

FACTUAL HISTORY

On February 24, 2015 appellant, then a 61-year-old mail handler, filed an occupational disease claim (Form CA-2) alleging that she sustained lower back pain as a result of her federal employment duties. The claim form did not indicate whether appellant stopped work.

In a March 9, 2015 duty status report (Form CA-17), Dr. Basimah Khulusi, Board-certified in physical medicine and rehabilitation, indicated that appellant had tenderness to palpation of her lumbar spine and noted a diagnosis of sciatica. She related that appellant could resume work on March 2, 2015 with restrictions.

OWCP advised appellant in a letter dated April 9, 2015 that the evidence submitted was insufficient to establish her claim. It requested that she respond to an attached development questionnaire in order to substantiate the factual element of her claim and submit additional medical evidence to establish a diagnosed medical condition causally related to factors of her federal employment. Appellant was afforded 30 days to submit the necessary evidence.

In a May 19, 2015 Form CA-17, Dr. Khulusi noted a diagnosis of lumbar strain and sciatica. She indicated that appellant could return to work on May 19, 2015 with restrictions.

OWCP denied appellant's claim in a decision dated June 11, 2015. It found that the evidence of record was insufficient to establish "the factual component" of fact of injury.

Thereafter OWCP received June 2 and 10, 2015 Form CA-17s wherein Dr. Khulusi reported a diagnosis of spinal stenosis. She related that appellant was able to resume work on June 10, 2015 with restrictions.

On August 4, 2015 appellant requested reconsideration and provided her response to OWCP's development questionnaire. She related that she had worked as a mail handler for operations for eight years and alleged that the activities of lifting, bending, twisting, turning, and standing for seven hours a day contributed to her diagnosed conditions. Appellant described her work duties and the physical requirements of each duty. She indicated that she began to have a sore back and numbness in her right leg for two months prior to the pull on her side in December 2014. Appellant noted that she did not have any back problems prior to December 27, 2014. OWCP received additional medical reports with appellant's August 4, 2015 request for reconsideration.

Appellant submitted an unsigned May 12, 2015 lumbar spine magnetic resonance imaging (MRI) scan report by an unknown provider. It noted diagnoses of diffuse disc bulge at T11-T12, broad-based central disc herniation at L3-L4, bilateral facet arthropathy, and grade 1 spondylolisthesis of L4 on L5.

In a June 5, 2015 nerve conduction velocity study of the lower extremities, Dr. Maliheh Massih, Board-certified in physical medicine and rehabilitation, indicated that appellant's left tibial H-reflex appeared to be somewhat more delayed than the right side. She reported a slightly abnormal electrodiagnostic study of the lower extremities, which could be consistent with probable proximal root pathology at the left L5 and S1.

Dr. Khulusi continued to treat appellant and in a June 10, 2015 narrative report described appellant's duties as a mail handler for the employing establishment since 1988. She related that appellant continued to complain of constant, aching pain in her low back. Dr. Khulusi reviewed appellant's history and provided physical examination findings. She diagnosed acceleration of degenerative disease of the lumbar spine, severe spinal stenosis, lumbar disc herniation, lumbar radiculopathy, and permanent aggravation of degenerative disc disease of the lumbar spine. Dr. Khulusi indicated that appellant's job duties required continuous standing, bending, twisting, lifting, pushing, and pulling of heavy weight. She opined that appellant's repetitive strenuous activities resulted in repetitive spraining and straining of the soft tissue structures of the back, which resulted in cumulative trauma disorder that caused lumbar spinal stenosis.

Dr. Khulusi again treated appellant and in an August 24, 2015 periodic report related her complaints of low back pain and numbness down her left leg despite conservative treatment. She provided physical examination findings and diagnosed lumbar disc herniation, lumbar radiculopathy, and severe spinal stenosis. Dr. Khulusi related that appellant continue with modified duty and provided a Form CA-17.

In a decision dated November 2, 2015, OWCP affirmed the denial of appellant's claim with modification. It accepted appellant's employment duties as a mail handler and that appellant had a diagnosed back condition, but found that the medical evidence of record failed to establish that her back condition was causally related to the accepted employment factors. OWCP explained that Dr. Khulusi had not provided sufficient medical rationale to explain how appellant's underlying medical conditions were in fact affected by specific employment duties.

