

helping a Federal Express driver unload a pallet off his truck. He stopped work on the date of injury.

In a February 20, 2015 letter, OWCP advised appellant to submit additional information, including a comprehensive medical report from his treating physician which included a reasoned explanation as to how the specific work factors or incidents identified by appellant had contributed to his claimed injury.

Appellant was treated by Dr. David Pichkadze, a Board-certified internist, on February 3, 2015, who returned him to work. On February 6, 2015 Dr. Pichkadze indicated that appellant could not return to work until February 12, 2015 pending further evaluation. Appellant was treated by Dr. Anamika Jain, a Board-certified physiatrist, on February 11 and March 11, 2015, who diagnosed cervical radiculopathy, lumbosacral radiculopathy, internal derangement of the left hip, and internal derangement of the bilateral knees. Dr. Jain noted that appellant was disabled from work. Also received was a February 4, 2015 computerized tomography (CT) scan of the head which revealed no abnormalities.

By decision dated March 27, 2015, OWCP denied appellant's claim for compensation because the evidence of record was insufficient to establish that the diagnosed medical conditions were causally related to the accepted work events.

Appellant subsequently requested a review of the written record. Additional evidence included a February 11, 2015 report from Dr. Jain, who noted that appellant was a mail handler who was involved in a work accident when he fell backwards while unloading a truck. She reported injuries to appellant's head, neck, left shoulder, knees, left hip, and lower back. Findings included a scalp contusion, tenderness at C3-7, paraspinal muscle spasm, diminished sensation to light touch over the left arm at C5-6 dermatomes and left leg at L5-S1, and decreased muscle strength at the elbows. Dr. Jain diagnosed post-traumatic cephalgia and dizziness, cervical sprain/strain, possible cervical and lumbar radiculopathy, left shoulder and left hip derangement, and bilateral knee derangement. She recommended an electromyogram (EMG) and a magnetic resonance imaging (MRI) scan. Dr. Jain opined that based on appellant's history and examination, his injuries were the cause of his impairment and disability causally related to the work accident. In an undated attending physician's report (Form CA-20), she diagnosed cervical and lumbosacral radiculopathy, left shoulder internal derangement, and left hip internal derangement. Dr. Jain checked a box marked "yes" indicating that appellant's condition was caused or aggravated by work activity. In reports dated March 11 and April 8, 2015, she noted a history of injury and findings. Dr. Jain diagnosed post-traumatic cephalgia and dizziness, cervical sprain/strain, rule of cervical and lumbar radiculopathy, left shoulder and left hip derangement, and bilateral knee derangement. She opined that appellant's injuries were related to the alleged employment incident and were the cause of his impairment and disability. In an undated work capacity evaluation (Form OWCP-7), Dr. Jain diagnosed cervical and lumbosacral radiculopathy and indicated that appellant could work in a sedentary job.

A functional capacity evaluation dated March 17, 2015 revealed that appellant had capability levels below average for his age and gender and would benefit from training in body mechanics and functional ability. The record also contains physical therapy records.

On April 6, 2015 Dr. Arthur Hryhorowych, a Board-certified physiatrist, treated appellant for a left knee, left hip, head, and neck injury which occurred at work on February 3, 2015. Appellant reported that while working an object fell on his left shoulder and knocked him down. He diagnosed left shoulder arthropathy secondary to trauma, rotator cuff impingement, bilateral knee arthropathy, and left hip trochanteric bursitis.

By decision dated September 25, 2015, an OWCP hearing representative affirmed the decision dated March 27, 2015.

On April 1, 2016 appellant requested reconsideration. He submitted a February 11, 2015 report from Dr. Bhim S. Nangia, a Board-certified neurologist, who noted that appellant was a mail handler and his duties involved loading, unloading, moving bulk mail, and other duties incidental to mail processing. Appellant reported that, on February 3, 2015, he was the only mail handler on duty and the bay in which trucks unload was inoperable due to a broken gate. He indicated that he assisted a Federal Express driver unload a pallet of oversized boxes on the truck's lift gate and as the lift gate was let down the oversized boxes fell forward striking him and causing him to fall backward hitting his head, back, hip, shoulder, and knee in a whiplash motion on the cement dock. Dr. Nangia opined that appellant sustained a traumatic injury on February 3, 2015 while unloading a truck. He opined that based on his work history and physical examination there was a reasonable degree of medical certainty that his physical injuries were a direct cause of the traumatic injury he encountered while doing his job. Dr. Nangia indicated that appellant did not have any problems before the injury on February 3, 2015. She noted three photographs showing bruising on his left hip. On March 7, 2015 Dr. Nangia noted a history of injury and findings. He diagnosed post-traumatic cephalgia, dizziness, cervical sprain/strain, rule out cervical and lumbar radiculopathy, left shoulder and left hip derangement, and bilateral knee derangement. Dr. Nangia opined that appellant's injuries were related to the work accident and were the cause of impairment and disability.

