

FACTUAL HISTORY

On March 9, 2015 appellant, then a 45-year-old nurse's assistant, filed a traumatic injury claim (Form CA-1) alleging that, on that date, she experienced left arm pain while she was assisting a patient, when he grabbed her hands and pulled himself up. She alleged that she developed left arm, shoulder, and neck numbness and swelling as well as a cervical spine condition. Appellant submitted medical evidence in support of her claim.

By decision dated May 7, 2015, OWCP denied appellant's traumatic injury claim, finding that she failed to submit medical evidence establishing causal relationship between her diagnosed conditions and the March 9, 2015 employment incident.

On November 6, 2015 appellant, through her then-counsel, requested reconsideration of the May 7, 2015 decision. By decision dated January 21, 2016, OWCP reviewed the merits of appellant's traumatic injury claim, but denied modification of its May 7, 2015 decision. It found that the medical evidence submitted was not based on a complete factual and medical background and was, therefore, of limited probative value.

On March 21, 2016 appellant, through her then-counsel, requested reconsideration of the January 21, 2016 decision and submitted additional medical evidence. By decision dated May 17, 2016, OWCP reviewed the merits of appellant's claim, but denied modification of its January 21, 2016 merit decision. It found that the new medical evidence provided did not include an opinion on causal relationship between appellant's diagnosed conditions and her March 9, 2015 employment incident.

On June 28, 2016 appellant requested reconsideration of the May 17, 2016 decision. In support of her request, she provided additional medical evidence. By decision dated September 14, 2016, OWCP reviewed the merits of appellant's claim, but denied modification of its May 17, 2016 merit decision. It found that the new medical evidence submitted did not provide a rationalized opinion addressing causal relationship.

On September 19, 2016 appellant requested reconsideration. She did not submit any additional evidence. In a September 22, 2016 decision, OWCP denied reconsideration of the merits of appellant's claim.

On October 5, 2016 appellant again requested reconsideration and submitted medical evidence. In a November 29, 2016 decision, OWCP reviewed the merits of appellant's claim, but denied modification of its May 17, 2016 merit decision, finding that the additional medical evidence did not address causal relationship.

On December 8, 2016 appellant requested reconsideration of the November 29, 2016 merit decision. By decision dated December 13, 2016, OWCP denied reconsideration of the merits of appellant's claim.

On December 21, 2016 appellant again requested reconsideration of the November 29, 2016 merit decision and submitted additional medical evidence. By decision dated January 18, 2017, OWCP denied reconsideration of the merits of appellant's claim.

On April 4, 2017 appellant again requested reconsideration of OWCP's November 29, 2016 decision. In support of this request, she provided a detailed statement regarding how her March 9, 2015 employment injury occurred. Appellant also provided a March 15, 2017 note from Dr. Michele M. Johnson, Board-certified in neurosurgery noting her history of injury. She also provided her September 29, 2015 cervical magnetic resonance imaging (MRI) scan report. By decision dated June 5, 2017, OWCP reviewed the merits of appellant's claim, but denied modification of its November 29, 2016 merit decision. It again found that appellant had not submitted a rationalized medical opinion establishing causal relationship.

Appellant requested reconsideration of the June 5, 2017 merit decision on September 7, 2017. In support of her request, she provided a statement regarding her current condition. Appellant also provided medical records including an August 25, 2017 treatment note from Joseph A. Lamb, a physician assistant, and a note dated August 29, 2017 from Dr. Johnson recommending surgery and noting appellant's increased left arm symptoms. She resubmitted her September 29, 2015 cervical MRI scan, and also provided a March 3, 2017 cervical MRI scan. Appellant resubmitted Dr. Johnson's March 15, 2017 treatment note.

By decision dated September 20, 2017, OWCP denied reconsideration of the merits of appellant's claim.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,² 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.³ To be entitled to a merit review of an OWCP decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.⁴ When a claimant fails to meet one of the above standards, OWCP will deny the application for review without reopening the case for a review on the merits.⁵

The Board has held that the submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case. The Board has also held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.⁶

² 5 U.S.C. § 8128(a). Under section 8128 of FECA, the Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application.

³ 20 C.F.R. § 10.606(b)(3).

⁴ *Id.* at § 10.607(a).

⁵ *Id.* at § 10.608(b).

⁶ *D.P.*, Docket No. 17-0290 (issued May 14, 2018); *M.E.*, 58 ECAB 694 (2007).

ANALYSIS

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of her claim without further merit review.

The Board finds that appellant has not shown that OWCP erroneously applied or interpreted a specific point of law; nor has she advanced a relevant legal argument not previously considered by OWCP. 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).⁷

The underlying issue in this case is whether appellant has provided sufficient evidence to establish that her cervical and left arm conditions were causally related to the accepted March 9, 2015 employment incident. This issue is medical in nature.

Appellant's request for reconsideration was accompanied by a new report from Dr. Johnson dated August 29, 2017. A claimant may be entitled to a merit review by submitting relevant and pertinent new evidence, but appellant did not submit any such evidence in this case.⁸ Dr. Johnson's August 29, 2017 report is substantially similar to her earlier report of March 15, 2017 in which she noted appellant's symptoms and recommended surgery. Providing additional evidence that repeats or duplicates information already in the record does not constitute a basis for reopening a claim.⁹ Appellant resubmitted her MRI scan report dated September 29, 2015 and Dr. Johnson's March 15, 2017 note. This evidence was previously considered by OWCP and it is therefore not pertinent new evidence.¹⁰ Appellant also submitted a March 3, 2017 MRI scan report. This report did not address the central issue in the case, whether appellant's diagnosed conditions are causally related to her accepted employment incident and therefore it does not constitute relevant and pertinent new evidence.¹¹

OWCP received an August 25, 2017 note from Mr. Lamb, a physician assistant. This note is insufficient to warrant merit review as physician assistants are not considered physicians as defined under FECA.¹² The Board, therefore, finds that this evidence is irrelevant to the underlying medical issue and is insufficient to warrant further merit review of appellant's claim.¹³

⁷ 20 C.F.R. § 10.606(b)(3)(i) and (ii).

⁸ See *D.P.*, *supra* note 6; *B.D.*, Docket No. 16-1177 (issued October 27, 2016).

⁹ *D.P.*, *supra* note 6; *James W. Scott*, 55 ECAB 606, 608 n.4 (2004).

¹⁰ *Id.*

¹¹ *R.C.*, Docket No. 17-1314 (issued November 3, 2017).

¹² See *B.D.*, Docket No. 17-0402 (issued June 12, 2017); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA); 5 U.S.C. § 8101(2) (this subsection defines a physician as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law).

¹³ *R.C.*, *supra* note 11.

Appellant's reconsideration request failed to show that OWCP erroneously applied or interpreted a point of law, nor did it advance a point of law not previously considered by OWCP. It also failed to provide any relevant and pertinent new evidence. Accordingly, the Board finds that OWCP did not abuse its discretion in denying appellant's request to reopen her claim for merit review.

CONCLUSION

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).

ORDER

IT IS HEREBY ORDERED THAT the September 20, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 19, 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