

ISSUE

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

FACTUAL HISTORY

This case has previously been before the Board.³ The facts of the case as presented in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On February 10, 2014 appellant, then a 55-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on January 29, 2014 she experienced a heart attack in the performance of duty. She stopped work on January 30, 2014.

Appellant was initially treated in the emergency room by Dr. Sheba G. Vattamala, a Board-certified internist. In January 29, 2014 hospital records, Dr. Vattamala related that appellant was on duty delivering mail when she collapsed. She indicated that an electrocardiogram (EKG) test showed ST elevations and T-wave inversions in inferior leads. Dr. Vattamala reviewed appellant's history and provided physical examination findings. She described the treatment that appellant received and diagnosed "status post ventricular fibrillation arrest x2" and status post witnessed fall and trauma. Appellant was admitted to the cardiac care unit.

In a February 6, 2014 hospital discharge report, Dr. Maurizio Diaco, a Board-certified internist who specializes in cardiovascular disease, noted discharge diagnoses of ventricular fibrillation arrest in the inferior myocardial infarction with right ventricular component, single-vessel coronary artery disease, dyslipidemia, mild anoxic encephalopathy, pneumonia by computerized tomography (CT) scan, anemia secondary to above, and broken ribs. He explained that overall, appellant's left ventricular function was low normal.

By letter dated February 28, 2014, OWCP advised appellant that the evidence submitted was insufficient to establish her claim. It requested that she respond to an attached claim development questionnaire in order to substantiate that the January 29, 2014 incident occurred as alleged and provide additional medical evidence to establish a diagnosed condition causally related to the alleged employment incident. Appellant was afforded 30 days to submit the additional evidence.

OWCP denied appellant's traumatic injury claim in a decision dated April 2, 2014 because she failed to establish fact of injury. It found that the evidence of record was insufficient to demonstrate that the January 29, 2014 employment incident occurred as alleged and that she sustained a diagnosed condition causally related to the alleged incident.

On May 13, 2015 OWCP received appellant's reconsideration request. Appellant submitted a detailed description of the January 29, 2014 incident. She also provided a January 29, 2014 police investigation report which described that a 911 call had been received

³ Docket No. 16-1341 (issued December 20, 2016).

about a postal worker who had suddenly collapsed and was unconscious. Appellant resubmitted her original Form CA-1 and hospital records.

Appellant also submitted a duty status report (Form CA-17) and an attending physician's report (Form CA-20) dated April 28, 2014 by Dr. Diaco. Dr. Diaco noted a date of injury of January 29, 2014 and a history of injury of acute myocardial infarction. He checked a box marked "yes" indicating that appellant's condition was caused or aggravated by the employment activity. Dr. Diaco explained: "physical exertion especially during cold weather may trigger a myocardial infarction." He related that appellant could return to full duty in July 2014.

In a June 10, 2014 work status note, Dr. Harris Ghaus, a Board-certified internist, indicated that appellant could return to work on June 30, 2014 with restrictions of no lifting above 30 pounds and no more than eight hours a day.

By decision dated July 10, 2014, OWCP affirmed the April 2, 2014 decision with modification. It accepted that the January 29, 2014 incident occurred as alleged and that appellant was diagnosed with a myocardial infarction, but denied her claim finding that the medical evidence of record was insufficient to establish that her myocardial infarction was causally related to the accepted incident.

On November 20, 2014 appellant again requested reconsideration.

In an October 28, 2014 narrative report, Dr. Diaco indicated that he was treating appellant for a recent myocardial infarction in January. He noted that the January 29, 2014 work event was related to a plaque rupture. Dr. Diaco opined that, although appellant may have had some preexisting plaque prior to the event consistent with coronary artery disease, working during cold weather at appellant's strenuous work on January 29, 2014 did cause the plaque rupture. He explained that it was well documented that plaque in the coronary artery may persist for years, but it was always a "trigger" that brought on the event. Dr. Diaco reported that the January 29, 2014 event did "cause a total occlusion of the right coronary artery suggesting it was quite a dramatic event and caused the cardiac arrest." He opined that "the work activity in cold weather was the cause of her myocardial infarction and more precisely was the trigger of a plaque rupture which caused the heart attack and the cardiac arrest."

In a January 21, 2015 decision, OWCP denied modification of the July 10, 2014 decision. It found that Dr. Diaco's new medical report was insufficient to establish a causal relationship between appellant's myocardial infarction and the accepted January 29, 2014 employment incident.

On January 4, 2016 appellant, through counsel, again requested reconsideration. He alleged that appellant's treating physician provided a rationalized medical opinion in regard to causation. Counsel noted that a report by Dr. Ghaus would show that appellant's high blood pressure had been under control for the past seven years, so it could not have been the cause of appellant's heart attack, which she suffered on the job.

In a December 14, 2015 letter, Dr. Ghaus noted that appellant had been his patient since 2007 and was on medication for hypertension. He related that appellant's blood pressure had been well controlled since 2007.

Appellant also provided a print out of the temperature on January 29, 2014, which showed a mean temperature of 18 degrees Fahrenheit, a maximum temperature of 24 degrees Fahrenheit, and a minimum temperature of 12 degrees Fahrenheit.

In a January 15, 2016 letter, Dr. Diaco indicated that the connection between exertion in cold weather to a myocardial infarction was not mere speculation, but rather was based on extensive body of medical research on cardiac event triggers. He noted that, according to a January 29, 2014 hospital record, appellant was on duty delivering mail when she fell down and collapsed. Dr. Diaco opined: “based on my evaluation of the patient, I feel comfortable in stating that the sustained physical activity in very cold weather was more likely than not the trigger of [appellant’s] myocardial infarction on January 29, 2014.”

