

employment injury.² She alleged that she had increased back pain due to a change in her modified job, which required her to engage in more up and down movements and required more paperwork. Appellant was also required to be on her feet more, and sit for longer periods of time. OWCP determined appellant had alleged a new injury as she was alleging new employment factors and converted appellant's recurrence claim to an occupational disease claim (Form CA-2).

Appellant submitted evidence in support of her claim.

In a June 18, 2013 report, Dr. Paul S. Curtis, a treating Board-certified orthopedic surgeon, noted that appellant had been seen for complaints of back pain. Physical examinations findings were provided and diagnoses included lumbar intervertebral disc degeneration, lumbago, and lumbar intervertebral disc displacement without myelopathy. Dr. Curtis checked a box marked "yes" indicating that appellant's complaints were consistent with her injury history.

In a June 30, 2014 pain clinic report, Dr. John J. Wasenko, an examining Board-certified neuroradiologist and diagnostic radiologist, reported that appellant had been seen for complaints of pain. He conducted a physical examination, reviewed appellant's diagnostic testing and diagnosed L3-4 and L4-5 diffuse disc bulges with minimal thecal sac compression, which he noted as a new finding, L5-S1 diffuse disc bulge abutting the thecal sac, grade 1 L5 spondylolisthesis on S1 associated with L5 pars defects, and L5 nerve compression in the neural foramina.

Dr. Curtis, in disability certificates dated July 23 and August 13, 2014, related that appellant was currently disabled from work. Under remarks on July 23, 2014, he noted that appellant had complained of increased back pain radiating down her leg, that appellant was awaiting a pain clinic appointment, and that a magnetic resonance imaging (MRI) scan was scheduled for July 28, 2014. Dr. Curtis reiterated appellant's diagnoses.

In an October 17, 2014 letter, OWCP informed appellant that the evidence of record was insufficient to support her claim. It advised her regarding the medical and factual evidence required to support her occupational disease claim and afforded her 30 days to submit the requested evidence.

In response to OWCP's October 17, 2014 development letter, it received reports dated September 24 and October 21, 2014 from Dr. Curtis. Dr. Curtis reiterated physical examination findings and conclusions from his prior June 18, 2013 report.

By decision dated November 26, 2014, OWCP denied appellant's claim. It found the evidence insufficient to establish a causal relationship between the diagnosed condition and the accepted work factors identified by appellant.

In a November 25, 2014 report, Dr. Curtis noted that appellant has been off work due to her acute low back pain. He provided examination findings and diagnosed lumbago, acquired

² This recurrence claim was for a claim previously filed under OWCP File No. xxxxxx493 when appellant was employed as a lead education technician.

spondylolisthesis, lumbar intervertebral disc displacement without myelopathy, lumbar intervertebral disc degeneration, and lumbar sprains and strains. Dr. Curtis checked a box marked “yes” indicating that appellant’s complaints were consistent with her injury history.

On December 20, 2014 appellant requested a review of the written record by an OWCP hearing representative.

On December 24, 2014 OWCP received reports dated May 14, 2012 and September 24, 2014 and a May 3, 2012 disability note from Dr. Curtis, which provided appellant’s program. Dr. Curtis opined that her reinjury was a consequential injury. He explained that, while appellant’s cervical symptoms had resolved, she continued to have significant low back pain, which was aggravated by her work activity. Due to the significant aggravation of her low back condition by her work activity, Dr. Curtis determined that she was disabled from work because she could not perform the duties of her position. He also restated appellant’s diagnoses.

In reports dated January 7 and March 23, 2015, Dr. Curtis related appellant’s diagnoses. He noted the history of appellant’s original injury in the January 7, 2015 report and noted changes in her job description. Dr. Curtis noted that appellant worked on a lower desk in 2012, which required constant moving from one level to the next, bending, and twisting. He also noted that her position required sitting for longer periods of times, which he opined significantly increased appellant’s symptoms.

In an April 4, 2015 narrative statement, appellant noted that she has been disabled from work since April 23, 2014 and that her disability has been verified by her physicians. She argued that medical evidence established that her diagnosed conditions were aggravated by her work and that her claim should be accepted.

