

FACTUAL HISTORY

On April 3, 2013 appellant, then a 37-year-old letter carrier (city), filed a traumatic injury claim (Form CA-1) for injuries to her neck and lower back, which she attributed to a January 22, 2013 employment-related motor vehicle accident. OWCP accepted her claim for temporary aggravation of cervical and lumbar disc disorder with myelopathy and temporary aggravation of cervical and lumbar/lumbosacral intervertebral disc degeneration. Appellant received continuation of pay and compensation for intermittent wage loss beginning March 12, 2013.

Beginning September 17, 2013, appellant worked modified duty as a lobby host. On January 3, 2014 the employing establishment offered her work as a modified carrier, which she accepted. The job offer was based on the November 13, 2013 work restrictions imposed by appellant's treating physician, Dr. Hosea Brown, III, a Board-certified internist. In a January 8, 2014 duty status report (Form CA-17), Dr. Brown extended the previous work restrictions. In an accompanying narrative report, he noted that appellant had been advised to continue working within her restrictions.

On January 17, 2014 Dr. Serge Obukhoff, a Board-certified neurosurgeon, examined appellant and diagnosed L5-S1 lumbar disc herniation. He recommended an L5-S1 arthroplasty with decompression. Dr. Obukhoff also noted that appellant was able to perform modified duty in accordance with her treating physician's Form CA-17. In a February 28, 2014 follow-up evaluation, he reiterated his prior diagnosis and recommendation for surgical intervention. Dr. Obukhoff also noted that appellant was capable of performing modified duty in accordance with her treating physician's restrictions as set forth on the Form CA-17.

On March 5, 2014 Dr. Brown extended appellant's previous work restrictions. However, in an April 15, 2014 duty status report (Form CA-17), he indicated that appellant was temporarily totally disabled through July 15, 2014. In a separate narrative report, Dr. Brown indicated that appellant was medically excused from work beginning April 10, 2014 due to severe low back instability and pain. He also noted that Dr. Obukhoff recommended surgery, which was scheduled for June 2014.

Beginning in April 2014, appellant filed a series of claims for compensation CA-7 forms covering the period January 13 through June 9, 2014. She claimed intermittent wage loss, as well as temporary total disability from January 13 through 24, 2014 and April 21 through June 9, 2014.

By letter dated May 9, 2014, OWCP advised appellant that it had authorized payment for certain claimed medical appointments, but other appointments were not substantiated. Additionally, it advised that appellant had not established total disability for the claimed period(s). OWCP noted that the employing establishment had provided ongoing light/limited-duty work as of January 3, 2014, and it was unclear why appellant could not perform the work provided which was within her restrictions. It afforded appellant 30 days to submit additional evidence in support of her claim for wage-loss compensation.

On June 10, 2014 appellant underwent an OWCP-approved L5-S1 discectomy and fusion performed by Dr. Obukhoff.³ OWCP paid wage-loss compensation for temporary total disability beginning June 10, 2014, and placed her on the periodic compensation rolls effective October 19, 2014.

By decision dated February 4, 2015, OWCP granted 13.52 hours of intermittent wage-loss compensation, but denied compensation for temporary total disability for the periods January 13 through 24, 2014 and April 11 through June 9, 2014.

On June 3, 2015 appellant requested reconsideration of OWCP's February 4, 2015 decision. She submitted an April 20, 2015 report from Dr. Brown. Dr. Brown referenced his earlier reports dated January 8 and April 15, 2014, and indicated that these reports justified compensation for the periods January 13 through 24, 2014 and April 11 through June 9, 2014.

On June 9, 2015 OWCP referred appellant to Dr. Michael J. Einbund, a Board-certified orthopedic surgeon, for a second opinion examination to determine the nature and extent of her accepted conditions. In his July 17, 2015 report, Dr. Einbund diagnosed mild cervical spine strain and status postoperative anterior fusion at L5-S1. He determined that appellant had not yet reached maximum medical improvement and opined that she had been temporarily totally disabled since undergoing surgery on June 10, 2014. Dr. Einbund advised that appellant was currently able to return to modified duty with the following lumbar-related restrictions: no lifting over 10 pounds; no repetitive bending or stooping more than two hours per eight-hour workday. He did not specifically address any periods of claimed disability prior to appellant's June 10, 2014 surgery.

By decision dated September 1, 2015, OWCP vacated in part and affirmed in part its prior February 4, 2015 decision. Based on Dr. Brown's April 20, 2015 report, it awarded wage-loss compensation for temporary total disability for the period April 15 through June 9, 2014. However, OWCP affirmed its prior finding that the medical evidence of record was insufficient to establish appellant's claimed disability for the periods January 13 through 24, 2014 and April 11 through 14, 2014.

On February 2, 2016 appellant requested reconsideration. She submitted a November 3, 2015 report from Dr. Brown who opined that appellant was totally disabled for work during the period April 11 to 14, 2014 based on his "medical re-evaluation dated April 15, 2014." Dr. Brown indicated that on April 15, 2014 appellant informed him that she was unable to work as a result of severe low back instability and increasing radicular symptomatology. He further indicated that she had a positive straight leg raising test and her lumbar spine range of motion was severely restricted with severe spasm of the paraspinal lumbosacral musculature.

