United States Department of Labor
Employees' Compensation Appeals Board

L.L., Appellant	)	
and	)	**Docket No. 17-1764**
	)	**Issued: December 28, 2017**
DEPARTMENT OF JUSTICE, FEDERAL BUREAU OF PRISONS, Mendota, CA, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 14, 2017 appellant filed a timely appeal from a March 2, 2017 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days elapsed from the last merit decision dated September 27, 2016, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of this case.

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

On September 2, 2015 appellant, then a 52-year-old correctional counselor, filed a traumatic injury claim (Form CA-1), alleging that, while leaving Chow Hall and walking to a

[1] 5 U.S.C. § 8101 *et seq.*

scheduled evening training session on September 1, 2015 she felt dizzy, nauseated, and experienced chest pain. She did not stop work.

Appellant was treated in the emergency room of Sierra Vista Regional Medical Center by Dr. Joseph Robinson, Board-certified in emergency medicine, for a sudden onset of epigastric pain while at Camp San Luis for training. Dr. Robinson diagnosed radiating pain in the epigastric area. He discharged appellant in good condition.

In a September 16, 2015 letter, OWCP advised appellant to submit additional information including a comprehensive medical report from her treating physician which included a reasoned explanation as to how the specific work factors or incidents identified by appellant had contributed to her claimed injury.

In a September 24, 2015 statement, appellant indicated that on September 1, 2015 she attended employing establishment Crisis Management Training as part of the crisis support team. Her class was instructed to assemble and build a canvas tent similar to a medium military tent from its original box as a team building exercise. Appellant indicated that while assembling the tent outside she was holding the outer edges with both hands and lifted and pulled the tent up to her chest and then over her head and held it overhead for over 15 minutes. She subsequently attended additional classes and headed to Chow Hall where she became dizzy, nausea, and felt pressure in the middle of her chest. Appellant was treated in the medical clinic and then transported by ambulance to an emergency room. She believed that her chest injury was caused by holding, tugging, and pulling the weight of the tent above her head.

Appellant submitted employing establishment medical records dated September 1, 2015 prepared by a health care provider, with an illegible signature, who noted that appellant presented with chest pressure, dizziness, shortness of breath, and nausea. She reported sitting at a dinner table when her symptoms began. The health care provider diagnosed chest pain and appellant was given two nitroglycerin tablets and taken to the emergency room by ambulance.

Also submitted were September 1, 2015 county emergency medical services and ambulance records which noted that appellant reported eating when she had a sudden onset of dizziness, nausea, and upper epigastric pain. Appellant's medical history was significant for lupus. She was diagnosed with abdominal pain, nausea, and chest pain.

Appellant submitted additional September 1, 2015 emergency room records from Dr. Robinson, who treated her for pain in the anterior chest, lower parasternal region, with an onset during eating. Laboratory test results were normal. Dr. Robinson diagnosed chest pain with somatic features with no indication of myocardial ischemia or other serious etiology. Appellant was discharged. In an October 14, 2015 addendum, Dr. Robinson noted that appellant was treated on September 1, 2015 for chest pain and that his findings were consistent with chest wall pain. He indicated that at the time of his initial evaluation he did not have information available regarding physical activity which may have led to appellant's presentation. Appellant furnished information about her activity before the onset of pain. She reported being engaged in an extended period of physical activity supporting a tent which was being assembled by members of her team and her symptoms began later after this activity. Dr. Robinson advised that documentation indicated that appellant had chest wall tenderness with reproduction of her

symptoms. He noted that diagnostic studies revealed no evidence of a visceral source for pain. Dr. Robinson opined that the history appeared consistent with a likely cause of her chest wall pain for which he evaluated and treated appellant. He opined that it "was likely" that her activity involving the tent assembly was the cause of her chest wall pain.

In an October 20, 2015 decision, OWCP denied the claim finding that appellant failed to submit medical evidence establishing that a medical condition was diagnosed in connection with the accepted work incident. It concluded, therefore, that she had not met the requirements to establish an injury as defined by FECA.

On November 17, 2015 appellant requested an oral hearing before an OWCP hearing representative which was held on July 13, 2016.

In an undated statement, appellant indicated that she believed she has submitted all supporting documentation for her claim. Additional evidence submitted included a Crisis Management Training authorization form dated July 23, 2015, which noted authorization to attend training from September 1 to 3, 2015. An employee training roster noted that appellant was in attendance.

Appellant submitted an authorization for examination (Form CA-16) from Dr. Robinson dated October 14, 2015 who noted that she reported developing nausea, dizziness, and chest pain after a day of training. Dr. Robinson noted findings of anterior chest tenderness and diagnosed chest wall pain. He checked a box marked "yes" that appellant's condition was caused or aggravated by an employment activity.

In a September 27, 2016 decision, an OWCP hearing representative affirmed the decision dated October 20, 2015.

