United States Department of Labor
Employees' Compensation Appeals Board

K.Z., Appellant	)	
and	)	**Docket No. 17-0158**
	)	**Issued: June 26, 2018**
U.S. POSTAL SERVICE, POST OFFICE, White Plains, NY, Employer	)	

Appearances:
Thomas S. Harkins, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On October 31, 2016 appellant, through counsel, filed a timely appeal from a June 7, 2016 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed between the last OWCP merit decision, dated October 16, 2015, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of this case.

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] 5 U.S.C. § 8101 *et seq.*

ISSUE

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

FACTUAL HISTORY

On June 9, 2014 appellant, then a 43-year-old postmaster, filed a notice of traumatic injury (Form CA-1) alleging that, on June 5, 2014, her vehicle was rear-ended while in the performance of duty. She alleged that she sustained injuries to her right foot, both shoulders, mid-stomach, and right wrist, with pain and headaches. Appellant stopped work on June 6, 2014. OWCP placed appellant on the supplemental rolls.

OWCP initially denied appellant's claim on July 16, 2014. Appellant requested reconsideration on August 30, 2014. By decision dated March 16, 2015, OWCP vacated the July 16, 2014 decision and accepted her claim for contusion of abdominal wall, left; contusion of chest wall, left; contusion of right foot and right shoulder; and sprain of neck. By separate decision also dated March 16, 2015, OWCP denied appellant's request for the expansion of the acceptance of her claim to include additional conditions of: cervical subluxation; cervical radiculopathy; thoracic strain; lumbosacral strain; right wrist sprain; right wrist tendonitis; right foot sprain, right ankle sprain, ruptured tendon of right ankle/foot; anxiety; depression; and post-traumatic stress disorder.[3]

Appellant's treating physician, Dr. Ronald Coffey, a Board-certified family practitioner, diagnosed contusions, pain, and anxiety. He saw appellant on July 2, 11, 28, and August 12, 2014. In a July 28, 2014 report, Dr. Coffey noted that, on June 5, 2014, appellant was in a car accident and had chief complaints of: pain in the abdomen; tenderness in the lower left quadrant of her stomach where the seatbelt was located; soreness in the neck; and pain near the base of her fifth metatarsal. He explained that the hospital report revealed that appellant was having lateral neck pain and pain in the lateral right foot, as well as a burning sensation where she was wearing a seat belt on the left clavicle and left lower abdomen.

Dr. Coffey noted that appellant was seen at his office on June 23, 2014 and he ordered a cervical spine magnetic resonance imaging scan and x-ray of the right foot, as she had complaints of right wrist pain, right foot pain, swollen and bruised and cannot bend toes fully, along with neck and mid back pain, and constant headaches ranging from full to stabbing. He also found burning sensation and tenderness in her lower left abdomen left by the seat belt with apparent bruising and on the upper left chest area with soreness to the right shoulder. Dr. Coffey determined that she had tenderness over the lower cervical spine, tenderness of the lower left abdomen, and lumbar tenderness with tenderness in the right knee and foot. He diagnosed: sprain injury to the cervical area; cervical subluxation; cervicalgia; lumbago; spasm of muscles; right wrist sprain, tendinitis in the right wrist; foot sprain; trauma to right foot; unspecified sprain to the ankle; ruptured tendon

[3] The record reflects that appellant has a nonwork-related anxiety and Raynaud's syndrome. In 1997 appellant underwent a nonwork-related right ulnar nerve disposition.

of the ankle/foot on the right; multiple contusions of the upper right shoulder, right foot, lower left stomach, and upper left chest; and anxiety increased due to trauma.

Dr. Coffey also indicated that appellant had increased anxiety due to trauma and advised that she experienced numerous anxiety attacks. He opined that all of the above diagnoses were "directly correlated from the trauma caused in the 4[-]car MV accident on June 5th 2014." Dr. Coffey added that all of appellant's complaints and diagnoses were consistent with a multiple car accident where appellant was hit from the back while completely stopped, then causing her car to be pushed into the car in front of her. He also noted that it was proven further from her "initial complaints at the scene and in the hospital to what she has continued to experience to this day." Dr. Coffey advised that appellant was totally disabled from work and he continued to treat appellant. He also completed an attending physician's report (Form CA-20) of the same date and checked the box marked "yes" in response to whether the conditions found were caused or aggravated by the employment activity. Dr. Coffey filled in "no doubt at all, based on initial ambulance report, emergency room report, and physical examination."

