

FACTUAL HISTORY

On December 1, 2012 appellant, then a 52-year-old city carrier, filed an occupational disease claim (Form CA-2) alleging that, as a result of 23 years of repetitive duties delivering mail, she suffered wear and tear of her spine and neck. She listed the nature of disease or illness as neck disc degeneration. Appellant did not stop work.³

By decision dated September 5, 2013, OWCP accepted appellant's claim for cervical sprain, thoracic sprain, and lumbar sprain. On April 29, 2014 it also accepted her claim for aggravation and acceleration of degenerative changes, C3-6, and aggravation and acceleration of degenerative changes at L2-S1.

On May 24, 2016 appellant filed claims for compensation (Form CA-7) for the time period April 16 through May 13, 2016.

By letter dated May 31, 2016, OWCP informed appellant that additional evidence was necessary to establish that she was disabled as of April 16, 2016, causally related to the accepted conditions in this claim. It requested that she submit medical evidence to establish that she was disabled due to this claim. Appellant was afforded 30 days to submit the necessary evidence.

In support of her claim, appellant submitted notes by Adam Beyer, a physician assistant for Dr. Thomas J. Perlewitz, a Board-certified orthopedic surgeon. In a March 16, 2016 return to work slip, Mr. Beyer diagnosed low back pain and indicated that she was totally incapacitated pending a magnetic resonance imaging (MRI) scan. In a May 13, 2016 form he ordered physical therapy. Mr. Beyer listed appellant's diagnoses as status post lumbar fusion and sacroiliac joint dysfunction. These notes were not countersigned by Dr. Perlewitz or any other physician.

In addition, appellant submitted a May 3, 2016 report, wherein Dr. Jamie O. Edwards, a Board-certified family practitioner, listed her diagnosis as sacroiliitis. Dr. Edwards treated her with a sacroiliac corticosteroid injection. Appellant also submitted physical therapy notes dated from June 20 through July 1, 2016.

By decision dated August 19, 2016, OWCP denied appellant's claims for compensation for the period April 16 through May 31, 2016. It determined that the medical evidence failed to support disability during the time period claimed.

On January 17, 2017 OWCP received appellant's request for reconsideration. In support thereof, appellant resubmitted the May 3, 2016 report by Dr. Edwards. She also submitted a new September 6, 2016 physical therapy note and resubmitted prior physical therapy notes. Appellant also submitted three new "Recommendations to Return to Work" signed by Dr. Perlewitz. In notes dated March 23 and April 1, 2016, Dr. Perlewitz diagnosed low back

³ Appellant has filed other claims before OWCP. In File No. xxxxxx532, OWCP accepted that on March 22, 2008 her was in an employment-related motor vehicle accident and sustained a sprain of her neck, lumbar region and shoulder. It also accepted appellant's claim for disorders of sacrum, other symptoms of back, and spasm of muscle. In File No. xxxxxx415, OWCP denied her claim for an occupational disease for her lower back and hip as it determined that she had not submitted medical evidence establishing a medical diagnosis causally related to her accepted employment conditions.

pain and noted that she was totally incapacitated pending her MRI scan and follow-up appointment. In a May 13, 2016 note, he diagnosed appellant with post anteroposterior spinal fusion/low back pain. Dr. Perlewitz indicated that she could return to work on May 17, 2016 with restrictions

By decision dated January 26, 2017, OWCP denied appellant's reconsideration request without conducting a merit review. It determined that she had neither raised substantive legal questions nor included new and relevant evidence not previously considered.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,⁴ 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.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 pursuant to 5 U.S.C. § 8128(a).

Appellant did not to show that OWCP erroneously applied or interpreted a specific point of law, nor did she advance a relevant legal argument not previously considered by OWCP.⁷

Furthermore, appellant has not submitted relevant and pertinent new evidence not previously considered by OWCP. The underlying issue in this case is whether she established total disability for the period April 16 through May 13, 2016, due to the accepted cervical and lumbar conditions. In support of her request, appellant submitted a duplicate of the May 3, 2016 report by Dr. Edwards and duplicates of her physical therapy notes. Evidence which is duplicative, cumulative, or repetitive in nature is insufficient to warrant reopening a claim for merit review.⁸

⁴ 5 U.S.C. § 8128(a).

⁵ 20 C.F.R. § 10.606(b)(3).

⁶ *Id.* at § 10.608(b).

⁷ *See J.F.*, Docket No. 16-1233 (issued November 23, 2016).

⁸ *Denis M. Dupor*, 51 ECAB 482 (2000).

Although appellant submitted a new physical therapy note, certain healthcare providers such as physical therapists, are not considered physicians as defined under FECA.⁹ As causal relationship is a medical issue which requires rationalized medical opinion evidence,¹⁰ this therapy is insufficient to require merit review.¹¹

Appellant also submitted new progress notes by Dr. Perlewitz. Although Dr. Perlewitz indicated that she was totally disabled in his notes of March 23 and April 1, 2016, he did not address whether she was disabled due to her accepted employment conditions. As these reports do not address the critical issue of whether appellant was totally disabled causally related to her accepted employment conditions, they did not requiring reopening the case for merit review.¹²

A claimant may obtain a merit review of an OWCP decision by submitting relevant and pertinent new evidence. In this case, appellant failed to submit relevant and pertinent new medical evidence addressing the underlying issue. The Board accordingly finds that she has not met the requirements of 20 C.F.R. § 10.606(b)(3).

Accordingly, pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

CONCLUSION

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).

⁹ 5 U.S.C. § 8102 of FECA provides as follows: (2) physician includes surgeons, podiatrists, dentist, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. *Gloria J. McPherson*, 51 ECAB 441 (2000); *F.G.*, Docket No. 16-1482 (issued January 25, 2017) (physical therapists); *Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (a medical issue such as causal relationship can only be resolved through the submission of probative medical evidence from a physician). 20 C.F.R. § 10.5(t).

¹⁰ *B.B.*, Docket No. 17-0919 (issued June 28, 2017).

¹¹ *E.R.*, Docket No. 17-0540 (issued July 26, 2017).

¹² *Joseph A. Brown, Jr.*, 55 ECAB 542 (2004).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 26, 2017 is affirmed.

Issued: October 23, 2017
Washington, DC

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

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

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