

ISSUE

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

FACTUAL HISTORY

On May 16, 2016 appellant, then a 52-year-old letter carrier, filed a notice of recurrence (Form CA-2a) under OWCP File No. xxxxxx864³ alleging that lifting heavy parcels at work on April 29, 2016 caused neck/shoulder pain so severe that she collapsed. She stopped work on April 29, 2016. In a June 8, 2016 statement, appellant requested that OWCP reclassify her claim as a traumatic injury claim (Form CA-1) as her medical conditions occurred on April 29, 2016 after she fell on her route that day. OWCP developed the claim as a traumatic injury as appellant cited an injury or event which occurred on one specific workday.

In an April 29, 2016 emergency room report, Dr. Clifford Weith, a Board-certified emergency medicine specialist, noted that on that day appellant had headaches, which she had reported to her boss, but she continued to work. Appellant delivered a package and was walking back to her vehicle when she collapsed in the street. Dr. Weith noted that she was found by emergency medical services (EMS) lying face down in the middle of the street. Appellant reported complaints of chronic neck pain and pulled muscle in her left thigh. She had multiple facial contusions/abrasions and a lip laceration. Appellant had prior history of cervical spine fusion at C6-7 and recent radioablation. Dr. Weith reported the results of diagnostic testing and provided an assessment of syncope/near syncope, acute nondisplaced fracture ring C1, facial abrasions, and lower lip laceration not repaired. Appellant was admitted to the hospital as a result of the anterior C1 fracture after a fall. She was discharged on May 3, 2016 with a diagnosis of anterior C1 fracture and left hamstring strain.

In an April 29, 2016 report, Dr. Stephen L. Reintjes, a Board-certified neurosurgeon, reported that appellant awoke with a headache and felt dizzy. Appellant went to work on her letter carrier route and, because of persistent dizziness, was going to call her supervisor and truncate her route. As she exited her vehicle, she passed out and fell forward. In an April 29, 2016 addenda, appellant elaborated that she was delivering mail when she became light headed and passed out, falling and hitting her face. She also stated that her neck and head were hurting and that it had become painful to work, therefore she contacted her supervisor and requested to go home. Dr. Reintjes noted appellant's prior history of C6-7 anterior cervical discectomy and fusion and her complaints of frontal headache, neck pain, and pulled hamstring behind her left leg. He reported examination findings and provided an impression of syncope with anterior C1 ring fracture.

In May 1 and 2, 2016 progress notes, Dr. Reintjes provided an impression of transverse fracture of the anterior ring of C1 and left hamstring pull. He also noted in the May 2, 2016 note

³ Under OWCP File No. xxxxxx864, OWCP accepted an October 25, 2012 injury for displacement of cervical intervertebral disc without myelopathy.

that appellant reported that it was not really a headache she had on Friday, rather the pain was in her neck and left shoulder area, which she attributed to heavy lifting at work.

Emergency room computerized tomography (CT) scans of the maxillofacial bones, head, cervical spine; a magnetic resonance imaging (MRI) scan of the brain; and x-ray reports of left knee dated April 29 and 30, 2016 were also of record. A brain MRI scan reported white hyperintensities within the bilateral frontal lobes likely chronic microangiopathy or migraine vasculopathy. The CT of the cervical spine reported nondisplaced nonangulated fracture through the ring of C1 and degenerative changes of the cervical spine at C5-6 and C6-7 with postoperative changes at C6-7. The x-ray of her left knee reported mild degenerative changes. No significant findings were otherwise reported.

The employing establishment controverted the claim on May 26, 2016.

By development letter dated June 24, 2016, OWCP advised appellant that additional information was necessary to support her claim, including factual evidence sufficient to establish that the incident occurred as alleged and rationalized medical evidence sufficient to establish a diagnosed condition causally related to the alleged incident. It also provided her a questionnaire for her completion. OWCP afforded appellant 30 days to submit the necessary evidence.