In an August 1, 2014 report, Dr. Surinder Jindal, a Board-certified neurologist, examined appellant and found normal examination findings with the exception of spasm of the cervical paraspinal muscles, limited range of motion of the cervical spine and tenderness. He related that appellant had a history of motor vehicle accident at work and diagnosed: cervical strain with cervical radiculopathy; thoracic strain; lumbosacral strain; myofascial pain involving the right wrist and foot region; cervicogenic headaches and exacerbation of her underlying anxiety and depression. Dr. Jindal opined that her present status was "causally related to the accident on June 5, 2014 as per history." He recommended conservative management and physical therapy.

On March 24, 2015 OWCP referred appellant for medical management.

In an April 22, 2015 report, Dr. Jindal noted appellant's history and explained his initial clinical impression was that appellant had a history of motor vehicle accident while at work with the cervical strain with cervical radiculopathy, thoracic strain, lumbosacral strain; myofascial pain involving the right wrist; and foot region; and cervicogenic headaches; and exacerbation of her underlying anxiety and depression. He opined that appellant's present status was causally related to her accident on June 5, 2014 as per her history. Dr. Jindal indicated that in his last examination on April 16, 2015, she had complaints of persistent neck pain, stiffness. He indicated that she could not sit or stand for a long time and her symptoms continued and were persisting. Dr. Jindal noted that she had multiple injuries involving the neck, right wrist, the lower back, foot, and right shoulder. He opined that appellant's symptoms were causally related to the motor vehicle accident at work on June 5, 2014. Dr. Jindal diagnosed: cervical strain; cervical radiculopathy; myofascial pain involving the right foot; thoracic strain; lumbosacral strain; and right wrist strain. He advised that appellant received physical therapy, was receiving pain management with local trigger point injections, and was prescribed different anti-inflammatory medications. Dr. Jindal recommended conservative pain management. He opined that appellant could work light duty with restrictions.

Dr. Jindal continued to treat appellant and saw her on May 11, July 20, and August 17, 2015. His findings on examination included tenderness and spasm of the paraspinal cervical muscles. Dr. Jindal recommended conservative pain management.

On June 23, 2015 OWCP referred appellant for a second opinion, along with a statement of accepted facts, a set of questions and the medical record to Dr. Patrick Hughes, a Board-certified neurologist.

In a report dated July 21, 2015, Dr. Hughes described appellant's history of injury and treatment, and provided examination findings. He noted that she could not abduct the left arm at the shoulder due to pain; that she had normal strength in the right deltoid and the biceps, triceps, infraspinatus, brachioradialis, extensor carpi radialis, extensor carpi ulnaris extensor digitorum, and interossei muscles; and that she could not extend the right wrist due to pain. Dr. Hughes also found normal strength in the abductor pollicis brevis and flexor digitorum profundus muscles along with normal strength in the iliopsoas, quadriceps and hip abductors and adductor muscles. He determined that there were no current objective medical findings that indicated that the accepted injuries were present and active. Dr. Hughes opined that the cervical strain had resolved as she did not have symptoms or findings on neurologic examination or on the imaging studies of the cervical spine to account for a C6 radiculopathy. He noted that the electromyogram findings of the lumbar spine were consistent with a diagnosis of lumbosacral strain and not with bilateral S1 radiculopathy. Furthermore, the thoracic and lumbosacral strains had resolved. Dr. Hughes opined that he had reviewed the job description for a postmaster and advised that appellant was not disabled from performing her job duties. He completed a work capacity evaluation (OWCP-5c) form on July 23, 2015 and advised that she could return to her usual job without restrictions.

In a July 27, 2015 letter, the employing establishment offered appellant a modified assignment as an operation support specialist, encompassing the restrictions provided by Dr. Hughes.