On December 16, 2015 appellant again requested reconsideration. In a December 16, 2015 letter, Dr. Khulusi reiterated that appellant's job activities caused her low back injury and disease. She indicated that in her June 10, 2015 letter she had previously described appellant's job duties, which included repetitive bending, twisting, lifting, and carrying. Dr. Khulusi reported that these repetitive activities resulted in "repetitive straining and spraining of the structures of the low back that results in setting of an inflammatory process in the soft tissue structures of the low back including the ligaments and the soft tissue structures of the facet joints and disc spaces." She further explained that repetitive lifting weights resulted in repetitive compression of the discs between the vertebrae and that the inflammatory process also led to weakening of the structures that contain the discs within the disc spaces. Dr. Khulusi reported that in appellant's case, her discs protruded through the annular and ligament space, resulting in disc herniation at the L3-L4 and L4-L5 level. She indicated that the combination of appellant's spondylolisthesis and herniated discs at L3-L4 had resulted in a much more serious narrowing of the central canal. Dr. Khulusi concluded that appellant's job activities had contributed to the severity of her low back conditions, which included acceleration of degenerative disease of the lumbar spine, severe spinal stenosis, lumbar disc herniation, and lumbar radiculopathy.

Appellant also submitted Form CA-17s dated November 10, 2015 to February 9, 2016 from Dr. Khulusi, who continued to recommend that appellant work modified duty with restrictions.

By decision dated March 15, 2016, OWCP denied appellant's request for reconsideration of the merits of her claim. It found that the additional medical evidence was cumulative and

substantially similar to evidence previously considered. OWCP further determined that appellant's reconsideration request did not raise any new legal arguments, nor did it demonstrate that OWCP erroneously applied or interpreted a point of law.

On April 19, 2016 appellant again requested reconsideration. With this request for reconsideration OWCP received an April 14, 2016 letter in which Dr. Khulusi referenced her June 10 and December 16, 2015 letters and asserted that she had explained in detail how appellant's job activities had caused her low back condition. She cited Chapter 2.805, paragraph 2, of OWCP's Federal (FECA) Procedure Manual about the acceleration of an underlying disease and reported that appellant's repetitive job duties had accelerated the degenerative arthritis in her low back and caused her to develop lumbar disc herniations, lumbar radiculopathies, and severe spinal stenosis. Dr. Khulusi alleged that she had already explained biomechanically and biomedically how appellant's job activities caused acceleration of the degeneration of her low back. Dr. Khulusi further expressed her disagreement with OWCP's claims examiner's conclusion that the medical evidence failed to establish a causal relationship between appellant's employment and her diagnosed conditions. She further noted that FECA did not require for a claimant's employment to be a significant contribution to her condition, but that, if an employment factor contributed in any way to a claimant's condition, such a condition would be considered employment related. Dr. Khulusi concluded that appellant's job activities had contributed to her low back condition in a substantial way.

In April 12 and July 26, 2016 CA-17 forms, Dr. Khulusi noted that appellant could work modified duty with restrictions.

OWCP denied further merit review of appellant's claim in a decision dated October 7, 2016. It found that the medical reports submitted were irrelevant to the issue of causal relationship and substantially similar to medical evidence previously submitted.

On October 26, 2016 appellant submitted an appeal form and indicated by a checkmark her intention to file a reconsideration request. OWCP received on the same day a letter from Dr. Khulusi which expressed her disagreement with OWCP's October 7, 2016 decision. Dr. Khulusi cited OWCP's Federal (FECA) Procedure Manual, Chapter 2.1602, paragraph 7b, which instructed an OWCP senior claims examiner to not use language which suggested that a review of the merits of the claim was undertaken such as "the evidence lacks substantial probative value." Dr. Khulusi alleged that OWCP's claims examiner committed an error of law because he had stated that the April 14, 2016 medical letter and two CA-17 forms were of "no probative value." She also asserted that in her April 14, 2016 letter she showed that the reviewing claims examiner committed an error of law when she quoted different legal principles but failed to explain the manner and extent to which such a principle was applicable. Dr. Khulusi further contended that the claims examiner merely reviewed her last reconsideration letter and did not review appellant's entire case file as required in OWCP's Federal (FECA) Procedure Manual, Chapter 2.1602. She related that in every letter she had sent to OWCP, she had provided more medical evidence to strengthen her causal arguments that she had initially sent to OWCP. Dr. Khulusi requested that OWCP accept appellant's claim for the medical conditions of acceleration of degenerative disease of the lumbar spine, severe spinal stenosis, lumbar disc herniation, lumbar radiculopathy, and permanent aggravation of degenerative disc

disease of the lumbar spine. She resubmitted her June 10 and December 16, 2015 and April 14, 2016 letters.

Dr. Khulusi also provided an October 18, 2016 Form CA-17, which related that appellant could continue working modified duty with restrictions.

