

(OWCP).³ The most recent merit decision in this case was the May 14, 2015 decision of the Board which became final 30 days after issuance and is not subject to further review. As there was no merit decision issued by OWCP within 180 days of the filing of this appeal, pursuant to the Federal Employees' Compensation Act⁴ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction to review the merits of appellant's claim.

ISSUE

The issue is whether OWCP properly denied appellant's request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

This case has previously been before the Board. The facts and circumstances surrounding the prior appeal are incorporated herein by reference. The relevant facts of the case are set forth below.

OWCP accepted that on March 30, 2012 appellant, then a 53-year-old clerk, sustained a cervical sprain and cervicgia while lifting file boxes. Appellant stopped work at the time of injury. He reported for duty on May 23, 2012, again stopped work and did not return.

Dr. Guillermo Pasarin, an attending Board-certified neurosurgeon, provided an August 17, 2012 report noting multilevel spondylitic disc disease from C3 through C7, with myelomalacia at C5-6 consistent with appellant's neurologic symptoms in the right upper extremity, and advanced degenerative disc disease with congenital stenosis. He opined that the accepted cervical sprain likely exacerbated appellant's preexisting degenerative conditions, causing them to become symptomatic.

OWCP placed appellant's case on the periodic rolls as of March 9, 2014.

By notice dated April 9, 2014, OWCP advised appellant that it proposed to terminate his wage-loss compensation and medical benefits, based on the report of the second opinion medical specialist, Dr. Peter J. Millheiser, a Board-certified orthopedic surgeon, as the accepted cervical sprain and cervicgia had ceased without residuals.

In a May 30, 2014 decision, OWCP finalized the termination of appellant's wage-loss compensation and medical benefits effective June 1, 2014 finding that the accepted neck sprain had ceased without residuals. It accorded Dr. Millheiser the weight of the medical evidence.

By decision dated August 21, 2014, OWCP approved a request for a \$4,560.00 attorney fee, as appellant failed to raise a timely objection to the proposed fee.

³ Appellant timely requested oral argument before the Board. By order dated August 4, 2017, the Board exercised its discretion and denied the request, finding that the issues could properly be adjudicated based on the evidence of record. *Order Denying Request for Oral Argument*, Docket No. 17-0691 (issued August 4, 2017).

⁴ 5 U.S.C. § 8101 *et seq.*

Appellant subsequently appealed to the Board.⁵

By decision dated May 14, 2015,⁶ the Board affirmed OWCP's May 30 and August 21, 2014 decisions, finding that OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective June 1, 2014 as the accepted neck sprain had ceased without residuals, and that OWCP properly approved his counsel's fee in the amount of \$4,560.00.

In June 18 and 20, 2015 letters, appellant requested reconsideration. He alleged a pattern of misfeasance and obstruction by OWCP and the employing establishment in the processing of his FECA claim. Appellant asserted that he required additional treatment for neurologic issues affecting his right hand and both feet, and a urinary tract condition. He submitted additional evidence.

Dr. Candelario Guzman, an attending family practitioner, provided an April 18, 2012 report diagnosing right arm, right hand, and right-sided neck pain related to the accepted March 30, 2012 injury.

In a May 16, 2013 report, Dr. Pasarin found appellant's cervical spine condition unchanged, with advanced degenerative disc disease and early spinal cord compression at C5-6.

February 6, 2015 magnetic resonance imaging (MRI) scans showed multilevel spondylitic changes and stenosis in the cervical spine, greatest at C5-6, and minimal spondylitic changes of the lumbar spine.

Appellant provided police reports regarding a March 23, 2015 nonoccupational motor vehicle collision in which his car was struck by another vehicle. He sought treatment for neck and back pain following the accident from Dr. M. Cristina Crespo-Smith, a Board-certified family practitioner, and Dr. Mrialini Sehgal, a Board-certified pathologist, who provided chart notes through May 14, 2015. Appellant also received chiropractic treatment through May 21, 2015. Additionally, he enclosed copies of OWCP informational letters regarding the status of his claim.

By decision dated July 8, 2015, OWCP denied reconsideration, finding that the evidence submitted on reconsideration was irrelevant or cumulative. It found that appellant's letters reiterated his previous, unsubstantiated contentions that OWCP and the employing establishment obstructed his FECA claim. OWCP further found that the medical evidence submitted on reconsideration was irrelevant as it did not address the accepted injuries or appellant's condition prior to the termination of his compensation benefits on June 3, 2013.

⁵ During the pendency of the prior appeal, appellant submitted documents predating the accepted March 30, 2012 injury. This included October 9, 2002 work restrictions regarding right thumb tenosynovitis, imaging studies, and progress notes from June 2004 to January 2005. Appellant also provided documents not pertaining to the accepted injury. This included: fertility clinic records; weight management counseling, and laboratory studies; treatment notes for diabetic retinopathy and peripheral neuropathy; February 17, 2015 electrodiagnostic studies confirming diabetic peripheral neuropathy affecting both legs and the right arm; and a February 27, 2015 sleep study.

