

FACTUAL HISTORY

On October 10, 2007 appellant, then a 60-year-old mail carrier, filed an occupational disease claim (Form CA-2) alleging that on August 22, 2007 he first became aware of the connection between his right shoulder and back conditions and his employment duties as a mail carrier.³ OWCP accepted the claim for right bicipital tenosynovitis, lumbosacral sprain, temporary aggravation of right thumb generalized osteoarthritis, and temporary aggravation of right shoulder acromioclavicular arthrosis. Subsequently, it expanded the acceptance of appellant's claim to include right shoulder impingement syndrome.⁴ OWCP authorized right shoulder arthroscopy, which was performed on November 21, 2011.

A magnetic resonance imaging (MRI) scan of the lumbar spine dated May 25, 2012 was interpreted by Dr. Jerome Gold, a Board-certified radiologist, as revealing no evidence of disc herniation and bilateral S2 nerve root cysts of questionable significance.

In reports dated July 31 and December 28, 2015, Dr. James T. Tran, a treating Board-certified neurosurgeon, noted that appellant had retired in 2009. He reviewed appellant's history of injury, noted diagnostic test findings, and provided examination findings. Dr. Tran diagnosed lumbar spinal stenosis with neurogenic claudication, lumbar disc degeneration, and lumbar disc displacement with myelopathy, which he attributed to appellant's 24 years of work as a city letter carrier. He related that appellant had to lift and carry 25 to 35 pounds of mail and magazine containers on a frequent basis. Dr. Tran further explained that twisting and turning of the low back while lifting tubs of mail, and extension of the lumbar spine while loading mail tubs on a conveyor belt, exerted force on the lumbar spine, which caused tears in the annulus fibrosus of the lumbar disc, which allowed protusion or extrusion of the nuclear pulposus in the spinal canal, and compressed lumbar nerve roots resulting in back and leg pain. He further explained that extension of the low back while bending down to pick up tubs of mail and pushing hampers of mail caused lumbar facet joints to disengage and separate. Disengagement of facet joints stretched the ligamentum flavum which caused spinal stenosis and compression of lumbar nerve roots.

In a letter dated January 18, 2017, Dr. Christopher P. DeCarlo, a treating physiatrist, requested that OWCP expand the acceptance of appellant's claim to include lumbar disc degeneration and lumbar disc displacement with myelopathy. He reported that appellant's November 6, 2015 and December 7, 2016 MRI scans showed L4-5 spinal stenosis, L4-5 grade 1 anterolisthesis, and L4-5 and L5-S1 facet osteoarthritis. Dr. DeCarlo described appellant's work duties and opined that the lumbar disc degeneration and lumbar disc displacement with myelopathy were due to appellant's 24 years of work as a city letter carrier.

By decision dated March 23, 2017, OWCP denied appellant's request to expand the acceptance of his claim to include lumbar disc degeneration and lumbar disc displacement with myelopathy. It noted that appellant worked modified duties from August 22, 2007 until retiring in 2009 and the physician failed to explain how the additional conditions were due to his mail carrier

³ In statements submitted to OWCP appellant noted that he had worked as a mail carrier for 21 years until a May 3, 2007 work injury when he was placed on limited duty.

⁴ Appellant retired from the employing establishment in 2009.

duties when he had not worked as a mail carrier since 2007 and the conditions were not present on earlier MRI scans.

Following the March 23, 2017 decision, additional medical evidence was received.

A December 7, 2016 MRI scan of appellant's lumbar spine revealed an S2 spinal canal lesion, L4-5 spinal stenosis without definite compression of the L5 nerve roots, L4-5 grade 1 anterolisthesis, and L4-5 and L5-S1 facet osteoarthritis.

Dr. DeCarlo, in progress reports dated March 10, April 11, and October 3, 2017, diagnosed occupational right major bicipital tendinitis, lumbosacral strain, right thumb arthrosis, lumbar spinal stenosis with neurogenic claudication, lumbar disc degeneration, lumbar disc displacement with myelopathy, and status post right rotator cuff tear repair.

In reports dated March 8, April 5, May 3 and 31, July 12, and August 24, 2017, Dr. James A. Kim, a treating Board-certified anesthesiologist and pain medicine physician, based on review of diagnostic testing and physical examination, diagnosed lumbar disc degeneration, lumbar disc displacement, nonspecific lumbar pain, lumbar radiculopathy, and lumbar spinal stenosis. He noted that appellant was currently retired from the employing establishment where he had worked for 24 years. Dr. Kim noted lumbar sprain had been accepted as work related. He noted that, based on radicular symptoms and MRI scan findings of disc displacement, the conditions of spinal stenosis and radiculopathy should be accepted.