Appellant requested reconsideration in an undated statement received on December 6, 2016. She noted submitting evidence regarding her diagnosed systemic lupus erythematosus in connection with her diagnosed chest wall pain which had occurred before the September 1, 2015 incident. Appellant noted that she was treated on March 14, 2009 for chest pain, trouble breathing, dizziness, and feeling faint due to excess swimming. She was treated for symptoms of a heart attack.[2] Appellant noted symptoms of a heart attack, which were similar to those she experienced on September 1, 2015. She requested that her case be reviewed by a rheumatologist who was familiar with lupus and who could understand how the tent training exercise would have caused her chest wall injury. Appellant related being diagnosed with lupus in 1989 and advised that it was a chronic, autoimmune condition that can cause pulmonary inflammation which results in chest pain. She advised that the diagnosed chest wall pain or musculoskeletal chest pain was related to the muscles and bones of the chest wall. Appellant indicated that the only strenuous activity she participated in was the military tent training exercise. She reported that she had prior emergency room visits with chest wall pain due to strenuous movement in her upper body in conjunction with her diagnosed lupus. Appellant

[2] Appellant referenced medical records from the March 14, 2009 hospital visit. However, the records were not in the file before the Board on appeal.

submitted employing establishment medical records from September 1, 2015, previously of record.

Appellant submitted a note from Dr. Himmat S. Gill, a Board-certified rheumatologist, dated August 1, 2016, who noted that she was under his care for systemic lupus which was stabilized with medication.

In a March 2, 2017 decision, OWCP denied appellant's request for reconsideration as the evidence submitted was insufficient to warrant a merit review.

LEGAL PRECEDENT

Under section 8128(a) of FECA,[3] OWCP has the discretion to reopen a case for review on the merits. It must exercise this discretion in accordance with the guidelines set forth in section 10.606(b)(3) of the implementing federal regulations, which provides that a claimant may obtain review of the merits of his or her written application for reconsideration, including all supporting documents, sets forth arguments and contain evidence which:

> "(i) Shows that OWCP erroneously applied or interpreted a specific point of law; or
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> "(ii) Advances a relevant legal argument not previously considered by OWCP; or
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> "(iii) Constitutes relevant and pertinent new evidence not previously considered by OWCP."[4]

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by OWCP without review of the merits of the claim.[5]

ANALYSIS

OWCP denied appellant's claim because she failed to submit sufficient evidence establishing that an injury causally related to the accepted work incident. Thereafter, it denied her reconsideration request, without conducting a merit review.

The issue presented on appeal is whether appellant met any of the requirements of 20 C.F.R. § 10.606(b)(3), requiring OWCP to reopen the case for review of the merits of the claim. In her request for reconsideration, appellant did not show that OWCP erroneously applied or interpreted a specific point of law. She submitted an undated statement in which she sought to explain the relationship between her lupus, chest wall pain, and the accepted work incident on September 1, 2015. Appellant requested that her case be reviewed by a rheumatologist who was

[3] 5 U.S.C. § 8128(a).

[4] 20 C.F.R. § 10.606(b)(3).

[5] *Id*. at § 10.608(b).

familiar with lupus. However, this statement does not show a legal error by OWCP nor does it provide a new and relevant legal argument. The underlying issue in this case is whether appellant submitted sufficient medical evidence establishing that an injury causally related to the accepted September 1, 2015 employment incident. That is a medical issue which must be addressed by relevant new medical evidence.[6] However, appellant did not submit any pertinent new and relevant medical evidence in support of her claim.

Appellant submitted employing establishment medical records from September 1, 2015. However, this evidence is duplicative of evidence previously submitted and considered by OWCP in its earlier decisions dated October 20, 2015 and September 27, 2016. 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.[7] Therefore, these reports are insufficient to require OWCP to reopen the claim for a merit review.

Appellant also submitted an August 1, 2016 note from Dr. Gill who advised that she was under his care for systemic lupus which was stable. While this report is new to the record, it is not relevant to the issue for which OWCP denied appellant's claim, the failure to establish that an injury was causally related to the accepted work incident.[8] Dr. Gill's report does not address causal relationship between appellant's condition and the accepted September 1, 2015 employment incident. The submission of evidence that does not address the particular issue involved does not constitute a basis for reopening a case.[9] Therefore, this document does not constitute a basis for reopening appellant's claim.[10]

On appeal appellant asserts that her claim was improperly denied because the emergency room physician failed to provide the correct diagnosis and noted only "chest wall pain" which was not a diagnosis but a symptom. She asserted that the emergency room physician did not know the physical exercise she performed September 1, 2015 that she believed caused her condition. As explained, the Board does not have jurisdiction over the merits of the claim.

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.

[6] *See Bobbie F. Cowart*, 55 ECAB 746 (2004).

[7] *See Daniel Deparini*, 44 ECAB 657 (1993); *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984).

[8] *See R.B.*, Docket No. 16-0345 (issued April 21, 2016).

[9] *M.M.*, Docket No. 10-224 (issued October 6, 2010).

[10] *See W.D.*, Docket No. 09-658 (issued October 22, 2009) (causal relationship is a medical issue).

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).

ORDER

IT IS HEREBY ORDERED THAT the March 2, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 28, 2017
Washington, DC

Patricia H. Fitzgerald, Deputy 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