



of duty. She indicated that, while she was delivering mail, the door of a cluster box unit broke off its hinge and hit her in the middle of her lower back. Appellant stopped work on February 4, 2012.

OWCP assigned this claim OWCP File No. xxxxxx505 and accepted the condition of lumbar strain as work related.<sup>2</sup> It paid appellant wage-loss compensation on the daily rolls commencing March 2, 2012.<sup>3</sup>

In February 2013, OWCP referred appellant for a second opinion examination to Dr. David T. Easley, a Board-certified orthopedic surgeon. It requested that Dr. Easley provide an opinion regarding whether appellant had continuing residuals of her accepted February 4, 2012 lumbar strain. OWCP provided Dr. Easley with a statement of accepted facts (SOAF), dated February 27, 2013, which indicated that it had been accepted that appellant sustained a lumbar strain when a door hit the middle of her lower back on February 4, 2012.

In a March 25, 2013 report, Dr. Easley discussed the February 4, 2012 employment injury and noted that appellant reported constant pain in her lower back and left lower extremity. He reported the findings of the physical examination he conducted on March 25, 2013 and noted that appellant could only flex her back to 60 degrees and extend her back to 10 degrees. Dr. Easley diagnosed chronic lumbar pain with left lower extremity radiculopathy, and he posited that appellant had continuing residuals of her February 4, 2012 employment injury, as reflected by the observed limited range of motion of the lumbar spine, left sciatic notch tenderness, positive straight leg raise testing, and decreased sensation to soft touch of the corresponding dermatomes of the left lower extremity. He discussed potential treatment options for appellant's condition, including lumbar surgery if conservative treatment failed. In an accompanying April 4, 2015 work capacity evaluation form (Form OWCP-5c), Dr. Easley recommended work restrictions such as lifting no more than 25 pounds.

Appellant received continuing medical treatment from attending physicians, including Dr. Thomas T. Haider, a Board-certified orthopedic surgeon. In a December 17, 2014 report, Dr. Haider noted that appellant had decreased sensation in the L5 and S1 nerve distributions in both legs. He diagnosed lumbar spondylosis with bilateral radiculopathy and recommended that appellant continue with physical therapy.

In January 2015, OWCP referred appellant for a second opinion examination to Dr. Stephen M. Ma, a Board-certified orthopedic surgeon, and requested that he provide an opinion regarding whether appellant had continuing residuals of her accepted November 17, 2011 traumatic cervical strain, February 4, 2012 traumatic lumbar strain, and occupational cervical strain (sustained by September 17, 2013). It provided Dr. Ma with a January 28, 2015 SOAF

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<sup>2</sup> Under a separate occupational disease claim, bearing OWCP File No. xxxxxx117, OWCP accepted that appellant sustained a cervical strain due to her repetitive work duties, including bending her neck up and down. Appellant indicated that she had become aware of this condition and its relationship to her work on September 17, 2013. OWCP administratively combined the files for OWCP File Nos. xxxxxx505, xxxxxx602, and xxxxxx117 and designated OWCP File No. xxxxxx505 as the master file.

<sup>3</sup> Appellant returned to work for brief periods and OWCP paid her wage-loss compensation for the intermittent periods she was off work. OWCP had previously accepted, under OWCP File No. xxxxxx602, that appellant sustained a traumatic cervical strain on November 17, 2011 when a panel fell on her head.

which discussed the circumstances of appellant's three claims, including the fact that it had been accepted that appellant sustained a lumbar strain when a door hit the middle of her lower back on February 4, 2012.

In a March 11, 2015 report, Dr. Ma discussed appellant's factual and medical history and reported the findings of his physical examination. He indicated that appellant did not exhibit objective findings on physical examination due to the November 17, 2011 traumatic cervical strain, February 4, 2012 traumatic lumbar strain, or occupational cervical strain (sustained by September 17, 2013). Dr. Ma also explained that the diagnostic testing of record did not show that these conditions still existed. He noted that appellant did not have continuing disability or physical limitations due to her accepted work conditions.

In an April 13, 2015 letter, OWCP advised appellant that it proposed to terminate her wage-loss compensation and medical benefits because she ceased to have residuals of her accepted employment conditions. It based the proposed termination action on the March 11, 2015 report of Dr. Ma.

By decision dated June 30, 2015, OWCP terminated appellant's wage-loss compensation and medical benefits effective June 30, 2015. It determined that the weight of the medical evidence, with respect to residuals of appellant's accepted employment conditions, rested with the well-rationalized March 11, 2015 report of Dr. Ma. OWCP found that, therefore, it had met its burden of proof to terminate appellant's wage-loss compensation and medical benefits.

In a June 16, 2016 report, Dr. Basimah Khulusi, a Board-certified physical medicine and rehabilitation physician, provided an opinion that appellant continued to have residuals of her February 4, 2012 traumatic lumbar strain.

In February 2017 OWCP determined that there was a conflict in the medical opinion evidence between Dr. Ma and Dr. Khulusi regarding whether appellant had residuals of her February 4, 2012 traumatic lumbar strain after June 30, 2015, and it referred appellant to Dr. Jayaraja Yogaratnam, a Board-certified orthopedic surgeon, for an impartial medical examination and opinion on the matter. It noted that it had provided Dr. Yogaratnam with a SOAF which indicated that it had been accepted that appellant sustained a lumbar strain when a door hit the middle of her back on February 4, 2012.

