

that occurred when she walked backwards to avoid a dog advancing towards her. She asserted that she tripped, fell backwards, and landed on her right side.² Appellant stopped work that day.

Appellant submitted a July 21, 2016 note from James Beasley, an attending registered nurse, who advised that appellant could return to work on July 23, 2016. Mr. Beasley noted that the reported injury/illness was “not work related.”³

In several reports dated between July 25 and 28, 2016, Dr. Raymond Valdes, an attending Board-certified internist, diagnosed right-sided rib pain and right flank pain/injury due to a July 21, 2016 fall. On July 28, 2016 he indicated that appellant could not work until she was cleared by an orthopedic specialist. Appellant also submitted several reports from the same period produced by Kathy J. Banks, an attending nurse practitioner.

In an August 31, 2016 development letter, OWCP requested that appellant submit additional evidence in support of her claim, including a physician’s opinion supported by a medical explanation as to how the reported July 21, 2016 employment incident caused or aggravated a medical condition. It afforded her 30 days to submit a response.

Appellant submitted an August 26, 2016 report from Dr. Douglas T. Cannon, an attending Board-certified orthopedic surgeon, who noted that appellant described falling backwards on July 21, 2016 when a pit bull charged her. Dr. Cannon diagnosed lumbar spondylosis with low back pain and probably referred right left pain. He recommended that appellant stay out of work until a magnetic resonance imaging scan was obtained. Appellant resubmitted a number of reports from Dr. Valdes and Ms. Banks.⁴

By decision dated October 5, 2016, OWCP denied appellant’s claim for a July 21, 2016 employment injury. It accepted the occurrence of a July 21, 2016 employment incident in the form of a fall, but found that she failed to submit medical evidence sufficient to establish a diagnosed condition causally related to the accepted July 21, 2016 employment incident.

On February 21, 2017 appellant requested reconsideration of OWCP’s October 5, 2016 decision.

Appellant submitted the first page of an emergency/urgent care report dated July 21, 2016. The document indicated that she was seen on the date by Mr. Beasley and Dr. Stephen E. Johnston, a Board-certified emergency medicine physician. In the history of present illness section of the document, it was noted that appellant reported that on July 21, 2016 she lost her balance and fell

² In an accompanying statement, appellant provided further details regarding the claimed July 21, 2016 employment injury.

³ In an August 4, 2016 letter, an injury compensation specialist advised that the employing establishment was controverting appellant’s claim because the July 21, 2016 note submitted by appellant indicated that the reported injury/illness was “not work related.”

⁴ Appellant also submitted therapy prescription notes from July and August 2016 and several reports from August 2016 describing physical therapy sessions conducted by Jenny L. Doza, an attending physical therapist.

backwards while avoiding being bitten by a dog at work. She complained of back and right rib pain.

In an August 26, 2016 form report, Dr. Cannon diagnosed lumbar spondylosis and indicated that appellant was unable to work.

By decision dated May 5, 2017, OWCP denied modification of its October 5, 2016 decision. It found that the new evidence submitted by appellant was insufficient to establish a diagnosed condition causally related to the accepted July 21, 2016 employment incident.

On February 5, 2018 appellant requested reconsideration of OWCP's May 5, 2017 decision. In a February 1, 2018 letter, she indicated that she had submitted evidence in support of her claim for a July 21, 2016 employment injury, but did not understand why her claim had not been approved. Appellant asserted that she still had back and leg pain from the injury, which made it difficult for her to perform her job.

By decision dated February 13, 2018, OWCP denied appellant's February 20, 2018 request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a). It indicated that the argument submitted by her was irrelevant or immaterial to the underlying issue of the case, causal relationship, as it was "not medical evidence."

On March 20, 2018 appellant, through her then counsel, requested reconsideration of OWCP's May 5, 2017 decision. She resubmitted the first page of the July 21, 2016 emergency/urgent care report of Dr. Johnston and Mr. Beasley. Appellant also submitted additional pages from that July 21, 2016 report and two July 21, 2016 x-ray reports which had not been previously considered by OWCP. The July 21, 2016 emergency/urgent care report of Dr. Johnston and Mr. Beasley contained appellant's description of the July 21, 2016 employment incident, findings upon physical examination, and a diagnosis of rib pain on the right side.⁵ The x-ray testing of the lumbar spine contained an impression of normal lumbar spine, and the x-ray testing of the ribs contained an impression of no evidence of rib fracture.

By decision dated March 28, 2018, OWCP denied appellant's March 20, 2018 request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a). It indicated that the evidence submitted by her was insufficient to require reopening of her claim for review on the merits, as it was "repetitious and consists of copies of documentation that was previously considered in the contested decision."

⁵ Upon physical examination, Dr. Johnston noted that appellant had tenderness of her right chest wall and lumbar spine. Bilateral straight leg testing and saddle paresthesia testing yielded negative results. Dr. Johnston provided a differential or provisional diagnosis of "fall, closed fracture" prior to reviewing the x-ray testing of appellant's lumbar spine and ribs. After reviewing the x-ray testing, he provided the diagnosis of rib pain on the right side.

