidence, from a physician under FECA, establishing causal relationship.⁵

By letter dated November 11, 2015, received by OWCP on November 16, 2015, appellant, through counsel, requested reconsideration. In support thereof appellant submitted multiple documents, including multiple notes from Contra Medical Center including an intake chart with an illegible signature; notes by nurses and physical therapists dated November 26 and December 3 and 5, 2013; a November 27, 2013 Ohio Workers' Compensation form completed by a nurse practitioner, a record from Christ Hospital listing appellant's prescriptions; a supervisor's summary of appellant's claim; appellant's summary of the claim dated November 26, 2013; clinical notes signed by a nurses from July 11 through October 23, 2013;

⁴ Docket No. 15-650 (issued May 20, 2015).

⁵ *Id.*

and a copy of the attending physician's report (Form CA-16) dated December 20, 2013 bearing an illegible signature. OWCP also received a November 27, 2013 report cosigned by Dr. Stephen T. Lewis, an osteopath, on November 28, 2013, wherein he listed impressions of: (1) fall from other slipping, tripping, or stumbling; and (2) musculoskeletal pain.

By decision dated April 15, 2016, OWCP denied appellant's request for reconsideration without merit review under 5 U.S.C. § 8128(a).

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: (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.⁶ 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.⁷

It is well established that the requirement for reopening a claim for further merit review before OWCP does not require a claimant to submit all evidence necessary to discharge his burden of proof. Rather, the requirement for reopening a case specifies only that the evidence be relevant, pertinent, and not previously considered by OWCP. The presentation of such new evidence creates the necessity for review of the full case record in order to properly determine whether the newly submitted evidence warrants modification of an earlier decision.⁸

ANALYSIS

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of her claim under 5 U.S.C. § 8128(a).

By decision dated May 20, 2015, the Board affirmed the denial of appellant's claim and found that she failed to meet her burden of proof to establish an injury causally related to the November 15, 2013 employment incident as she had failed to present sufficient medical evidence.

Counsel submitted a timely request for reconsideration of the May 20, 2015 merit decision, received by OWCP on November 16, 2015. In support of the request multiple documents were submitted including several notes from Contra Medical Center which contained an intake chart with an illegible signature; notes by nurses and physical therapists dated November 26, and December 3 and 5, 2013; a November 27, 2013 Ohio Workers' Compensation form completed by a nurse practitioner; a record from Christ Hospital listing appellant's prescriptions; a supervisor's summary of appellant's claim; appellant's summary of the claim

⁶ 20 C.F.R. § 10.606(b)(3).

⁷ *Id.* at § 10.608(b).

⁸ *F.D. (S.D.)*, 58 ECAB 413 (2007).

dated November 26, 2013; clinical notes signed by a nurses from July 11 through October 23, 2013; and a copy of the attending physician's report (Form CA-16) dated December 20, 2013 bearing an illegible signature. OWCP also received a November 27, 2013 report cosigned by Dr. Stephen T. Lewis, an osteopath, on November 28, 2013, wherein he listed impressions of: (1) fall from other slipping, tripping, or stumbling; and (2) musculoskeletal pain.

Appellant's request for reconsideration did not show that OWCP erroneously interpreted a point of law nor did it advance a legal argument not previously considered.⁹ She did submit evidence in support of her request for reconsideration.

However, the Board finds that appellant failed to submit evidence with her reconsideration request that is sufficient to warrant merit review. Appellant resubmitted evidence already of record, including, *inter alia*, her summary of her claim, hospital records listing medications, nurse practitioners' notes from November 29 through December 9, 2013, and the illegibly signed December 20, 2013 Form CA-16. The Board has found that evidence which is repetitive, duplicative, or cumulative in nature is insufficient to warrant reopening a claim for merit review.¹⁰

The new evidence submitted is also insufficient to warrant merit review. The underlying issue in this case was whether appellant submitted medical evidence establishing a medical condition causally related to the accepted November 15, 2013 employment incident. Causal relationship is a medical issue that must be addressed by medical evidence.¹¹ Appellant failed to submit any relevant and pertinent new evidence in support of her reconsideration request. Although appellant submitted a November 27, 2013 report that was now signed by Dr. Lewis, this report failed to provide a rationalized medical opinion that addressed the pertinent issue of causal relationship.¹²

Appellant also submitted additional records from her hospital visit and additional nursing notes. However, these reports were repetitive of the evidence already of record and were not signed by a physician. Therefore these additional records do not constitute relevant medical evidence.¹³

Similarly appellant's supervisor's statement is a lay opinion and is irrelevant to the underlying medical issue of causal relationship and is therefore insufficient to reopen the case for a merit review.¹⁴

⁹ *Supra* note 7.

¹⁰ *J.B.*, Docket No. 14-1164 (issued November 20, 2014); *Denis M. Dupor*, 51 ECAB 482 (2000).

¹¹ *D.H.*, Docket No. 15-1480 (issued June 7, 2016).

¹² *See A.M.*, Docket No. 16-0499 (issued June 28, 2016).

¹³ *Supra* note 11.

¹⁴ *C.H.*, Docket No. 16-808 (issued July 21, 2016).

The Board finds that appellant did not show that OWCP erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by OWCP, or submit relevant and pertinent new evidence not previously considered. Pursuant to 20 C.F.R. § 10.608(b), OWCP properly denied appellant's request for reconsideration of the merits of her claim under 5 U.S.C. § 8128(a).

CONCLUSION

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of her claim under 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 15, 2016 is affirmed.

Issued: November 7, 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