In a June 1, 2015 decision, an OWCP hearing representative affirmed the November 26, 2014 decision denying appellant’s claim. He found the reports from Dr. Curtis insufficient to establish appellant’s claim as he had failed to provide sufficient medical rationale explaining how appellant’s diagnosed conditions had been caused or aggravated by the identified work factors.

Appellant requested reconsideration on May 23, 2016. She provided a history of her injury and medical treatment and contended that her back condition had been aggravated by her employment. Appellant contended that OWCP erred in denying her compensable claim.

In support of her request, appellant submitted a March 25, 2015 computer workstation ergonomic evaluation, which recommended changes to appellant’s workstation to provide better ergonomic environment and better lumbar support. An April 3, 2015 memorandum from the employing establishment’s Chief of Industrial Hygiene Preventive Medicine, instructed that the recommendations made in the March 25, 2015 report be implemented.

In a statement dated April 4, 2016, appellant’s supervisor stated that she had supervised appellant since June 2013 and she had been out on unpaid leave since July 2014 due to her back complaints. He related that upon appellant’s return to work in March 2015 an ergonomic study was requested. Based on findings from the study, appellant’s work station was redesigned, an ergonomic chair ordered, and new anti-fatigue floor mat provided for her work station.

By decision dated August 29, 2016, OWCP denied appellant's request for reconsideration. It found that the factual statements and ergonomic evaluation submitted were immaterial to the underlying issue of causal relationship, which was a medical issue.

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 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

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

Appellant disagreed with OWCP's denial of her occupational disease claim. The underlying issue in this case is whether appellant submitted medical evidence establishing that her back pain, lumbar intervertebral disc degeneration, lumbago, and lumbar intervertebral disc displacement without myelopathy was causally related to the accepted factors of her federal employment. That is a medical issue which must be addressed by relevant, new medical evidence.⁷

Appellant did not show that OWCP erroneously applied or interpreted a specific point of law. Moreover, she did not advance a relevant legal argument not previously considered. Consequently, appellant was not entitled to a review of the merits of the claim based on the first and second above-noted requirements under section 10.606(b).⁸ She merely argued that she submitted substantial medical evidence regarding her back condition and relationship to her employment.

³ *Supra* note 1. 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.

⁴ 20 C.F.R. § 10.606(b)(3). See *J.M.*, Docket No. 09-0218 (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. 08-0440 (issued March 16, 2009); *Tina M. Parrelli-Ball*, 57 ECAB 598 (2006).

⁷ *Bobbie F. Cowart*, 55 ECAB 746 (2004).

⁸ 20 C.F.R. § 10.606(b).

As to the submission of relevant and pertinent new evidence not previously considered by OWCP, the Board finds that appellant failed to meet this requirement. The evidence submitted on reconsideration included an April 4, 2016 statement from her supervisor, appellant's May 12, 2016 statement, a March 25, 2015 ergonomic evaluation report, and April 3, 2015 memorandum from the employing establishment regarding the March 25, 2015 ergonomic report. The underlying issue was whether appellant's back conditions had been caused or aggravated by the accepted employment factors. The evidence appellant submitted was not relevant to the issue of causal relationship because it was not medical evidence, but factual information.⁹ The evidence, therefore, is insufficient to require merit review of the claim.¹⁰

The Board finds that 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 submit relevant and pertinent new evidence not previously considered. Pursuant to 20 C.F.R. § 10.608, OWCP properly denied appellant's request for reconsideration of the merits of her claim under 5 U.S.C. § 8128(a).¹¹

On appeal appellant contends that she is entitled to acceptance of her claim and wage-loss compensation from July 23, 2014 to March 23, 2015. As explained above, the Board lacks jurisdiction to review the merits of her claim.

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).

⁹ *Supra* note 7.

¹⁰ *D.L.*, Docket No. 16-0342 (issued July 26, 2016); *D'Wayne Avila*, 57 ECAB 642 (2006).

¹¹ *See L.H.*, 59 ECAB 253 (2007); *Susan A. Filkins*, 57 ECAB 630 (2006)

ORDER

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

Issued: June 27, 2017
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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