By decision dated June 30, 2016, OWCP denied modification of its September 25, 2015 decision.

On June 12, 2017 appellant requested reconsideration. He noted that his supervisor indicated on the CA-1 form that he was injured in the performance of duty on February 3, 2015. Appellant noted seeing his physician on February 3, 2015 who sent him for a CT scan that was performed on February 4, 2015. He indicated that he was treated by Dr. Jain on February 11, 2015 who advised that he had injured his knees, hip, neck, back, head, and shoulder at the time of the February 3, 2015 injury. Appellant submitted a February 11, 2015 report from Dr. Nangia, previously of record.

By decision dated July 5, 2017, OWCP denied appellant's request for reconsideration as the evidence of record was insufficient to warrant a merit review.

LEGAL PRECEDENT

Under section 8128(a) of FECA,² OWCP has the discretion to reopen a case for review on the merits. It must exercise this discretion in accordance with the guidelines set forth in section 10.606(b)(3) of the implementing federal regulations, which provides that a claimant may obtain review of the merits of his or her written application for reconsideration, including all supporting documents, sets forth arguments and contain evidence which:

“(1) Shows that OWCP erroneously applied or interpreted a specific point of law;
or

“(2) Advances a relevant legal argument not previously considered by OWCP; or

“(3) Constitutes relevant and pertinent new evidence not previously considered by OWCP.”³

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by OWCP without review of the merits of the claim.⁴

ANALYSIS

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 the claim. In his request for reconsideration, appellant did not show that OWCP erroneously applied or interpreted a specific point of law nor advanced a legal argument not previously considered by the OWCP. He submitted a statement dated June 1, 2017, and noted that his supervisor indicated on the CA-1 form that he was injured in the performance of duty on February 3, 2015. Appellant sought treatment from his physician on February 3, 2015 who sent him for a CT scan that was performed on February 4, 2015. He indicated that he was treated by Dr. Jain on February 11, 2015 who advised that he injured his knees, hip, neck, back, head and shoulder at the same time of the February 3, 2015 work injury. These assertions do not show a legal error by OWCP, nor are they a new and relevant legal argument. As noted, appellant did not submit a rationalized medical opinion explaining how a diagnosed medical condition is causally related to the work incident of February 3, 2015. Thus, these assertions do not show a legal error by OWCP or a represent a new and relevant legal argument.

The underlying issue in this case is whether appellant submitted sufficient medical evidence to establish that he sustained cervical and lumbosacral radiculopathy, left shoulder internal derangement, and internal derangement of the bilateral knees causally related to the work incident on February 3, 2015. That is a medical issue which must be addressed by new and

² 5 U.S.C. § 8128(a).

³ 20 C.F.R. § 10.606(b)(3).

⁴ *Id.* at § 10.608(b).

relevant medical evidence.⁵ However, appellant did not submit any new and relevant medical evidence in support of his claim.

Appellant resubmitted a February 11, 2015 report from Dr. Nangia. However, this evidence is duplicative of evidence previously submitted and considered by OWCP. Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.⁶ Therefore, this report is insufficient to require OWCP to reopen the claim for a merit review.

On appeal appellant disagrees with OWCP's decision denying his claim for compensation. He further indicates that OWCP improperly denied his physician's request for MRI scans which could have clarified the extent of his work injuries. As explained, the Board does not have jurisdiction over the merits of the claim.

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 constitute relevant and pertinent new evidence not previously considered. 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 his claim pursuant to 5 U.S.C. § 8128(a).

⁵ See *Bobbie F. Cowart*, 55 ECAB 746 (2004).

⁶ See *Daniel Deparini*, 44 ECAB 657 (1993); *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984).

ORDER

IT IS HEREBY ORDERED THAT the July 5, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 6, 2018
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