In an August 10, 2015 response to a letter from OWCP seeking further clarification of his opinion, Dr. Hughes noted that appellant was not disabled from work due to sprain and contusion sustained on June 5, 2014. He explained that his decision was based on a lack of objective findings on neurological examination and on the imaging studies of the cervical spine to substantiate her continuing examination and on the imaging studies of the cervical spine to substantiate her continuing complaints of disabling pain. Dr. Hughes indicated that there was no objective finding to indicate that the disc herniation at L4-S1 was causing symptoms. He advised that it was not unusual for people to have disc herniations at L5-S1 without causing symptoms. Dr. Hughes determined that there were no medical findings that supported current disability to be medically connected to the work injury or to the factors of employment for which the case was accepted. He opined that the accepted condition had resolved and she had full recovery from her neck sprain, chest, abdomen, shoulder, and foot contusions. Dr. Hughes further opined that he believed she could work without restrictions. He explained that there were no positive objective medical findings to support that the injuries were present and active. Dr. Hughes explained that appellant had made a full and complete recovery. He related that the reported subjective findings were not supported or substantiated by objective findings. Dr. Hughes indicated that appellant could perform full-duty work without restrictions.

On September 15, 2015 OWCP proposed to terminate appellant's wage-loss compensation and medical benefits as the medical evidence of record established that she no longer had any

residuals or continuing disability from work stemming from her work-related injury of June 5, 2014. It accorded the weight of the evidence to Dr. Hughes.[4]

In a letter dated October 12, 2015, counsel argued that appellant's treating physician opined that appellant continued to suffer disability from employment as a result of her work injuries. He argued this was a direct conflict with the second opinion physician and it was improper to terminate her benefits.

In an October 12, 2015 report, Dr. Jindal noted that appellant had complaints of cervical pain and stiffness, and noted certain points which were triggering pain. He advised that her symptoms worsened. Dr. Jindal noted that appellant had an injury at work and the numbness was bad. He indicated that she continued to be symptomatic, with pain a 10 on a scale of 10. Dr. Jindal noted the recent change to colder weather caused an exacerbation of pain and she could not sit or stand for a long time. He examined appellant and determined that she was in no acute distress. Dr. Jindal found normal strength in all muscle groups, deep tendon reflexes of +1 and decreased sensation in the C5-6 distribution. He noted that appellant had tenderness and spasm in the paraspinal cervical muscles and right lateral flexion of 20 degrees and extension of 30 degrees. Dr. Jindal diagnosed cervical radiculopathy with radicular and myofascial pain with history of head trauma and recommended conservative pain management. He provided trigger points involving the bilateral, cervical trapezius, supraspinatus, and rhomboid muscles.

By decision dated October 16, 2015, OWCP terminated appellant's wage-loss compensation and medical benefits, effective October 15, 2015 finding that she no longer had any employment-related residuals or disability. It found that the weight of the evidence rested with Dr. Hughes, who determined that appellant could return to her date-of-injury job and that the residuals of the accepted conditions had ceased.

On March 9, 2016 appellant, through counsel, requested reconsideration. Counsel noted as issues for reconsideration that not all injuries and conditions sustained as a result of the accepted employment injury had been accepted as compensable and that the second opinion report of Dr. Hughes was insufficient to support termination of wage-loss compensation and medical benefits.

In support of his reconsideration request, counsel submitted on March 14, 2016 an August 8, 2014 report, Dr. Todd Rochman, a Board-certified psychiatrist, who noted that appellant was experiencing panic attacks which were occurring for months post motor vehicle accident. Dr. Rochman also noted that in 1995 she was trampled by a horse and had ulnar nerve transposition. He advised that appellant had pain from the accident to include: foot, wrist, neck, back, and headaches. Dr. Rochman diagnosed acute stress disorder and anxiety disorder. He recommended individual psychotherapy. Dr. Rochman continued to treat appellant and submit reports dated February 4 and October 28, 2015. He recommended that appellant continue with medication management and brief psychotherapy.

[4] OWCP noted that the latest report from appellant's physician, Dr. Jindal was dated April 22, 2015 and he recommended limited-duty work. However, appellant did not return to limited duty until August 10, 2015. It explained that the only examination findings from reports dated May 11, July 20, and August 17, 2015 were tenderness and spasm of the paraspinal cervical muscles.