LEGAL PRECEDENT

Section 8128(a) of FECA vests OWCP with discretionary authority to determine whether to review an award for or against compensation. OWCP may review an award for or against payment of compensation at any time based on its own motion or on application.⁶

A claimant seeking reconsideration of a final decision must present arguments or provide evidence that: (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.⁷ If OWCP determines that at least one of these requirements is met, it reopens and reviews the case on its merits.⁸ 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.⁹

A request for reconsideration must also be received by OWCP within one year of the date of OWCP's decision for which review is sought.¹⁰ For its decisions issued on or after August 29, 2011, the date of the application for reconsideration is the "received date" as recorded in the Integrated Federal Employees' Compensation System (iFECS).¹¹

The Board has held that the submission of evidence or argument which repeats or duplicates evidence or argument already in the case record¹² and the submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.¹³

ANALYSIS

The Board finds that OWCP properly denied appellant's February 5 and March 20, 2018 requests for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

OWCP issued decisions denying appellant's claim for a July 21, 2016 employment injury on October 6, 2016 and May 5, 2017. On February 5, 2018 it received the first of her two requests

⁶ 5 U.S.C. § 8128(a).

⁷ 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).

⁸ *Id.* at § 10.608(a); *see also* *M.S.*, 59 ECAB 231 (2007).

⁹ *Id.* at § 10.608(b); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

¹⁰ *Id.* at § 10.607(a).

¹¹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (February 2016). *See also* *C.B.*, Docket No. 13-1732 (issued January 28, 2014).

¹² *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Jerome Ginsberg*, 32 ECAB 31, 33 (1980).

¹³ *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

for reconsideration of its May 5, 2017 decision. Appellant's request was timely filed because it was received within one year of OWCP's May 5, 2017 decision.¹⁴

The Board must consider whether appellant's February 5, 2018 request for reconsideration met any of the requirements of 20 C.F.R. § 10.606(b)(3), requiring OWCP to reopen the case for further review of the merits of the claim. The Board finds that appellant's February 5, 2018 request for reconsideration did not show that OWCP erroneously applied or interpreted a specific point of law, advance a new and relevant legal argument not previously considered by OWCP, or constitute relevant and pertinent new evidence not previously considered by OWCP.¹⁵

In support of her February 5, 2018 request for reconsideration, appellant submitted a February 1, 2018 letter in which she indicated that she had submitted evidence in support of her claim for a July 21, 2016 employment injury, but did not understand why her claim had not been approved. She asserted that she still had back and leg pain from the injury which made it difficult for her to perform her job.

The Board finds that the submission of this argument does not require reopening appellant's claim for merit review because the argument is not relevant to the underlying issue in the present case.¹⁶ That issue is medical in nature, *i.e.*, whether appellant submitted rationalized medical evidence sufficient to establish a diagnosed condition causally related to the accepted July 21, 2016 employment incident, and it must be addressed by relevant medical evidence.¹⁷ Appellant did not submit such medical evidence in connection with her February 5, 2018 request for reconsideration. For these reasons, OWCP properly denied appellant's February 5, 2018 request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

On March 20, 2018 OWCP received another request for reconsideration of its May 5, 2017 decision. This request also was timely filed because it was received within one year of OWCP's May 5, 2017 decision.¹⁸

The Board finds that appellant's March 20, 2018 request for reconsideration did not show that OWCP erroneously applied or interpreted a specific point of law, advance a new and relevant legal argument not previously considered by OWCP, or constitute relevant and pertinent new evidence not previously considered by OWCP.¹⁹

In support of her March 20, 2018 request for reconsideration, appellant resubmitted the first page of the July 21, 2016 emergency/urgent care report of Dr. Johnston and Mr. Beasley. She also submitted additional pages from that July 21, 2016 report and two July 21, 2016 x-ray reports

¹⁴ See *supra* note 10.

¹⁵ See *supra* note 7.

¹⁶ See *supra* note 13.

¹⁷ See *Bobbie F. Cowart*, 55 ECAB 746 (2004).

¹⁸ See *supra* note 10.

¹⁹ See *supra* note 7.

which had not been previously considered by OWCP. The July 21, 2016 emergency/urgent care report of Dr. Johnston and Mr. Beasley contained appellant's description of the July 21, 2016 employment incident, findings upon physical examination, and a diagnosis of rib pain on the right side. The x-ray testing of the lumbar spine contained an impression of normal lumbar spine, and the x-ray testing of the ribs contained an impression of no evidence of rib fracture.

As noted above, a claimant may be entitled to a merit review by submitting pertinent new and relevant evidence, but the Board finds that appellant did not submit such evidence in connection with her March 20, 2018 request for reconsideration.²⁰ The Board notes that, while appellant submitted new medical evidence (other than the previously submitted first page of the July 21, 2016 emergency/urgent care report), this evidence is not relevant to the underlying issue of this case and its submission does not require reopening appellant's claim for review on the merits.²¹ This is because none of the new evidence submitted by appellant related a diagnosed medical condition to the accepted July 21, 2017 employment incident.²² As explained above, the underlying issue of the case is whether appellant submitted a medical report with a rationalized opinion relating a diagnosed condition to the accepted July 21, 2016 fall. However, the evidence submitted by appellant in connection with her March 20, 2018 request for reconsideration does not provide any opinion on causal relationship. For these reasons, OWCP properly denied appellant's March 20, 2018 request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

CONCLUSION

The Board finds that OWCP properly denied appellant's February 5 and March 20, 2018 requests for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

²⁰ See *supra* note 7.

²¹ See *supra* note 13. With respect to the resubmission of the first page of the July 21, 2016 emergency/urgent care report, the Board notes that the resubmission of previously submitted evidence would not require the reopening of a claim for review on the merits. See *supra* note 12.

²² Moreover, with respect to the diagnosis of rib pain on the right side, the Board has held that pain alone is a symptom, not a medical diagnosis. See *F.U.*, Docket No. 18-0078 (issued June 6, 2018).

ORDER

IT IS HEREBY ORDERED THAT the March 28 and February 13, 2018 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: October 24, 2018
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board