

from behind by another vehicle. Immediately following the accident he was transported by ambulance to a hospital emergency room. Paramedics described the accident in a January 19, 2015 report. At the hospital, Dr. Andrew Abrass, an attending physician specializing in emergency medicine, diagnosed neck and lumbar sprain/strains due to the motor vehicle accident. A cervical computed tomography scan and lumbar x-rays demonstrated no evidence of fracture. Dr. Abrass discharged appellant to home that day. Appellant stopped work on the date of injury.

Appellant submitted a January 19, 2015 narrative statement describing the accident. His supervisor confirmed the account in a January 20, 2015 accident report.

In a January 22, 2015 report, Dr. Milton D. Chan, an attending osteopathic physician specializing in internal medicine, held appellant off work through February 4, 2015.

Beginning February 3, 2015, appellant was followed by Dr. Michael Hebrard, an attending Board-certified physiatrist. Dr. Hebrard submitted reports dated February 3, 6, and 27 and March 18, 2015 diagnosing cervical radiculitis, cervical radiculopathy, an S1 joint strain, sprains and strains of the sacroiliac ligament, sciatica, and brachial plexopathy. He held appellant off work.

OWCP paid appellant compensation for temporary total disability from March 6, 2015 to until he returned to full-time limited-duty work on March 30, 2015.² On March 26, 2015 Dr. Hebrard released appellant to modified duty as of March 30, 2015. On May 28, 2015 he held appellant off work from May 28 to 31, 2015.

On June 5, 2015 appellant filed claims for compensation (Forms CA-7) for May 28 and 29, 2015, and the period June 17 through July 15, 2015. In June 10 and 26, 2015 letters, OWCP notified him of the additional evidence needed to establish his claims for compensation, including a report from his attending physician explaining how and why the accepted sacroiliac sprain would disable him for work for the dates claimed.

On June 17, 2015 Dr. Hebrard diagnosed sprains and strains of the sacroiliac ligament and cervical radiculopathy. He held appellant off work from June 17 to July 15, 2015. A June 18, 2015 lumbar magnetic resonance imaging (MRI) scan showed L4-5 left facet arthropathy, L4-5 disc degeneration, and mild sacroiliac joint spurring. June 22, 2015 lumbar x-rays showed a grade 1 anterolisthesis of L4 on L5 and L5 and S1. On June 24, 2015 Dr. Hebrard held appellant off work pending a surgical evaluation. In a July 15, 2015 report, he diagnosed continued sciatica, sacroiliac ligament sprains and strains, and unspecified complications of medical care. On July 16, 2015 Dr. Hebrard released appellant to limited duty, with a 10-pound lifting limit.

On July 23, 2015 appellant accepted a modified position as a mechanic, with lifting limited to 10 pounds.

² OWCP also paid compensation on May 14, 2015 when appellant attended a medical appointment.

By decision dated July 29, 2015, OWCP denied appellant's claims for wage-loss compensation for May 28 and 29, 2015, and from June 17 to July 15, 2015, finding that the medical evidence of record did not establish disability for the claimed periods due to a worsening of the accepted January 19, 2015 work injury. It found that appellant's physician attributed his condition to work factors unrelated to the accepted injury, including conditions not accepted by OWCP.

In an August 26, 2015 letter postmarked September 1, 2015, and received by OWCP on September 4, 2015, appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review. He submitted additional evidence.³

In an August 13, 2015 report, Dr. Celeste Lopez, attending Board-certified psychiatrist, diagnosed post-traumatic stress disorder (PTSD) causally related to the January 19, 2015 employment injury.

In an August 18, 2015 report, Dr. Michael D. Tseng, an attending Board-certified orthopedic surgeon, diagnosed lumbar degenerative disc disease with multilevel stenosis, a low grade L4-5 anterolisthesis, a possible left S1 strain, and possible cervical radiculopathy due to the January 19, 2015 work injury.

On September 1, 2015 OWCP obtained a second opinion from Dr. Aubrey A. Swartz, a Board-certified orthopedic surgeon, who found that the accepted sacroiliac sprain had ceased without residuals. Dr. Swartz released appellant to full duty with no restrictions.

Dr. Hebrard prescribed physical therapy on October 8, 2015.

By decision dated October 14, 2015, OWCP denied appellant's request for an oral hearing under 5 U.S.C. § 8124(b), finding that his request was not timely filed. It performed a limited review of the evidence, and further denied the claim as the issue involved could be addressed equally well accompanying a request for reconsideration.

OWCP paid compensation for appellant's attendance at medical appointments on September 1 and October 8, 2015 and January 26, 2016. On January 27, 2016 appellant accepted a full-time modified-duty position as a mechanic, with lifting limited to 10 pounds. OWCP paid compensation for his attendance at a February 16, 2016 medical appointment.

