



## 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 December 21, 2014 appellant, then a 41-year-old transportation security officer, filed a traumatic injury claim (Form CA-1) alleging that on that date she injured her left hand, hip, and back when her chair broke, causing her to fall.

Appellant submitted a February 12, 2015 report from Dr. Laura Heinrich, Board-certified in family medicine, in which Dr. Heinrich diagnosed appellant with lower back pain and visceral hypersensitivity syndrome. Dr. Heinrich noted that appellant had significant difficulty performing her work due to back pain.

OWCP also received a February 19, 2015 report from Dr. Joel John Heidelbaugh, a Board-certified family practitioner, in which he noted that appellant had fallen from a broken chair on December 21, 2014. Dr. Heidelbaugh provided work restrictions for appellant.

By decision dated May 8, 2015, OWCP denied appellant's claim, finding that she had not established an injury causally related to the December 21, 2014 employment incident.

On June 8, 2015 appellant requested reconsideration of OWCP's May 8, 2015 decision. With her request, she submitted an April 16, 2015 report from Dr. John Yarjanian, Board-certified in physical medicine and rehabilitation. Dr. Yarjanian noted that appellant related pain in her left gluteal region, left lower back, and left hip to the incident of December 21, 2014. He related that, while physical examination suggested pelvic obliquity and a restricted left sacroiliac joint, in addition to extensive myofascial restriction in the left lumbar spine, imaging had failed to reveal signs of a fracture or disc herniation in relation to her symptoms. Dr. Yarjanian concluded that, based on his clinical impression and physical examination findings, appellant's subjective complaints of pain were legitimate, and substantiated by the mechanism of her fall. He recommended left sacroiliac joint and left facet point injections at L4-5 and L5-S1.

By letter dated May 22, 2015, Dr. Yarjanian described that on December 21, 2014, appellant's stool gave way while she was working and she fell to the ground striking her left gluteal region, left sacral region, and left low back to a hard cement surface. He noted that appellant instantaneously developed severe pain in this respective area. Dr. Yarjanian opined that appellant's symptoms were causally related to this fall. As a result of the trauma sustained to her sacrum and lumbar spine, appellant's left sacroiliac and left lower lumbar facet joints sustained trauma, and mechanical dysfunction. The mechanism of her fall was in accordance with her symptoms and physical examination findings.

By decision dated August 24, 2015, OWCP reviewed the merits of appellant's claim and denied modification of its May 8, 2015 decision. It explained that Dr. Yarjanian had not offered an opinion as to causal connection between a diagnosed medical condition and the employment

incident of December 21, 2014. Drs. Heinrich and Yarjanian related only her symptoms of pain to the employment incident.

On December 14, 2015 appellant, through counsel, requested reconsideration of OWCP's August 24, 2015 decision. Also submitted was a letter dated December 2, 2015 from Dr. Yarjanian explaining that, when appellant fell, she struck her left buttock and pelvis against a hard concrete floor, causing upward force on the pelvis, and this led to a dysfunction of the left sacroiliac joint. The sacroiliac joint has been hypo-mobile and restricted since this fall. As a result of the fall, a pelvic obliquity occurred, subsequently causing compensatory curvature of her lumbar spine. This has led to regional muscle strain, and localized pain at the left lower lumbar facet joints. Physical examination findings have substantiated appellant's pain complaints. Appellant has evidence of restricted motion at the left sacroiliac joint, with displacement of her left innominate (iliac crest) in a superior position. Her lower lumbar pain worsens on extension, consistent with pain emanating from the lower lumbar facet joints as a result of this fall.

By decision dated March 9, 2016, OWCP reviewed the merits of appellant's claim and denied modification of its prior decision of August 24, 2015. It stated that its May 8, 2015 decision determined that dysfunction of the left sacroiliac joint and pelvic obliquity were descriptions of conditions and not definitive medical diagnoses.

On August 15, 2016 appellant, through counsel, requested reconsideration of OWCP's March 9, 2016 decision. With the request, appellant submitted a June 21, 2016 letter from Dr. Yarjanian, in which he provided ICD-10 and ICD-9 codes for the diagnoses of sacroiliac dysfunction, pelvic obliquity, lumbar facet arthropathy, and myofascial pain. Dr. Yarjanian reiterated that he maintained that the description provided in his December 2, 2015 letter sufficiently explained the mechanism of appellant's injury as it related to the December 21, 2014 incident."