In a March 27, 2017 report, Dr. Yogaratnam detailed appellant's factual and medical history and reported the findings of the physical examination he conducted on that date. He noted that appellant complained of tenderness to palpation in the L4-5 disc level of her back, but posited that the February 4, 2012 traumatic lumbar strain was a type of injury that would have long since resolved. Dr. Yogaratnam opined that appellant could perform her regular duties as a city letter carrier without restriction.

By decision dated May 15, 2017, OWCP denied modification of its June 30, 2015 termination decision. It found that it had met its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective June 30, 2015 based on the March 11, 2015 report of Dr. Ma. OWCP further found that, after the proper termination of wage-loss compensation and medical benefits effective June 30, 2015, she failed to meet her burden of proof

to establish the existence of ongoing residuals or disability due to her February 4, 2012 employment injury on or after June 30, 2015. It noted that the weight of the medical opinion evidence with respect to such work-related residuals after June 30, 2015 now rested with the March 27, 2017 report of Dr. Yogaratanam.

On May 14, 2018 appellant requested reconsideration of OWCP's May 15, 2017 decision.

In support of her reconsideration request, appellant submitted a May 10, 2018 report from Dr. Khulusi, who discussed OWCP's May 15, 2017 decision and posited that Dr. Ma's opinion should not have been given special weight because OWCP advised Dr. Ma that appellant's claim had only been accepted for lumbar strain. Dr. Khulusi indicated, however, that Dr. Easley had determined that appellant suffered from chronic lumbar pain with left lower extremity radiculopathy. She indicated that OWCP should have accepted these conditions under the Federal (FECA) Procedure Manual provision dictating that it should accept each diagnosis that is causally related to the work injury, regardless of severity or impact on disability.<sup>4</sup> Dr. Khulusi further discussed Dr. Easley's March 25 and April 4, 2013 reports, noting that he had detailed various treatment options and recommended work restrictions. She wrote that the opinions of Dr. Ma and Dr. Yogaratanam "lose their probative value" because OWCP sent each of them erroneous and flawed SOAFs. Dr. Khulusi concluded that OWCP should accept the conditions of chronic lumbar pain and left lower extremity radiculopathy as resulting from the February 4, 2012 employment incident and should then send a corrected SOAF to a second opinion evaluator and, if necessary, to an impartial medical specialist.

By decision dated May 18, 2018, OWCP denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

### **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.<sup>5</sup>

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.<sup>6</sup> If OWCP determines that at least one of these requirements is met, it reopens and reviews the case on its merits.<sup>7</sup> If the

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<sup>4</sup> Dr. Khulusi provided a citation to Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Acceptances*, Chapter 2.806.2a (June 2011).

<sup>5</sup> 5 U.S.C. § 8128(a).

<sup>6</sup> 20 C.F.R. § 10.606(b)(3); *see also* *M.S.*, Docket No. 18-1041 (issued October 25, 2018); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

<sup>7</sup> 20 C.F.R. § 10.608(a); *see also* *C.K.*, Docket No. 18-1019 (issued October 24, 2018).

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.<sup>8</sup>

The Board has held that the submission of evidence or argument which repeats or duplicates evidence or argument already in the case record<sup>9</sup> and the submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.<sup>10</sup> While a reopening of a case may be predicated solely on a legal premise not previously considered, such reopening is not required where the legal contention does not have a reasonable color of validity.<sup>11</sup>

### ANALYSIS

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).

With her timely May 14, 2018 request for reconsideration of OWCP's May 15, 2017 merit decision,<sup>12</sup> appellant 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. Consequently, appellant is not entitled to review of the merits of her claim based on the first and second above-noted requirements under 20 C.F.R. § 10.606(b)(3).

In support of her reconsideration request, appellant submitted a May 10, 2018 report from Dr. Khulusi who posited that Dr. Ma's opinion should not have been given special weight because OWCP advised Dr. Ma that appellant's claim had only been accepted for lumbar strain.<sup>13</sup>

As the underlying issue in this case is medical in nature, it must be addressed by relevant and pertinent new medical evidence.<sup>14</sup> The underlying medical issue in this case is whether appellant has employment-related residuals after June 30, 2015 and, while Dr. Khulusi's May 10, 2018 report was new, it was not relevant because it did not directly address the underlying issue of the present case. The Board has held that the submission of evidence of argument which does not address the particular issue involved does not constitute a basis for reopening a case.<sup>15</sup>

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<sup>8</sup> 20 C.F.R. § 10.608(b); *E.R.*, Docket No. 09-1655 (issued March 18, 2010). To be timely, a request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought. 20 C.F.R. § 10.607(a).

<sup>9</sup> *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Jerome Ginsberg*, 32 ECAB 31, 33 (1980).

<sup>10</sup> *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

<sup>11</sup> *John F. Critz*, 44 ECAB 788, 794 (1993).

<sup>12</sup> *See supra* note 7.

<sup>13</sup> *See supra* note 10. Moreover, the Board has held that the determination of legal standards is outside the scope of a physician's expertise. *See Barbara Bush*, 38 ECAB 710, 714 (1987).

<sup>14</sup> *See Bobbie F. Cowart*, 55 ECAB 746 (2004).

<sup>15</sup> *See supra* note 9.

Appellant, therefore, is not entitled to review of the merits of her claim based on the third above-noted requirement under 20 C.F.R. § 10.606(b)(3).

The Board accordingly finds that appellant has not met any of the requirements of 20 C.F.R. § 10.606(b)(3). Therefore, 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 her claim pursuant to 5 U.S.C. § 8128(a).

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 18, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 12, 2019  
Washington, DC

Christopher J. Godfrey, 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