United States Department of Labor
Employees' Compensation Appeals Board

S.F., Appellant	)	
and	)	**Docket No. 16-1019**
	)	**Issued: May 4, 2017**
U.S. POSTAL SERVICE, POST OFFICE, McCordsville, IN, Employer	)	

Appearances:
Joseph E. Allman, *Esq*., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On April 14, 2016 appellant, through counsel, filed a timely appeal from an October 30, 2015 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days elapsed from the last merit decision dated July 15, 2014, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of this case.

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id*. An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id*.; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] 5 U.S.C. § 8101 *et seq*.

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 March 3, 2014 appellant, then a 47-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on February 3, 2014, she sustained injuries to her left lower abdominal quadrant and left leg. She indicated that she had left inguinal pain and vaginal bleeding. Appellant attributed her condition to heavy lifting.[3] She reported carrying a parcel to the door, as well as lifting trays of mail and moving them from the back to the front of her work vehicle. Appellant stopped work on February 5, 2014.

On her claim form, appellant reported that she first received medical treatment on February 7, 2014. On that same date, she saw Dr. Dennis Pippenger, a Board-certified gynecologist, who noted that appellant presented with a complaint of vaginal bleeding, which reportedly had been occurring for a week. Appellant's prior surgical history included a 2005 hernia repair, a 2007 excision of both ovaries (bilateral salpingo-oophorectomy - BSO), and a 2007 total vaginal hysterectomy. Dr. Pippenger noted that appellant believed the bleeding may be caused by her hernia because it was heavier when she lifted things at work. He diagnosed postmenopausal vaginal bleeding and vaginal atrophy. Dr. Pippenger also noted that appellant may have an inguinal hernia, and that she lifted a lot at work.

On February 14, 2014 Dr. Samuel Heiser, a Board-certified general surgeon, examined appellant for possible recurrent left inguinal hernia. He noted that she indicated that approximately 10 days prior, she was lifting a tray of mail weighing about 35 pounds. Appellant related to Dr. Heiser that she had experienced sudden discomfort in the left inguinal area and did not recall twisting in any particular direction or doing anything remarkable. Dr. Heiser remarked that appellant "simply developed sharp pain in the region." He indicated that she believed that she may have developed a recurrence of her hernia, which had been surgically repaired in 2005. Dr. Heiser examined appellant and explained that it was possible that the hernia repair had failed, but he could not feel any evidence. He indicated a computerized tomography (CT) scan would help in that regard. Dr. Heiser also advised that appellant may have pulled the scar tissue in that area, which he had seen on occasion when someone twisted in a particular manner. However, he noted that the significant pain associated with pulled scar tissue usually resolved quickly. Dr. Heiser recommended pain medication and a CT scan.

A February 17, 2014 abdomen/pelvis CT scan revealed no acute process, old granulomatous disease, status post left lower abdominal hernia repair, hepatomegaly (enlarged liver), and constipation.

In a February 18, 2014 report, Dr. Heiser noted that he saw appellant on February 14 and 18, 2014 following x-rays to determine the cause of discomfort in her left lower quadrant

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[3] Appellant also noted that she underwent surgery on October 13, 2005 for a work-related hernia under OWCP File No. xxxxxx405.

and left leg. He indicated that appellant's reported discomfort "followed some heavy lifting at work." Dr. Heiser advised that she would undergo further evaluation in order to "shed more light on her discomfort and its etiology."

On February 27, 2014 appellant received left lower quadrant myofascial trigger point injections. The reported history of injury was that on February 3, 2014, appellant experienced a sudden onset of left lower quadrant pain after she lifted a heavy box at work. The diagnoses included left lower quadrant pain and myofascial pain syndrome.

In a February 28, 2014 follow-up report, Dr. Pippenger continued to diagnose postmenopausal vaginal bleeding and vaginal atrophy. At this visit, appellant reportedly felt fine now with no bleeding. The plan was for her to continue with her current medication and to follow-up as needed.

In a March 11, 2014 report, Dr. Daniel T. McKenna, a general surgeon, noted that appellant underwent an uncomplicated laparoscopic left femoral hernia repair in 2005. He advised that appellant did a great deal of heavy lifting with her job as a mail carrier and had pain both before and after her surgery. Dr. McKenna indicated that the pain intensified when appellant lifted something heavy on February 3, 2014. He advised that she had heavy vaginal bleeding at the time. Dr. McKenna explained that appellant was advised not to do so much heavy lifting moving forward. He diagnosed inguinodynia, status post laparoscopic left inguinal hernia repair. Dr. McKenna discussed the etiology of her pain, which was unlikely to be from an inguinal hernia. He suspected that it was related to muscular strain or the mesh pulling on the musculature. Dr. McKenna wanted to ensure that there was no muscular swelling or tears and requested a magnetic resonance imaging (MRI) scan. He also completed a work/school excuse form advising "no lifting [at] all."

A March 18, 2014 MRI scan of the pelvis read by Dr. Fatih Akisik, a Board-certified diagnostic radiologist, revealed a limited study given susceptibility artifact from left femoral hernia surgical repair, but no evidence of T2 hyperintense inflammatory process within the adjacent abdominal wall musculature. Dr. Akisik also noted there were findings suggestive of pelvic floor congestion syndrome.