By decision dated May 5, 2016, OWCP denied appellant's request for reconsideration without a merit review finding that Dr. Brown's November 3, 2015 report was repetitious and did not constitute relevant and pertinent new evidence.

³ Dr. Joseph Vanderlinden, a vascular surgeon, assisted on the June 10, 2014 surgical procedure.

On August 25, 2016 appellant again requested reconsideration and submitted an August 5, 2016 report from Dr. James T. Tran, a Board-certified neurosurgeon, who reviewed the medical evidence of record and diagnosed painful lumbar radiculopathy and history of L5-S1 disc arthroplasty on June 10, 2014. Dr. Tran observed that on January 8, 2014 Dr. Brown had noted that appellant had significant pain and discomfort in the lower back and was unable to cooperate with the straight leg raise test portion of the examination. He concluded that appellant took time off work from January 13 to 24, 2014 because of excruciating back and leg pain with foot numbness and weakness that she could not tolerate. Dr. Tran further observed that in a February 28, 2014 report Dr. Obukhoff had noted that appellant had low back pain and severe persistent right leg radiculopathy. He concluded that appellant had to take time off work from April 11 to 14, 2014 because she had progressive radicular symptoms due to work activities and was unable to continue working as a result of severe low back instability and increasing radicular symptoms.

By decision dated August 29, 2016, OWCP denied appellant's request for reconsideration without conducting a merit review finding that Dr. Tran's August 5, 2016 report was cumulative and did not constitute relevant and pertinent new evidence.

LEGAL PRECEDENT

Section 8128(a) of FECA does not entitle a claimant to review of an OWCP decision as a matter of right.⁴ OWCP has discretionary authority in this regard and has imposed certain limitations in exercising its authority.⁵ One such limitation is that the request for reconsideration must be received by OWCP within one year of the date of the decision for which review is sought.⁶ A timely application for reconsideration, including all supporting documents, must set forth arguments and contain evidence that either: (i) shows that OWCP erroneously applied or interpreted a specific point of law; (ii) advances a relevant legal argument not previously considered by OWCP; or (iii) constitutes relevant and pertinent new evidence not previously considered by OWCP.⁷ When a timely application for reconsideration does not meet at least one of the above-noted requirements, OWCP will deny the request for reconsideration without reopening the case for a review on the merits.⁸

⁴ This section provides in pertinent part: “[t]he 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).

⁵ 20 C.F.R. § 10.607.

⁶ *Id.* at § 10.607(a). For merit decisions issued on or after August 29, 2011, a request for reconsideration must be “received” by OWCP within one year of OWCP’s decision for which review is sought. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (February 2016). Timeliness is determined by the document receipt date of the request for reconsideration as indicated by the “received date” in the Integrated Federal Employees’ Compensation System (iFECS). *Id.* at Chapter 2.1602.4b.

⁷ 20 C.F.R. § 10.606(b)(3).

⁸ *Id.* at § 10.608(a), (b).

ANALYSIS

On February 2, 2016 appellant submitted the appeal request form that accompanied OWCP's September 1, 2015 decision. She requested reconsideration, but did not otherwise elaborate. Appellant's February 2, 2016 request for reconsideration neither alleged nor demonstrated that OWCP erroneously applied or interpreted a specific point of law. Additionally, she did not advance a relevant legal argument not previously considered by OWCP. Consequently, appellant is not entitled to further review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(3).

Appellant also failed to submit relevant and pertinent new evidence not previously considered by OWCP. Dr. Brown's November 3, 2015 report reiterated statements made in his report dated April 15, 2014 and is, therefore, cumulative and duplicative in nature.⁹ The Board finds that this report does not constitute relevant and pertinent new evidence not previously considered by OWCP.¹⁰ Therefore, OWCP properly determined that this evidence did not constitute a basis for reopening the case for a merit review.

The Board finds that OWCP properly determined that appellant was not entitled to further review of the merits of her claim pursuant to any of the three requirements under section 10.606(b)(3) and properly denied her February 2, 2016 request for reconsideration.

With respect to appellant's August 25, 2016 request for reconsideration, she neither alleged nor demonstrated that OWCP erroneously applied or interpreted a specific point of law. Additionally, she did not advance a relevant legal argument not previously considered by OWCP. Consequently, appellant is not entitled to further review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(3).

Appellant also failed to submit relevant and pertinent new evidence not previously considered by OWCP. Dr. Tran's August 5, 2016 report was new, but irrelevant as it contained no new, independent medical opinion and was comprised of his support for adoption of the medical opinions already considered and rejected by OWCP.¹¹ The Board finds that this report does not constitute relevant and pertinent new evidence not previously considered by OWCP.¹² Therefore, OWCP properly determined that this evidence did not constitute a basis for reopening the case for a merit review.

The Board finds that OWCP properly determined that appellant was not entitled to further review of the merits of her claim pursuant to any of the three requirements under section 10.606(b)(3) and properly denied her August 25, 2016 request for reconsideration.

⁹ Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a claim for merit review. *Denis M. Dupor*, 51 ECAB 482 (2000).

¹⁰ *Id.*

¹¹ See *K.C.*, Docket No. 12-32 (issued October 9, 2012).

¹² *Id.*

CONCLUSION

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of its May 5 and August 29, 2016 decisions pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the August 29 and May 5, 2016 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: January 6, 2017
Washington, DC

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

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board