In a March 9, 2016 letter, received March 15, 2016, appellant requested reconsideration of the October 14, 2015 decision. He submitted additional evidence.⁴

On May 14, 2015 Dr. Hebrard diagnosed a sacroiliac ligament sprain and sciatica, caused by the January 19, 2015 employment-related motor vehicle accident. He prescribed medication and a sacroiliac joint belt. In October 8, 2015 reports, Dr. Hebrard diagnosed a sacroiliac ligament sprain. He contended that Dr. Swartz was no longer a practicing orthopedic surgeon,

³ Appellant also submitted duplicates of Dr. Hebrard's July 15, 2015 report and the July 23, 2015 modified job offer, considered by OWCP prior to the July 29, 2015 decision.

⁴ Appellant also submitted duplicates of Dr. Hebrard's June 17 and 24, 2015 reports.

misinterpreted the medical evidence, performed an inadequate examination, and was not qualified to render an opinion in the case.

In an October 29, 2015 report, Dr. Michael Levi, an attending Board-certified psychiatrist, diagnosed PTSD causally related to the January 19, 2015 employment injury.

Dr. Tseng provided reports dated November 30 and December 8, 2015, January 26, February 2 and 16, and March 22, 2016 diagnosing lumbar degenerative disc disease with multilevel stenosis, a low grade L4-5 anterolisthesis, a possible left S1 strain, and possible cervical radiculopathy due to the January 19, 2015 employment-related collision. He provided work restrictions from January 26 to May 22, 2016.

By decision dated May 17, 2016, OWCP denied modification of its July 29, 2015 decision, finding that the medical evidence of record did not establish that appellant was disabled for work for the claimed periods due to the accepted January 19, 2015 work injury.⁵

On July 28, 2016 appellant requested reconsideration.⁶ He submitted additional medical evidence. On January 26, 2015 Dr. Chan noted appellant's complaints of neck and low back pain after the January 19, 2015 employment-related motor vehicle accident. He diagnosed a lumbar strain, left trapezius strain, left shoulder sprain, and cervical whiplash injury related to the employment injury. Appellant also resubmitted Dr. Hebrard's June 17, 2015 report, which held appellant off work from June 17 to July 15, 2015 as his modified duties allegedly aggravated his symptoms.

A March 28, 2016 MRI scan of the cervical spine showed multilevel central canal stenosis.

On May 17, 2016 Dr. Tseng diagnosed lumbar degenerative disc disease with multilevel stenosis, a low-grade L4-5 anterolisthesis, and a possible left S1 strain and possible cervical radiculopathy due to the January 19, 2015 employment-related injury. He repeated these diagnoses in July 28 and 29, 2016 reports. Dr. Tseng provided work restrictions from May 17 to July 17, 2016.

Dr. Fulton S. Chen, an attending Board-certified physiatrist, examined appellant on May 17, 2016. In reports dated from June 3 through July 12, 2016, he opined that the January 19, 2015 employment injury may have caused C5-6, L4-5, and L5-S1 disc herniations, and aggravated previously quiescent cervical and lumbar degenerative disc disease. In an August 9, 2016 report, Dr. Chen found that appellant had attained maximum medical improvement. He diagnosed status post January 19, 2015 rear-end motor vehicle accident, L5-S1 disc degeneration with annular tear, left lumbar radiculopathy, left sacroiliac joint strain,

⁵ By notice dated July 20, 2016, OWCP advised appellant of its preliminary determination to terminate his wage-loss compensation and medical benefits as the medical record demonstrated that the accepted January 19, 2015 work injury had ceased without residuals. There is no final decision of record regarding the termination of compensation.

⁶ In a July 12, 2016 letter, OWCP notified appellant that it authorized payment of wage-loss compensation for 3.75 hours on March 22, 2016, 4 hours on March 28, 2016, and 4 hours on May 17, 2016 to attend medical appointments.

multilevel cervical degenerative disc disease, and left C6 or C7 radiculopathy. Dr. Chen repeated these diagnoses in September 1 and 23, 2016 reports.

In an August 10, 2016 letter, counsel at the time alleged that Dr. Swartz failed to review or misinterpreted the medical record.

A September 19, 2016 cervical MRI scan showed multilevel cervical disc disease with canal stenosis and loss of lordosis, and a paracentral C5-6 herniation.

In October 11, 2016 reports, Dr. Tseng diagnosed lumbar and cervical disc degeneration. He noted appellant's "underlying degenerative issues in [appellant's] back," with "much more pain and dysfunction" following the January 19, 2015 employment injury.

Appellant also submitted duplicate copies of Dr. Chen's January 22, 2015 report, the June 18, 2015 lumbar MRI scan report, Dr. Tseng's February 16 and March 22, 2016 reports, Dr. Hebrard's June 24, 2015 report, and medical literature on spinal injury.

By decision dated October 26, 2016, OWCP denied appellant's request for a further review of his case on the merits, finding that the additional evidence submitted was cumulative or irrelevant, and therefore did not warrant a review of the merits of the claim. It found that the January 19, 2015 paramedic report, and May 28 and June 17 and 24, 2015 work duty status reports were copies of documents already of record and considered by OWCP. The remaining medical reports were irrelevant as they did not address the claimed periods of disability, or did not discuss the critical issue of causal relationship. Additionally, the August 10, 2016 letter from appellant's then counsel did not address appellant's claims for wage-loss compensation.

