

constant and repetitive lifting of trays, sacks of mail, and parcels. He first became aware of the condition and related it to factors of his federal employment on March 2, 2012, the date he stopped work. Appellant subsequently retired on October 28, 2014.

Initial status reports from Dr. Danny Chan, a chiropractor, advised that appellant was unable to work and was experiencing low back sprain/strain with radicular pain. An April 17, 2012 magnetic resonance imaging (MRI) scan of the lumbar spine revealed a concentric broad-based bulge at L4-5 and L5-S1. A July 15, 2013 report from Dr. Robert J. Harrison, Board-certified in internal and occupational medicine, advised that appellant's work involved lifting 70-pound bags of mail about 12 times a day. Dr. Harrison reported that, while performing these duties, appellant felt right lower back pain with radiation down the right leg to the foot. He reported findings and diagnosed lumbar disc disease with right lower extremity radiculopathy. Dr. Harrison also reported that appellant should remain off work. He continued following appellant and placing him off work.

After appellant's claim was initially denied in decisions dated April 11 and November 25, 2013, on April 18, 2014 OWCP accepted the claim for sprain of the back in the lumbar region and temporary aggravation of degeneration of the lumbar or lumbosacral intervertebral disc. Subsequently, by decision dated May 29, 2014, OWCP terminated his compensation benefits effective May 29, 2014 as the employment-related conditions had resolved. However, by decision dated September 10, 2014, it vacated the termination decision and reopened appellant's claim for the accepted conditions.

In a May 6, 2014 claim for compensation (Form CA-7), appellant requested wage-loss compensation for the period March 5, 2012 through May 2, 2014. He also submitted a June 3, 2014 claim for compensation (Form CA-7) for the period May 5 through 19, 2014.

By letter dated August 28, 2014, OWCP advised appellant to submit medical evidence supporting his disability claim.

In a September 22, 2014 letter, Dr. Harrison responded to OWCP's request for a medical opinion regarding appellant's claimed disability from February 8, 2013 through May 19, 2014. He noted that appellant had been under his care since July 15, 2013. Dr. Harrison advised that a lumbar spine MRI scan revealed disc disease at L4-5 and L5-S1 with underlying annular tear and bulge with possible nerve root impingement. He indicated that on examination of the back there was tenderness to palpation at L4 and L5 with tightness in the lower back region. Dr. Harrison advised that range of motion was abnormal and straight leg raising was positive on the right. He noted that he provided multiple work status slips indicating appellant's inability to work and that his documentation had not been limited to pain only, but provided evidence for objective findings.

By decision dated October 15, 2014, OWCP denied appellant's claim for compensation for the period March 4, 2012 through May 2, 2014 because the medical evidence of record was insufficient to establish that his total disability from work was causally related to the work injury. It found that medical evidence of record included objective findings. However, there was no rationalized opinion explaining how the objective findings rendered appellant unable to work.

On December 1, 2014 appellant requested reconsideration.

In a letter dated November 6, 2014, Dr. Harrison responded to OWCP's October 15, 2014 denial. He advised that appellant's condition was permanent and rendered him unable to work due to low back pain with significant aggravation upon bending, stooping, and lifting. Dr. Harrison opined that a return to work would result in significant aggravation of his disc disease that had been objectively demonstrated with MRI scan and examination findings.

In a November 17, 2014 report, Dr. Hoyman Hong, a Board-certified physiatrist to whom appellant was referred by Dr. Harrison, advised that appellant sustained a low back injury while lifting several years prior. He noted that appellant was unable to stand for more than an hour and, therefore, he had difficulty participating in his job activities. Dr. Hong noted that appellant had been off work for the past month and recommended an L5-S1 transforaminal epidural steroid injection.

By decision dated February 27, 2015, OWCP denied modification of its prior decision.

Appellant continued to submit medical evidence. In a May 5, 2014 report, Dr. Harrison advised that appellant complained of right-sided back pain radiating down to the right leg with numbness and tingling over the right side of the lower leg and toes. He advised that appellant was off work and assessed sprain of the lumbar region. On examination Dr. Harrison noted positive straight leg raising on the right at 10 degrees, light touch decreased over the right lateral calf, forward flexion 50 percent, and extension 75 percent.

In a February 19, 2015 report, Dr. Harrison advised that appellant complained of right-sided low back pain. He reiterated the findings on examination found in earlier reports and assessed sprain of the lumbar region and displacement of the lumbar intervertebral disc without myelopathy.

In a March 3, 2015 report, Dr. Hong administered a right L5-S1 and S1 fluoroscopic guided contrast-enhanced transforaminal epidural steroid and anesthetic injection. He assessed L5-S1 lumbar disc herniation and right L5-S1 lumbar radiculopathy. An accompanying imaging report advised that x-rays showed the lumbosacral junctional and demonstrated spinal needles to the right of L5 and S1.