In a November 9, 2015 report, Dr. Jindal noted appellant's history of injury and treatment, examined appellant and provided findings. He noted that appellant had a history of cervical strain and radicular and myofascial pain and a history of neuropathic and myofascial pain. Dr. Jindal recommended conservative pain management. He provided trigger points involving the bilateral, cervical, trapezius, supraspinatus, and rhomboid muscles. Dr. Jindal indicated that appellant was quite symptomatic and would take medicine as needed. He related that appellant was given a note that she could work a new offered job on a regular basis that did not involve lifting, pulling, or pushing.

OWCP also received duplicate copies of the July 28, 2014 report from Dr. Coffey and the April 22 and October 2, 2015 reports from Dr. Jindal. It also received October 12, 2015 laboratory reports.

By decision dated June 7, 2016, OWCP denied appellant's request for reconsideration, finding that her request neither raised substantial legal questions nor included new and relevant evidence.

LEGAL PRECEDENT

Under section 8128(a) of FECA,[5] OWCP may reopen a case for review on the merits 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 if the written application for reconsideration, including all supporting documents, sets forth arguments and contains evidence that:

> "(i) Shows that OWCP erroneously applied or interpreted a specific point of law; or
>
> "(ii) Advances a relevant legal argument not previously considered by OWCP; or
>
> "(iii) Constitutes relevant and pertinent new evidence not previously considered by OWCP."[6]

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.[7]

ANALYSIS

The Board finds that OWCP properly denied appellant's request for reconsideration.

[5] 5 U.S.C. § 8128(a).

[6] 20 C.F.R. § 10.606(b).

[7] *Id.* at § 10.608(b).

In his May 9, 2016 request for reconsideration, counsel did not show that OWCP erroneously applied or interpreted a specific point of law, or advance 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).

In support of the March 9, 2016 reconsideration request, counsel asserted that the medical evidence of record is insufficient to support termination of benefits. He specifically asserted that the medical records submitted from Drs. Rochman, Jindal, and Coffey are sufficient to overcome the weight accorded to the opinion of Dr. Hughes as a second opinion medical examiner.

Counsel relied upon the medical opinion of Dr. Rochman to support ongoing residuals from diagnosed acute stress disorder and anxiety disorder. The Board notes, however, that OWCP previously considered which conditions were accepted in prior decisions and denied the additional requested conditions including stress and anxiety disorders. The Board notes that these arguments are repetitive and previously considered by OWCP and thus does not constitute a basis for reopening a case for review on the merits.[8]

The remainder of the medical evidence cited in support of reconsideration is also cumulative or duplicative of that already in the record. It, therefore, has no evidentiary value in establishing the claim and does not constitute a basis for reopening a case for further merit review.[9]

In a November 9, 2015 report, Dr. Jindal noted appellant's history of injury and treatment, examined appellant and provided findings. He noted that appellant had a history of cervical strain and radicular and myofascial pain and a history of neuropathic and myofascial pain. Dr. Jindal recommended conservative pain management. He related that appellant was given a note that she could work a new offered job on a regular basis that did not involve lifting, pulling, or pushing. The Board notes that while this report is new, Dr. Jindal did not offer any opinion on continued disability. Evidence which does not address the particular issue involved does not constitute a basis for reopening a case.[10]

OWCP also received copies of prior reports to include: a copy of the July 28, 2014 report from Dr. Coffey; the April 22 and October 12, 2015 reports from Dr. Jindal; and October 12, 2015 laboratory reports. However, this is not new or relevant medical evidence. The Board has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.[11]

Appellant, therefore, 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

[8] *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Jerome Ginsberg*, 32 ECAB 31, 33 (1980).

[9] *Id.*

[10] *See B.D.*, Docket No. 16-1177 (issued October 27, 2016).

[11] *Id*.

new and relevant evidence not previously considered. As she did not meet any of the necessary regulatory requirements, she is not entitled to further merit review.

On appeal counsel for appellant reiterated prior arguments. He argues that appellant submitted relevant and pertinent new medical evidence. Counsel also argues that appellant had psychiatric conditions that were work related. However, as noted above, the Board does not have jurisdiction over the merits of the termination decision.

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).

ORDER

IT IS HEREBY ORDERED THAT the June 7, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 26, 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