⁶ Docket No. 15-0284 (issued May 14, 2015).

In a May 4, 2016 letter, appellant, through counsel, again requested reconsideration. He asserted that a new report from Dr. Pasarin was sufficient to outweigh Dr. Millheiser's opinion and establish causal relationship.

Dr. Pasarin opined in an April 20, 2016 report that it was "likely that the spinal cord and the exiting nerve roots were dragged along the preexisting osteophytes," combined with diabetes, causing a recrudescence of symptoms. He noted, however, that appellant's symptoms were largely consistent with "the nature of his injury and consistent with the nature of his work-related trauma" which was the predominant reason for continued treatment. Dr. Pasarin explained that while appellant's "bony pathology and disc disease is preexisting," the accepted injury irritated the nerve roots and spinal cord, permanently accelerating the previously quiescent condition, and necessitating treatment and proposed surgery." He found it "likely that lifting the heavy boxes caused the spinal cord and nerves to be dragged across the degenerative disc disease," precipitating and accelerating degenerative disc disease into symptomatic myelopathy. Dr. Pasarin noted that appellant's bladder condition was unrelated to work factors.

By decision dated August 5, 2016, OWCP denied reconsideration, finding that Dr. Pasarin's April 20, 2016 report was repetitive of his prior opinions regarding a preexisting degenerative cervical spine condition. Therefore, it was insufficient to warrant reopening appellant's claim on its merits.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,⁷ 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.⁸ 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 within one year of the date of that decision.⁹ 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.¹⁰

In support of a request for reconsideration, appellant is not required to submit all evidence which may be necessary to discharge his or her burden of proof.¹¹ He need only submit relevant, pertinent evidence not previously considered by OWCP.¹² When reviewing an OWCP

⁷ 5 U.S.C. § 8128 (a). Under section 8128 of FECA, "[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."

⁸ 20 C.F.R. § 10.606(b)(3).

⁹ *Id.* at § 10.607(a).

¹⁰ *Id.* at § 10.608(b).

¹¹ *Helen E. Tschantz*, 39 ECAB 1382 (1988).

¹² *See* 20 C.F.R. 10.606(b)(3). *See also Mark H. Dever*, 53 ECAB 710 (2002).

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.¹³

ANALYSIS

Appellant, through counsel, requested reconsideration by May 4, 2016 letter, received on May 10, 2016. He provided an April 20, 2016 report from Dr. Pasarin, an attending Board-certified neurosurgeon. OWCP denied reconsideration by August 5, 2016 decision, finding that the evidence submitted on reconsideration was cumulative or irrelevant to the critical issue of whether an accepted cervical sprain and cervicgia sustained on March 30, 2012 ceased on or before June 1, 2014.

Prior to appellant's May 4, 2016 reconsideration request, there were two reports in the medical record from Dr. Pasarin. In an August 17, 2012 report, Dr. Pasarin diagnosed congenital cervical stenosis, and multilevel, spondylitic degenerative disc disease greatest at C5-6 with radiation into the right upper extremity. He opined that the accepted March 30, 2012 cervical spine sprain exacerbated appellant's condition. On May 16, 2013 Dr. Pasarin found appellant's condition unchanged.

In his April 20, 2016 report submitted on reconsideration, Dr. Pasarin diagnosed multilevel cervical degenerative disc disease with radiation into the right arm. He opined that the March 30, 2012 cervical sprain exacerbated appellant's condition. Both aspects of this report are repetitive of Dr. Pasarin's reports previously of record. While he provided additional detail as to a possible mechanism of aggravation, Dr. Pasarin's opinion generally supporting such aggravation remained unchanged. Evidence which is duplicative, cumulative, or repetitive in nature is insufficient to warrant reopening a claim for merit review.¹⁴ Therefore, Dr. Pasarin's April 20, 2016 report was insufficient to warrant reopening appellant's case for a review on the merits.

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

On appeal counsel contends that Dr. Millheiser's opinion was of little to no probative value because he had poor online reviews, and his opinion was vague and contradictory. He argues that Dr. Millheiser failed to present evidence that appellant had preexisting cervical spine conditions prior to the accepted cervical sprain. Counsel's arguments pertain to the merits of the claim, which are not before the Board on the present appeal.

¹³ See e.g., *Annette Louise*, 54 ECAB 783 (2003) (citing to 20 C.F.R. § 10.606(b)(2), the predecessor of 20 C.F.R. § 10.606(b)(3)).

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

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).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 5, 2016 is affirmed.

Issued: November 14, 2017
Washington, DC

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

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

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