By decision dated January 17, 2017, OWCP denied appellant's request for reconsideration of the merits of her claim. It found that her reconsideration request neither raised substantive legal questions nor included new and relevant evidence.

LEGAL PRECEDENT

Section 8128(a) of FECA vests OWCP with discretionary authority to determine whether to review an award for or against compensation. The Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application.³

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or an argument which: (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 received by OWCP within one year of the date of OWCP's decision for which review is sought.⁵ If OWCP chooses to grant reconsideration, it reopens and reviews the case on its merits.⁶ If the request is timely but fails to 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

By decisions dated October 7, 2016 and January 17, 2017, OWCP denied appellant's requests for reconsideration. It found that appellant's reconsideration requests did not raise any substantive legal questions and that the medical reports submitted were repetitive and substantially similar to evidence previously reviewed.

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

³ 5 U.S.C. § 8128(a).

⁴ 20 C.F.R. § 10.606(b)(3); *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).

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

Appellant has not shown that OWCP erroneously applied or interpreted a specific point of law; nor has appellant advanced a relevant legal argument not previously considered by OWCP.

In support of her April 19, 2016 request for reconsideration, which OWCP denied on October 7, 2016, appellant submitted an April 14, 2016 letter from Dr. Khulusi, in which she referenced her June 10 and December 16, 2015 letters to OWCP. Dr. Khulusi did not relate that appellant had undergone additional medical examination and she did not provide any new medical findings, but rather she argued that OWCP's factual findings were wrong. She opined that appellant repetitive job duties had accelerated the degenerative arthritis in her back and caused appellant to develop lumbar disc herniations, radiculopathies, and severe spinal stenosis. The Board finds that the arguments contained in Dr. Khulusi's April 14, 2016 letter had already been considered by OWCP in its last merit decision of November 2, 2015 and in the nonmerit decision dated March 15, 2016. OWCP had responded to Dr. Khulusi's arguments by explaining that she had not explained with sufficient medical rationale how appellant's underlying medical conditions were affected by specific work duties. As Dr. Khulusi's arguments regarding her prior reports were previously considered and rejected by OWCP, they are cumulative and duplicative in nature and therefore are insufficient to warrant a merit review.⁸

Similarly in support of appellant's October 26, 2016 request for reconsideration, which OWCP denied in its January 17, 2017 decision. OWCP received another letter from Dr. Khulusi, dated October 20, 2016 in which she disagreed with OWCP's October 7, 2016 decision and again referenced her April 14, 2016 letter. As Dr. Khulusi again merely reiterated her disagreement with OWCP's findings relative to her April 14, 2016 letter, which was considered by OWCP in the October 7, 2016 decision, the Board finds that Dr. Khulusi's arguments were again cumulative and duplicative in nature, and therefore insufficient to warrant a merit review.⁹

The Board also finds that appellant did not submit any pertinent new and relevant evidence not previously reviewed by OWCP.

In support of her April 19, 2016 request for reconsideration appellant submitted April 12 and July 26, 2016 CA-17 forms in which Dr. Khulusi noted that appellant could work modified duty with restrictions. Likewise, in support of her October 26, 2016 request for reconsideration appellant submitted a new Form CA-17, dated October 28, 2016 from Dr. Khulusi which related that appellant could continue modified work with restrictions. These reports were new to the record. However, the underlying issue in this case is whether appellant has established that her diagnosed medical conditions were causally related to the accepted factors of her federal employment. As these CA-17 forms did not address the underlying issue of causal relationship, they did not constitute pertinent new and relevant medical evidence.¹⁰

⁸ *T.B.*, Docket No. 16-1130 (issued September 11, 2017).

⁹ *Id.*

¹⁰ *See S.H.*, Docket No. 15-0539 (issued September 21, 2015).

In support of appellant's October 26, 2016 request for reconsideration Dr. Khulusi also resubmitted her June 10 and December 16, 2015, and April 14, 2016 letters. Resubmission of duplicative medical reports previously of record does not constitute a basis for reopening a case for merit review.¹¹

The Board accordingly finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(3). 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 constitute relevant and pertinent new evidence not previously considered. Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review on October 7, 2016 and January 17, 2017.

CONCLUSION

The Board finds that OWCP properly denied appellant's April 19 and October 26, 2016 requests for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the January 17, 2017 and October 7, 2016 decisions of the Office of Workers' Compensation Programs are affirmed.¹²

Issued: December 14, 2017
Washington, DC

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

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

¹¹ See *H.T.*, Docket No. 12-1096 (issued October 12, 2012).

¹² Collen Duffy Kiko, Judge, participated in the original decision, but was no longer a member of the Board effective December 11, 2017.