In a July 12, 2016 statement, appellant indicated that she was delivering a parcel at approximately 12:45 p.m. on Friday, April 29, 2016. She indicated that she was not sure if she stepped in a hole next to the curb or tripped on the curb, but she felt a sharp pain in her left thigh and fell to the street, hitting her forehead on the street and blacking out momentarily. Appellant indicated that her back, shoulder, and neck had been bothering her for a few days as the amount and weight of parcels had increased on her route. She also indicated that, on the morning of April 29, 2016, she awoke with a headache. About 30 minutes before her fall, appellant indicated that she had texted her supervisor to let him know that her back and shoulder still hurt. She stated that she was in the hospital for four days and no irregularities were found. Appellant denied any history of fainting, epilepsy, diabetes, or cardiac conditions. She also noted that she had not seen an orthopedic doctor for her leg or a dentist for her chipped teeth. Duplicative and new diagnostic testing dated April 29, 30, May 2, and June 1, 2016 were received.

In a July 8, 2016 attending physician's report (Form CA-20), Dr. Reintjes reported that on April 29, 2016 appellant awoke with headache and dizziness, however, she proceeded with her work delivery route. Because of dizziness she was going to call her supervisor to cancel her route. Appellant got out of the vehicle and passed out, falling forward. Dr. Reintjes checked a box marked "yes" that the diagnosed C1 fracture was caused or aggravated by appellant's employment activity as she "fell at work and suffered a fracture."

By decision dated July 28, 2016, OWCP denied appellant's claim. It found that the evidence submitted showed that the fall on April 29, 2016 was an idiopathic fall from a nonoccupational pathology and that there was no intervention or contribution by any hazard or condition of employment. Thus, appellant had not sustained an injury in the performance of duty.

Following the decision, OWCP received a copy of an April 29, 2016 EMS report, which noted that appellant was found lying face down on the street. Appellant reported that she had

delivered a package, but did not remember much thereafter. She also indicated that she had awakened with a headache and had taken half a Vicodin. Appellant complained of neck and head pain, as well as left leg cramps.

In a May 16, 2016 report, Dr. Christina L. Eliason, a Board-certified family practitioner, noted the history of the claimed April 29, 2016 injury. Appellant reported going to work that day with marked left shoulder pain. She had mentioned to her boss that her arm hurt. While on her route, appellant noted increased pain in her left shoulder while moving packages. She remembered setting a package on the porch and walking to the street. Appellant then collapsed forward, causing her to strike her head and tear her left hamstring. She does not remember the fall. Dr. Eliason provided examination findings and diagnosed closed fracture of the cervical spine and hamstring tear.

Progress notes and return to work recommendations from Dr. Reintjes dated June 1, July 22, and August 5, 2016 were also received.

On July 26, 2017 appellant requested reconsideration. In a July 26, 2017 statement, counsel described an incident other than a nonwork-related syncope episode as causing appellant's injuries. Specifically, he indicated that appellant was delivering a package to the door of an employing establishment customer and, as she was returning to her mail truck and walking down a steep grassy slope, she pulled her left hamstring and fell to the street beside her mail truck. Counsel also provided his analysis of the medical evidence which he believed supported that appellant was injured in the performance of duty. In another letter, also dated July 26, 2017, he indicated that statements from appellant's coworkers and housemate supported that she suffered injuries due to her employment on April 29, 2016.

In a June 23, 2017 declaration, coworker J.H. stated that she worked in close proximity to appellant from 7:00 to 9:00 a.m. the morning of April 29, 2017 and that appellant did not have any injuries to her face or head. In a July 26, 2017 declaration, J.J., appellant's housemate, indicated that on April 29, 2016 at about 6:10 a.m., she saw appellant and did not notice that she had any difficulty walking or have any injury to her face or head. She next saw appellant at approximately 1:30 p.m. in the intensive care unit of the North Kansas City Hospital. Appellant complained that the back of her left leg was injured. J.J. indicated that, after appellant was released, she had difficulty walking because of her left leg. She further stated that appellant had noticed that her teeth were chipped while she was in the hospital.