By decision dated January 27, 2016, OWCP denied appellant’s request for reconsideration, finding that she failed to submit any evidence sufficient to warrant further merit review under 5 U.S.C. § 8128(a). It found that the medical evidence submitted was cumulative or substantially similar and irrelevant to the particular issue of this case.

Appellant, through counsel, appealed to the Board.

By decision dated December 20, 2016, the Board set aside the January 27, 2016 OWCP decision denying further merit review of appellant’s case. It determined that OWCP failed to address Dr. Diaco’s January 15, 2016 medical report, which was received by OWCP one day before it issued its final January 27, 2016 decision. The Board remanded the case to OWCP for consideration of the evidence in order to determine whether this evidence required further merit review of appellant’s claim.

In a January 19, 2017 decision, OWCP denied further merit review of appellant’s case under 5 U.S.C. § 8128(a). It found that, although Dr. Diaco’s January 15, 2016 report was new, it was cumulative and substantially similar to his previously submitted reports.

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.⁴

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or argument that: (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.⁵

⁴ 5 U.S.C. § 8128(a).

⁵ 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).

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.⁶ The one-year period begins on the date of the original decision. However, a right to reconsideration within one year accompanies any subsequent merit decision on the issues. This includes any hearing or review of the written record decision, any denial of modification following reconsideration, any merit decision by the Board, and any merit decision following action by the Board, but does not include prerecoumpment hearings.⁷ If OWCP chooses to grant reconsideration, it reopens and reviews the case on its merits.⁸ 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.⁹

ANALYSIS

In its January 21, 2015 decision, OWCP denied appellant's traumatic injury claim, finding that the medical evidence of record failed to establish that her myocardial infarction was causally related to the accepted January 29, 2014 employment incident. Appellant subsequently requested reconsideration and submitted additional medical evidence.

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

Appellant has not shown that OWCP erroneously applied or interpreted a specific point of law; she has not advanced a relevant legal argument not previously considered by OWCP; nor has she submitted relevant and pertinent new evidence not previously considered by OWCP.

In support of her January 4, 2016 reconsideration request, appellant submitted a December 14, 2015 letter by Dr. Ghaus. Dr. Ghaus related that appellant had been on medication for hypertension and that her blood pressure had been controlled since 2007. The Board finds that this report is irrelevant to the contested issue of appellant's claim as it does not address whether appellant's myocardial infarction was causally related to her January 29, 2014 employment incident. The Board notes that the submission of evidence that does not address the particular issue involved does not constitute a basis for reopening a case.¹⁰ Likewise, the print out of the temperature on January 29, 2014 is also irrelevant to the issue of causal relationship.

Appellant also provided a January 25, 2016 letter by Dr. Diaco, who noted that on January 29, 2014 appellant was on duty delivering mail when she fell down and collapsed. He reiterated that it was well documented that physical exertion in cold weather was connected to sustaining a myocardial infarction. Dr. Diaco opined: "based on my evaluation of the patient, I

⁶ 20 C.F.R. § 10.607(a).

⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.3b(1) (January 2004).

⁸ *Id.* at § 10.608(a); *see also M.S.*, 59 ECAB 231 (2007).

⁹ *Id.* at § 10.608(b); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

¹⁰ *Alan G. Williams*, 52 ECAB 180 (2000); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

feel comfortable in stating that the sustained physical activity in very cold weather was more likely than not the trigger of [appellant's] myocardial infarction on January 29, 2014.” The Board notes that Dr. Diaco merely repeated his opinion from his October 28, 2014 narrative report that appellant’s work activity in cold weather caused her myocardial infarction. The Board has held that the submission of evidence which duplicates or is substantially similar to evidence already in the case record does not constitute a basis for reopening a case.¹¹

On appeal counsel contends that Dr. Diaco’s January 25, 2016 report directly addressed the medical issue of causal relationship. He alleged that the medical report should have triggered not only a merit review of appellant’s claim, but also acceptance of the claim. As explained above, however, Dr. Diaco’s opinion on causal relationship in the new January 25, 2016 report merely duplicates his opinion found in the October 28, 2014 report, which was previously reviewed by OWCP. Counsel also alleged that OWCP’s decision was clearly erroneous because Dr. Diaco’s medical reports sufficiently established a causal relationship between appellant’s myocardial infarction and the accepted January 29, 2014 employment incident. He further asserted that OWCP erred in not fulfilling its obligation to fully develop the medical record because Dr. Diaco’s medical reports, at a minimum, suggested the existence of a causal relationship. As noted above, however, the Board lacks jurisdiction to review the underlying merits of appellant’s claim. Accordingly, it cannot review counsel’s arguments regarding appellant’s traumatic injury claim on appeal.¹²

The Board finds, therefore, that because appellant did not provide OWCP with any evidence which has met the requirements of 20 C.F.R. § 10.606(b)(3) sufficient to require further merit review of her claim, it properly declined her request for reconsideration of the merits of her claim under 5 U.S.C. § 8128(a).¹³

CONCLUSION

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

¹¹ *E.M.*, Docket No. 09-39 (issued March 3, 2009); *D.K.*, 59 ECAB 141 (2007).

¹² *See* 20 C.F.R. § 501.2(c)(1); *Sandra D. Pruitt*, 57 ECAB 126 (2005).

¹³ *A.K.*, Docket No. 09-2032 (issued August 3, 2010); *M.E.*, 58 ECAB 694 (2007); *Susan A. Filkins*, 57 ECAB 630 (2006).

ORDER

IT IS HEREBY ORDERED THAT the January 19, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 20, 2017
Washington, DC

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

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

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