In a March 18, 2014 report, Dr. McKenna advised that appellant continued to have abdominal and groin pain, which worsened with lifting. He noted that her pain began following lifting at work. Dr. McKenna reviewed the MRI scan results, and found that appellant did not demonstrate further damage or provide evidence of a recurrent hernia. He advised no heavy lifting in the future, which would preclude appellant from her job in the postal service.

In a March 19, 2014 report, Dr. McKenna opined that appellant was not capable of performing the daily requirements of her current job due to the February 3, 2014 work injury. He advised that she was unable to lift, stand, bend, push, pull, or walk.

In a May 1, 2014 report, Dr. McKenna indicated that appellant underwent a complicated laparoscopic left femoral hernia repair in 2005. He explained that she did a great deal of heavy lifting at work with her job as a mail carrier and had pain before and after the surgery. Dr. McKenna advised that the pain intensified on February 3, 2014 after appellant lifted

something heavy. He noted that she had heavy bleeding at that time, and her gynecologist found that she had torn a part of her vaginal closure from the previous hysterectomy. Dr. McKenna indicated that there was no evidence of a recurrent hernia. He diagnosed inguinodynia, status post laparoscopic left inguinal hernia repair. Dr. McKenna suspected that appellant's pain was related to muscular strain or the mesh pulling on the musculature. He explained that the chronic strain of lifting led to her chronic pain and previous inguinal hernia. Dr. McKenna advised that appellant should not perform any heavy lifting greater than 25 pounds, as this would aggravate her condition.

In a May 29, 2014 report, Dr. McKenna repeated the findings of his May 1, 2014 report. He reiterated that appellant underwent a complicated laparoscopic left femoral hernia repair in 2005. Dr. McKenna explained that appellant did a great deal of heavy lifting at work with her job as a mail carrier and had pain before and after the surgery. He advised that the pain intensified after she lifted something heavy on February 3, 2014. Dr. McKenna noted that she had heavy vaginal bleeding at that time and that her gynecologist found that she had torn part of her vaginal closure from the previous hysterectomy. He indicated that there was no evidence of a recurrent hernia. Dr. McKenna diagnosed inguinodynia, status post laparoscopic left inguinal hernia repair. He opined that it was unlikely to be from an inguinal hernia, and he suspected it was related to muscular strain or the mesh pulling on the musculature. Dr. McKenna explained that her pain began after lifting at work. He recommended that appellant undergo no heavy lifting and opined that the chronic strain of lifting led to her chronic pain and previous inguinal hernia.

In a decision dated July 15, 2014, OWCP denied appellant's claim as the medical evidence of record was insufficient to establish that a medical condition had been diagnosed in connection with the accepted February 3, 2014 employment incident. It explained that the medical evidence submitted did not contain a definitive medical diagnosis, and that pain was not a diagnosis. Consequently, OWCP denied appellant's traumatic injury claim because of her failure to establish the medical component of fact of injury.

On July 10, 2015 OWCP received a request for reconsideration from counsel. Counsel provided additional copies of Dr. McKenna's March 19 and May 29, 2014 reports. He argued that this evidence was sufficient to satisfy appellant's burden of proof under FECA, and that OWCP's prior decision should be reversed.

By decision dated October 30, 2015, OWCP denied appellant's request for reconsideration finding that the evidence submitted was insufficient to warrant a review of the merits of the claim. It found that the evidence was repetitious and consisted of a copy of a previously considered medical report from Dr. McKenna.

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

[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/her] own motion or on application." 5 U.S.C. § 8128(a).

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]

ANALYSIS

In the July 10, 2015 request for reconsideration, counsel argued that Dr. McKenna's March 19 and May 29, 2014 reports were sufficient to establish appellant's entitlement to benefits under FECA. He argued that a "common sense" reading of Dr. McKenna's report(s) established diagnoses related to the February 3, 2014 accepted employment incident. Apart from counsel's belief concerning the adequacy of Dr. McKenna's above-noted reports, the July 10, 2015 request for reconsideration neither alleged nor demonstrated that OWCP erroneously applied or interpreted a specific point of law. Additionally, he did not advance any relevant legal arguments not previously considered by OWCP. The Board finds that appellant is not entitled to a review of the merits based on the first and second requirements under section 10.606(b)(3).[9]

Counsel also failed to submit pertinent and relevant new evidence with the July 10, 2015 request for reconsideration. He resubmitted Dr. McKenna's March 19 and May 29, 2014 reports. OWCP's July 15, 2014 merit decision specifically referenced a "[March 19, 2014]" disability slip and a medical report dated "[May 29, 2014]." Providing additional evidence that either repeats or duplicates information already in the record does not constitute a basis for reopening a claim.[10] Because counsel did not provide any pertinent and relevant new evidence appellant is not entitled to a review of the merits based on the third requirement under section 10.606(b)(3).[11] Accordingly, OWCP properly declined to reopen appellant's case under 5 U.S.C. § 8128(a). The Board shall affirm OWCP's October 30, 2015 nonmerit decision.

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[5] 20 C.F.R. § 10.607.

[6] *Id*. § 10.607(a). The one-year period begins on the next day after the date of the original contested decision. 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*. § 10.608(a), (b).

[9] *Id*. § 10.606(b)(3)(i) and (ii).

[10] *James W. Scott*, 55 ECAB 606, 608 n.4 (2004).

[11] 20 C.F.R. § 10.606(b)(3)(iii).

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 October 30, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 4, 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