Dr. Tran, in a June 23, 2017 follow-up report, noted that appellant was seen for back pain and detailed examination findings. He noted that the accepted condition was lumbosacral sprain, however, appellant had additional diagnoses of lumbar spinal stenosis with neurogenic claudication, lumbar disc degeneration, and lumbar disc displacement with myelopathy. Dr. Tran attributed the additional conditions to appellant's 22 years of work as a mail carrier and reiterated the supporting rationale he had provided in his prior reports.

On October 17, 2017 appellant requested reconsideration. He subsequently submitted reports dated October 5 and November 16, 2017 from Dr. Kim reiterating findings and diagnoses from prior reports.

By decision dated January 11, 2018, OWCP denied appellant's request for reconsideration. It found that the evidence submitted by appellant was either irrelevant and immaterial, or cumulative and substantially similar to evidence previously of record.

LEGAL PRECEDENT

Section 8128(a) of FECA vests OWCP with discretionary authority to determine whether to review an award for or against compensation. The Secretary of Labor may review an award for or against compensation at any time on his own motion or on application.⁵

⁵ 5 U.S.C. § 8128(a); *see also V.P.*, Docket No. 17-1287 (issued October 10, 2017); *D.L.*, Docket No. 09-1549 (issued February 23, 2010); *W.C.*, 59 ECAB 372 (2008).

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or an argument which: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.⁶

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.⁷ If the request is timely, but fails to meet at least one of the requirements for reconsideration, OWCP will deny the request for reconsideration without reopening the case for review on the merits.⁸

ANALYSIS

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).

Appellant did not show that OWCP erroneously applied or interpreted a specific point of law, nor did he advance a relevant legal argument not previously considered by OWCP.⁹ As such, he was not entitled to a review of the merits of his claim based on the first and second above-noted requirements under section 10.606(b)(3).¹⁰

The Board further finds that appellant did not submit relevant and pertinent new evidence in support of his reconsideration request.

Appellant submitted reports from Dr. DeCarlo, Dr. Kim, and a December 7, 2016 MRI scan in support of his reconsideration request. Dr. DeCarlo diagnosed occupational right major bicipital tendinitis, lumbosacral strain, right thumb arthrosis, lumbar spinal stenosis with neurogenic claudication, lumbar disc degeneration, lumbar disc displacement with myelopathy, and status post right rotator cuff tear repair. Dr. Kim continued to opine that spinal stenosis and radiculopathy should be accepted conditions. The MRI scan reported an S2 spinal canal lesion, L4-5 spinal stenosis without definite compression of the L5 nerve roots, L4-5 grade 1 anterolisthesis, L4-5 and L5-S1 facet osteoarthritis. However, none of these reports offered an opinion as to the cause of the diagnosed conditions. The Board has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for

⁶ 20 C.F.R. § 10.606(b)(3); *see also* *L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

⁷ *Id.* at § 10.607(a).

⁸ *Id.* at § 10.608(b); *E.R.*, Docket No. 09-1655 (issued March 1, 2010).

⁹ *See J.F.*, Docket No. 16-1233 (issued November 23, 2016).

¹⁰ 20 C.F.R. § 10.606(b)(3).

reopening a case.¹¹ Thus, this evidence does not constitute a basis for reopening appellant's claim for a merit review.

Dr. Tran's June 23, 2017 report, while new, reiterated that appellant's additional diagnoses of lumbar spinal stenosis with neurogenic claudication, lumbar disc degeneration, and lumbar disc displacement with myelopathy were due to appellant's 22 years of work as a mail carrier. While he had previously incorrectly related that appellant worked as a mail carrier for 24 years, his new report merely reiterated his generalized conclusions regarding the development of appellant's lumbar conditions. Dr. Tran's opinion regarding causal relationship repeated and duplicated evidence previously of record and does not constitute a basis for reopening a case.¹²

The Board accordingly finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(3). 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.

On appeal appellant argues that the evidence of record supports his contention that the acceptance of his claim should be expanded to include additional conditions. As noted above, the Board lacks jurisdiction to review the merits of the claim. As none of the evidence submitted constitutes a basis for reopening his claim for a merit review, OWCP properly denied appellant's reconsideration request.

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).

¹¹ *S.O.*, Docket No. 15-1412 (issued December 8, 2015); *D'Wayne Avila*, 57 ECAB 642 (2006).

¹² *E.R.*, Docket No. 17-0540 (issued July 26, 2017); *D.K.*, 59 ECAB 141 (2007).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 11, 2018 is affirmed.

Issued: December 3, 2018
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