LEGAL PRECEDENT

To require the office to reopen a case for merit review under section 8128(a) of FECA,⁷ section 10.606(b)(3) of Title 20 of the Code of Federal Regulations provides that a claimant must: (1) show OWCP erroneously applied or 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.⁸ Section 10.608(b) provides that when an application for review of the merits of a claim does not meet at least one of the three requirements enumerated under section 10.606(b)(3), OWCP will deny the application for reconsideration without reopening the case for a review on the merits.⁹

In support of a request for reconsideration, appellant is not required to submit all evidence which may be necessary to discharge his burden of proof.¹⁰ He need only submit

⁷ 5 U.S.C. § 8128(a).

⁸ 20 C.F.R. § 10.606(b)(3).

⁹ *Id.* at § 10.608(b). *See also D.E.*, 59 ECAB 438 (2008).

¹⁰ *Helen E. Tschantz*, 39 ECAB 1382 (1988).

relevant, pertinent new evidence not previously considered by OWCP.¹¹ When reviewing an OWCP decision denying a merit review, the function of the Board is to determine whether OWCP properly applied the standards set forth at section 10.606(b)(3) to the claimant's application for reconsideration and any evidence submitted in support thereof.¹²

ANALYSIS

OWCP accepted that appellant sustained a sacroiliac ligament sprain in a January 19, 2015 occupational motor vehicle accident. Appellant claimed wage-loss compensation for temporary total disability for May 28 and 29, 2015, and from June 17 to July 15, 2015. OWCP denied the claim by merit decisions dated July 29, 2015 and May 17, 2016.

Appellant again requested reconsideration on July 28, 2016. OWCP denied reconsideration by decision dated October 26, 2016, finding that his contentions and the factual and medical evidence submitted were either irrelevant or cumulative.

The Board finds that OWCP properly denied appellant's request for reconsideration. The critical issue in the May 17, 2016 merit decision whether appellant established that he was disabled for work on May 28 and 29, 2015, and June 17 to July 15, 2015 due to the employment-related January 19, 2015 sacroiliac ligament sprain. To be relevant, the evidence submitted on reconsideration must address that issue.

In support of his July 21, 2016 reconsideration request, appellant submitted January 26, 2015 reports from Dr. Chan, an attending osteopathic physician specializing in internal medicine, reports dated from May 17 to July 29, 2016 from Dr. Tseng, an attending Board-certified orthopedic surgeon, reports from Dr. Chen, an attending Board-certified physiatrist, dated from May 17 to September 23, 2016, two reports dated October 11, 2016 from Dr. Tseng and MRI scan studies of the cervical spine dated March 28 and September 19, 2016. Appellant also submitted an August 10, 2016 letter from counsel at that time regarding the notice of proposed termination, and medical literature regarding spinal injuries. None of this evidence addresses the critical issue of whether he was disabled from work on May 28 and 29, 2015 and from June 17 to July 15, 2015. As these documents are irrelevant to establishing the claimed period of disability, they do not comprise a basis for reopening the case.¹³

Appellant also submitted duplicate copies of Dr. Chan's January 22, 2015 report, a June 17, 2015 work excuse note from Dr. Hebrard, an attending Board-certified physiatrist, the June 18, 2015 lumbar MRI scan report, Dr. Tseng's February 16, March 22, 2016 reports, Dr. Hebrard's June 24, 2015 report, and medical literature on spinal injury. However, evidence which is duplicative, cumulative, or repetitive in nature is insufficient to warrant reopening a claim for merit review.¹⁴ The duplicate copies of medical evidence previously of record are

¹¹ See *supra* note 8. See also *Mark H. Dever*, 53 ECAB 710 (2002).

¹² *Annette Louise*, 54 ECAB 783 (2003).

¹³ *Joseph A. Brown, Jr.*, 55 ECAB 542 (2004).

¹⁴ *Denis M. Dupor*, 51 ECAB 482 (2000).

therefore insufficient to warrant consideration on the merits. Moreover, the Board has held that newspaper clippings, medical texts, and excerpts from publication are of no evidentiary value in establishing causal relationship between a claimed condition and an employee's federal employment as such materials are of general application and are not determinative of whether the specific condition claimed is related to the particular employment factors alleged by the employee.¹⁵

A claimant may be entitled to a merit review by submitting pertinent new and relevant evidence or argument. Appellant did not do so in this case. Therefore, the Board finds that, pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

On appeal, appellant contends that Dr. Hebrard's reports were sufficient to establish his claim. He also alleges that Dr. Swartz failed to review the complete medical record and referred to an examination that did not occur. These arguments pertain to the merits of the claim, which are not within the Board's jurisdiction.

CONCLUSION

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

¹⁵ See *C.F.*, Docket No. 16-1859 (issued February 23, 2017).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 26, 2016 is affirmed.

Issued: July 21, 2017
Washington, DC

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

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

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