

ISSUE

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

On appeal appellant argues that her chronic neck pain had been aggravated by her computer use at work.

FACTUAL HISTORY

On July 23, 2015 appellant, then a 37-year-old chemical engineer, filed an occupational disease claim (Form CA-2) alleging that on July 15, 2015 she first realized that her neck pain was caused by her computer use.

In a letter dated August 13, 2015, OWCP informed appellant that the evidence of record was insufficient to establish her claim. Appellant was advised regarding the medical and factual evidence required to establish her claim. In the attached questionnaire, OWCP requested that she provide a detailed description of the employment activities she believed caused or aggravated her condition including the number and length of times she performed these activities. It afforded appellant 30 days to submit the requested evidence. Appellant did not respond to OWCP's August 13, 2015 letter.

By decision dated October 6, 2015, OWCP denied appellant's claim as it found she had failed to establish fact of injury. It found the evidence of record insufficient to establish that event or events occurred as alleged due to failure to provide a factual statement describing the factors she believed caused or aggravated her condition. OWCP also noted that appellant failed to provide any medical evidence.

On March 21, 2016 appellant requested reconsideration. In support of her request she submitted documents on the effects of vertebral subluxation, spinal nerve function, and forward head syndrome; photographs of diagnostic images; and a January 18, 2016 report by Dr. Richard Hagemeyer, a chiropractor. Dr. Hagemeyer diagnosed forward head syndrome based on review of x-ray interpretation.

By decision dated March 29, 2016, OWCP denied reconsideration. It found the evidence submitted was insufficient to warrant a merit review as it failed to address the basis for the denial of appellant's claim, which was failure to prove fact of injury. OWCP noted that she had not submitted any statement describing her job duties, outside activities, medical care, or circumstances regarding her injury.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,³ OWCP's regulations provide that a claimant must: (1) show that OWCP erroneously applied or

³ 5 U.S.C. § 8101 *et seq.* Section 8128(a) of FECA provides that the Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application.

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.⁴ To be entitled to a merit review of an OWCP decision denying or terminating a benefit, a claimant's application for review must be received by OWCP within one year of the date of that decision.⁵ 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.⁶

ANALYSIS

Appellant claimed that she sustained a neck injury due to factors of her federal employment. In her July 23, 2015 claim form, the only document of record containing her direct description of work factors, she attributed her neck condition to using a computer. On August 13, 2015 OWCP requested that appellant submit a detailed statement describing the employment tasks and specifying the frequency and duration of the tasks she attributed to computer work on her claim form. Appellant did not provide the information OWCP had requested describing her employment task or the frequency and duration of computer use. Due to the lack of a factual statement describing the factors of employment, OWCP issued its October 6, 2015 decision denying the claim, finding that appellant failed to establish the factual component of fact of injury, as the claimed work incident was not established. It also noted that appellant had failed to submit medical evidence in support of her claim.

The Board finds that appellant's March 15, 2016 request for reconsideration neither alleged nor demonstrated that OWCP erroneously applied or interpreted a specific point of law. It further finds that she failed to advance a relevant legal argument not previously considered by OWCP. Consequently, appellant is not entitled to a review of the merits of his claim based on the first and second above-noted requirements under section 10.606(b)(3).⁷

The Board further finds that appellant did not submit relevant or pertinent new evidence not previously considered by OWCP. In support of her request for reconsideration, appellant submitted documents on the effects of spinal subluxation and nerve function, forward head syndrome, and chiropractic care; photographs of diagnostic images; and a January 18, 2016 report by Dr. Hagemeyer, a chiropractor. None of this evidence is relevant to the underlying factual issue identifying the employment factors she believed caused or aggravated her neck

⁴ 20 C.F.R. § 10.606(b)(3). See *J.M.*, Docket No. 09-218 (issued July 24, 2009); *Susan A. Filkins*, 57 ECAB 630 (2006).

⁵ *Id.* at § 10.607(a).

⁶ *Id.* at § 10.608(b). See *Y.S.*, Docket No. 08-440 (issued March 16, 2009); *Tina M. Parrelli-Ball*, 57 ECAB 598 (2006).

⁷ 20 C.F.R. § 10.606(b)(3).

condition. The Board has held that evidence which does not address the particular issue involved does not constitute a basis for reopening a case.⁸

The Board finds that the documents appellant submitted with her request for reconsideration consisted primarily of medical literature. Medical literature however does not constitute relevant or pertinent new evidence as it is irrelevant to the issue of causal relationship and is not based on a physician's medical opinion from a complete and accurate medical history of appellant.⁹

Appellant also submitted a January 18, 2016 report from Dr. Hagmeyer, chiropractor, in which he diagnosed forward head syndrome. The Board has held that a chiropractor is a physician as defined under FECA only to the extent that the reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist.¹⁰ The evidence does not establish that appellant was diagnosed with subluxation based on the results of an x-ray. Accordingly, the Board finds that Dr. Hagmeyer does not qualify as a physician under FECA and his reports therefore cannot be considered competent medical evidence sufficient to require merit review of appellant's claim.¹¹ The Board, therefore, finds that the evidence submitted by appellant is insufficient to reopen her claim for a merit review.

On appeal appellant contends that the medical evidence of record showed that her chronic neck condition had been aggravated by her computer work. As noted above, the Board lacks jurisdiction to consider the merits of the claim as the only decision before the Board is the March 29, 2016 nonmerit decision. Appellant's statement attributing her condition to computer work is insufficient to establish the factual portion of her claim since it does not provide with specificity a sufficient description of her employment activities or the length or duration of the activities.

CONCLUSION

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

⁸ *E.O.*, Docket No. 15-0635 (issued June 5, 2015); *R.M.*, 59 ECAB 690 (2008); *Betty A. Butler*, 56 ECAB 545 (2005).

⁹ *See D.B.*, Docket No. 10-2036 (issued May 13, 2011).

¹⁰ Section 8101(2) of FECA provides as follows: (2) physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law. The term physician includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist and subject to regulations by the Secretary. *See* 5 U.S.C. § 8101(2); *see also Merton J. Sills*, 39 ECAB 572, 575 (1988).

¹¹ *A.M.*, Docket No. 14-125 (issued March 24, 2014).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 29, 2016 is affirmed.

Issued: January 25, 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