In a July 26, 2017 declaration, appellant stated that on April 29, 2016 she had delivered a package to a customer's front porch and walked down the grassy slope to her truck. When she reached the curb, she stepped forward with her left foot and felt excruciating pain in her left hamstring. Appellant attributed her fall to the pain in her left hamstring. She additionally noted that immediately before her fall, her neck and shoulders were very painful because of the heavy packages and trays of mail she had been lifting at work for several days. Appellant stated that she was massaging her neck and shoulders as she walked down the grassy slope to her truck. She indicated that she may have misjudged the difference in angle between the yard and the curb, or slipped on the grass, or tripped as she stepped from the yard to the curb. Appellant stated that her pain in her left hamstring was very sudden and severe and that she immediately and instinctively reached down to grab her left hamstring with both hands. She indicated that the combination of

the incline, her momentum, her reaching down suddenly, and leaning forward caused her to suddenly fall forward. Appellant noted that her fall was sudden and that she landed hard on her head on the street pavement beside her truck. She stated that she broke her neck, chipped three teeth, cut her lower lip, and injured her hamstring.

In an August 19, 2016 report, Dr. Brian C. Kindred, a Board-certified orthopedic surgeon, reported that on April 29, 2016 appellant, a letter carrier, had delivered a package to a customer's door. When appellant was returning down the steep driveway, she stumbled and fell and injured her neck, head, and left thigh. Dr. Kindred noted appellant's medical treatment and provided an assessment of left hamstring muscle strain and cervical spine fracture. In an August 22, 2016 attending physician's report (Form CA-20), Dr. Kindred reported that appellant was seen on August 19, 2016 and diagnosed with left hamstring muscle strain and cervical spine fracture, for which he checked the box marked "yes" noting the conditions were caused or aggravated by the employment injury. For the history of injury, he stated "see notes."

In a September 19, 2016 report, Dr. Kindred assessed status post left hamstring injury and released appellant to work. He opined that appellant's hamstring injury was a direct result of her work-related fall on the steep driveway.

By decision dated July 28, 2017, OWCP denied appellant's request for reconsideration without conducting a merit review. It found that, while appellant was working and had suffered injuries from the April 29, 2016 fall, the issue was whether or not the fall was idiopathic in nature. OWCP found that the evidence did not support that it erroneously applied or interpreted a point of law and that the evidence submitted was irrelevant or immaterial as it had no bearing on the issue at hand.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128 of FECA,⁴ OWCP's regulations provide that 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 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.⁶ When a claimant fails to meet one of the above standards, OWCP will deny the application for reconsideration without reopening the case for review of the merits.

⁴ Under section 8128 of FECA, the Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application. 5 U.S.C. § 8128(a).

⁵ 20 C.F.R. § 10.606(b)(3).

⁶ *Id.* at § 10.607(a).

ANALYSIS

The Board finds that OWCP improperly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

In her July 26, 2017 declaration, submitted on reconsideration, appellant related that she walked down a grassy slope to her truck, when she reached the curb, she stepped forward with her left foot and felt excruciating pain in her left hamstring. Additionally, counsel, on reconsideration reviewed the medical evidence of record and argued that appellant's fall was caused when she pulled her hamstring while returning to her vehicle and that she lost consciousness only because she struck her head on the pavement. He asserted that the initial contemporaneous medical evidence reported appellant's complaints of pain in her left hamstring and OWCP had not considered any evidence which indicated that appellant's hamstring injury occurred on April 29, 2016 and caused her fall.

To be considered an idiopathic fall, two elements must be present: a fall resulting from a personal nonoccupational pathology, and no contribution from the employment.⁷ OWCP has the burden of proof to submit medical evidence establishing the existence of a personal, nonoccupational pathology if it chooses to make a finding that a given fall is idiopathic in nature. The fact that the cause of a particular fall cannot be determined does not establish that it was due to an idiopathic condition and if the record does not establish a particular fall was due to an idiopathic condition, it must be considered as merely an unexplained fall, which is covered under FECA.⁸

The Board finds that the argument submitted by appellant and counsel is a relevant legal argument not previously considered by OWCP as it brings into question OWCP's finding that the fall in this case was an idiopathic fall due to a personal, nonoccupational pathology.

As such, the case shall be remanded to OWCP to conduct a merit review. After such further development as is deemed necessary, it shall issue an appropriate merit decision.

CONCLUSION

The Board finds that OWCP improperly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

⁷ *N.P.*, Docket No. 08-1202 (issued May 8, 2009).

⁸ *See Jennifer Atkerson*, 55 ECAB 317 (2004).

ORDER

IT IS HEREBY ORDERED THAT the July 28, 2017 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded to OWCP for further proceedings consistent with this opinion.

Issued: October 11, 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