By decision dated September 7, 2016, OWCP denied appellant's request for reconsideration. It found that Dr. Yarjanian's June 21, 2016 letter was cumulative evidence, in that he continued to provide the same assessments as in his prior reports, with the addition of lumbar facet arthropathy. OWCP also found that the addition of ICD-9 and ICD-10 codes corresponding with identified symptoms and conditions was insufficient to warrant formal review of the claim, as these were just codes, and did not address the pending issue in question, which was the causal relationship between the employment incident and a definitively diagnosed medical condition.

### **LEGAL PRECEDENT**

To require OWCP to reopen a case for merit review under section 8128(a), OWCP's regulations provide that the evidence or argument submitted by 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.<sup>3</sup> Section 10.608(b) of OWCP's regulations

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<sup>3</sup> 20 C.F.R. § 10.606(b)(3); *D.K.*, 59 ECAB 141, 146 (2007).

provide that when an application for reconsideration 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.<sup>4</sup>

### ANALYSIS

OWCP issued a decision on March 9, 2016 finding that appellant had not submitted sufficient evidence to establish a causal relationship between the accepted employment incident of December 21, 2014 and a definitively diagnosed medical condition. By letter dated August 15, 2016, appellant requested reconsideration. With her request, she submitted a June 21, 2016 letter from Dr. Yarjanian. OWCP denied appellant's request for reconsideration by decision dated September 7, 2016.

The issue presented on appeal is whether appellant met any of the requirements of 20 C.F.R. § 10.606(b)(3), requiring OWCP to reopen the case for review of the merits of her claim. The Board finds that in her May 12, 2016 request for reconsideration appellant did not show that OWCP erroneously applied or interpreted a specific point of law, or advance a new and relevant legal argument not previously considered. Thus, appellant is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(3).

The underlying issue is whether appellant has submitted sufficient evidence to establish a causal relationship between the accepted employment incident of December 21, 2014 and a diagnosed medical condition. A claimant may be entitled to a merit review by submitting new and relevant evidence. Dr. Yarjanian's June 21, 2016 letter containing ICD-9 and ICD-10 diagnostic codes qualifies as pertinent new and relevant evidence. OWCP, in its March 9, 2016 decision, stated that its May 8, 2015 decision determined that dysfunction of the left sacroiliac joint and pelvic obliquity were descriptions of conditions and not definitive medical diagnoses. Dr. Yarjanian's June 21, 2016 letter, by including the ICD-9 and ICD-10 diagnostic codes, correctly indicated that appellant's dysfunction of the left sacroiliac joint and pelvic obliquity qualified as medical diagnoses and not merely descriptions of symptoms.

As such, the Board finds that OWCP improperly declined to reopen appellant's claim for a review of the merits in its September 7, 2016 decision. Dr. Yarjanian's June 21, 2016 letter contained relevant information not previously considered by OWCP. The letter is not duplicative of his earlier reports, as it added additional information supporting the fact that dysfunction of the left sacroiliac joint and pelvic obliquity qualified as medical diagnoses, and not merely description of symptoms. Because the letter of June 21, 2016 contained relevant information not previously considered by OWCP, OWCP was required to reopen the case for merit review upon reconsideration.

The Board accordingly finds that appellant met the third above-noted requirement of 20 C.F.R. § 10.606(b)(3) in her reconsideration request of August 15, 2016. Appellant submitted relevant and pertinent evidence not previously considered. Thus, pursuant to 20 C.F.R. § 10.608, OWCP improperly denied merit review.

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<sup>4</sup> *Id.* at § 10.608(b); *see K.H.*, 59 ECAB 495, 499 (2008).

**CONCLUSION**

The Board finds that OWCP improperly 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 September 7, 2016 decision of the Office of Workers' Compensation Programs is vacated and this case is remanded for further proceedings consistent with this opinion, to be followed by an appropriate decision.

Issued: May 16, 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