In an April 2, 2015 report, Dr. Harrison advised that appellant had constant right-sided low back pain worse with walking and prolonged sitting. He noted that the pain radiated into the right leg with numbness and tingling over the right side of the lower leg and toes. Dr. Harrison indicated that appellant was retired and assessed sprain of the lumbar region. Examination revealed positive straight leg raising on the right at 10 degrees, light touch decreased over the right lateral calf, forward flexion 50 percent, and extension at 75 percent.

In an April 2, 2015 letter to OWCP, Dr. Harrison contended that appellant worked for the employing establishment for 34 years where he performed repetitive bending, stooping, and lifting. He advised that on March 2, 2012 appellant felt the immediate onset of right lower back pain with radiation into the right lower extremity after lifting a bag of mail. Dr. Harrison indicated that since then appellant complained of continuous pain in the right lower back with radiation into the right lower extremity. He noted that his examination findings included positive

straight leg on the right and that imaging showed objective evidence of low back injury. Dr. Harrison advised that appellant was provided with work restrictions that limited lifting, pulling, pushing, and simple grasping to 10 pounds and limited standing to an hour and included no bending, stooping, twisting, or climbing. He opined that appellant's L5-S1 disc disease was permanent and that he was unable to return to work in his usual and customary occupation.

On September 1, 2015 appellant requested reconsideration.

By decision dated November 24, 2015, OWCP denied appellant's request for reconsideration without a merit review.

On appeal appellant contends that he was treated unfairly by OWCP and he requests compensation for the annual and sick leave used prior to his retirement.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,² its 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.³ To be entitled to a merit review of its decision denying or terminating a benefit, a claimant's application for review must be received within one year of the date of that decision.⁴ 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.⁵

ANALYSIS

In a February 27, 2015 merit decision, OWCP denied appellant's claim for wage-loss compensation because the evidence of record did not establish that he was totally disabled from work beginning March 4, 2012 due to the accepted sprain of the back in the lumbar region and temporary aggravation of degeneration of the lumbar or lumbosacral intervertebral disc. Appellant submitted a timely request for reconsideration received by OWCP on September 1, 2015, which was denied without a merit review.

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of his claim. The underlying issue in this case is whether appellant met his burden of proof to establish that the period of disability from March 4, 2012 through May 2, 2014 was causally related to the accepted work injury. This is a medical issue. OWCP's decisions

² *Id.* Under section 8128 of FECA, the 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).

³ 20 C.F.R. § 10.606(b)(3).

⁴ *Id.* at § 10.607(a).

⁵ *Id.* at § 10.608(b).

informed appellant of the defects of his claim and particularly advised him of why the medical evidence was deficient. In support of reconsideration, appellant submitted several medical reports.

In his April 2, 2015 letter to OWCP, Dr. Harrison made findings on examination and listed work restrictions. He indicated that appellant's L5-S1 disc disease was permanent and that he was unable to return to work in his usual and customary occupation. However, this report, while new is duplicative of evidence previously submitted and was considered by OWCP. Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.⁶ Therefore, this report is insufficient to require OWCP to reopen the claim for a merit review.

In a May 5, 2014 report, Dr. Harrison assessed sprain of the lumbar region and made findings on examination. On February 19, 2015 he advised that appellant complained of right-sided low back pain. Dr. Harrison reiterated the findings on examination contained in earlier reports and assessed sprain of the lumbar region and displacement of the lumbar intervertebral disc without myelopathy. In his April 2, 2015 report, Dr. Harrison advised that appellant had constant right-sided low back pain worse with walking and prolonged sitting. He assessed sprain of the lumbar region and made findings on examination. In his March 3, 2015 report, Dr. Hong advised that appellant underwent a right L5-S1 and S1 fluoroscopic guided contrast-enhanced transforaminal epidural steroid and anesthetic injection. These reports, however, do not address appellant's disability for work during the claimed period. The Board has held that the submission of evidence which does not address the particular issue involved in a case does not constitute a basis for reopening the claim.⁷ Thus, this evidence is insufficient to require OWCP to reopen the claim for a merit review.

Furthermore, appellant neither showed that OWCP erroneously applied or interpreted a specific point of law nor advanced a relevant legal argument not previously considered by OWCP. Because he failed to meet one of the standards enumerated under section 8128(a) of FECA, he was not entitled to further merit review of his claim.

On appeal appellant contends that he was treated unfairly by OWCP and he requests compensation for the annual and sick leave used prior to his retirement. As explained above, the Board does not have jurisdiction to review the merits of the case. Appellant did not submit any evidence or argument in support of his reconsideration request that warranted reopening his claim for a merit review pursuant to 5 U.S.C. § 8128(a).

CONCLUSION

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

⁶ *J.P.*, 58 ECAB 289 (2007).

⁷ *Johnnie B. Causey*, 57 ECAB 359 (2006).

ORDER

IT IS HEREBY ORDERED THAT the November 24, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 17, 2017
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