

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 January 18, 2018 appellant, then a 23-year-old city carrier assistant, filed a traumatic injury claim (Form CA-1) alleging that on January 13, 2018 she suffered a low back strain when she reportedly felt her back lock up when she kneeled down to place a package on a porch while in the performance of duty. On the reverse side of the claim form, the employing establishment indicated that she was in the performance of duty when injured and that she had received medical treatment on January 13, 2018. Appellant initially sought medical treatment at the emergency room and was released to work on January 15, 2018.

Appellant received medical treatment from Dr. Novarro C. Stafford, specializing in family medicine. In a February 23, 2018 report, Dr. Stafford described the January 13, 2018 employment injury and her history. Upon examination of appellant's back, he observed abnormal curvature, decreased range of motion, and positive tenderness. Dr. Stafford diagnosed lumbar strain, lumbar intervertebral disc displacement, lumbar radiculopathy, and sciatica. He reported that, at the time of the January 13, 2018 injury, appellant developed "an acute disability secondary to an acute injury" and recommended that she remain off work. Dr. Stafford completed a work status note and duty status report (Form CA-17), which indicated that she should be excused from work from February 23 to March 24, 2018 due to being "totally incapacitated and unable to perform normal job duties."

On February 26, 2018 OWCP accepted appellant's claim for lower back strain.

Dr. Stafford continued to treat appellant and provide medical reports dated March 9 to April 6, 2018 regarding his treatment for her January 13, 2018 work-related back injury. He provided examination findings and diagnosed acute lumbar sprain, sciatica, and radiculopathy of the lower extremities. Dr. Stafford opined that appellant "developed an acute disability secondary to an acute injury" in her lumbar spine.

Appellant also received medical treatment from Dr. Kenneth Lee, an orthopedic surgeon. In an April 3, 2018 report, Dr. Lee related her complaints of low back and leg pain following a January 13, 2018 work injury. He provided examination findings and diagnosed lumbar intervertebral disc displacement and low back pain.

On April 16, 2018 appellant filed a claim for wage-loss compensation (Form CA-7) for the period February 28 to June 25, 2018. On the reverse side of the claim form, the employing establishment verified that she was in leave without pay status for 180 hours. Appellant filed additional CA-7 form claims for compensation for wage-loss due to continuing total disability.

By development letter dated May 16, 2018, OWCP informed appellant of the evidence needed to support her disability claim.

OWCP received additional medical reports by Dr. Stafford dated May 9 to 24, 2018. Dr. Stafford discussed appellant's history of the January 13, 2018 employment injury. He reiterated physical examination findings of abnormal curvature of her back, decreased range of motion, and positive tenderness. Dr. Stafford continued to opine that appellant "developed an acute disability secondary to an acute injury" and still had significant disability associated with her injury.

By decision dated July 10, 2018, OWCP denied appellant's claim for wage-loss compensation beginning February 28, 2018, finding that the evidence of record was insufficient to establish that she was unable to work during the claimed period due to her January 13, 2018 employment injury.

Following its decision, OWCP received reports dated July 6 to August 15, 2018 by Dr. Stafford. Dr. Stafford described the January 13, 2018 employment injury and discussed appellant's history. He diagnosed low back pain, lumbar strain, lumbar sciatica, lumbar herniated nucleus pulposus (HNP), and lumbosacral radiculopathy. Dr. Stafford reported that appellant continued to have disability associated with her lumbar back area.

In reports and letters dated August 15 to September 15, 2018, Dr. Stafford indicated that appellant's injury was more than a lumbar sprain. He related that diagnostic testing confirmed that she had herniation in her lumbar back at L1-2 and L5-S1 and nerve compression at L4-5. Dr. Stafford opined that these conditions were causally related to the initial injury. He requested that appellant's claim be expanded to include herniation of the lumbar spine, radiculopathy of the lower extremities, and polyneuropathy of the plantar portion of her feet, and sciatica of the left side of her lower extremities. Dr. Stafford further recommended that she remain out of work and indicated that appellant's disability was causally related to her lumbar injury.

In a September 4, 2018 report, Dr. Lee related appellant's complaints of intermittent low back pain. He reviewed her history and reported physical examination findings of pain to palpation in the midline and paraspinal regions of her lumbar spine. Range of motion was decreased with forward flexion. Dr. Lee diagnosed lumbar disc displacement, low back pain, and lumbar radiculopathy.

In a September 18, 2018 report, Dr. Ajay Aggarwal, a Board-certified anesthesiologist, noted appellant's chief complaint of lower back pain after a January 13, 2018 employment injury. He provided neurological examination findings of the upper and lower extremities. Facet joint tenderness was positive on the right and left side at L5-S1. Dr. Aggarwal diagnosed lumbar strain.

OWCP also received several physical therapy referrals and treatment notes dated January 13 to September 27, 2018 and duty status reports (Form CA-7) dated February 23 to August 24, 2018.

On October 3, 2018 appellant requested reconsideration.

Appellant continued to submit reports by Dr. Stafford dated September 28 to December 19, 2018. Dr. Stafford reviewed her history of injury and noted that she still had limited ability to bend at the back and intermittent back spasms. He reported that appellant's ability was improving, but she was still not able to return to work. Dr. Stafford noted that she could only sit

for one hour before she had to stand up and walk around. He diagnosed lower back pain, sciatica, lumbosacral radiculopathy, lumbar HNP, and lumbar strain. Dr. Stafford completed duty status reports (Form CA-7), which indicated that appellant was not able to return to work.

In a November 5, 2018 report, Dr. Shabrez Tariq, Board-certified in physical, and rehabilitation medicine, indicated that he evaluated appellant for a lumbar spine injury that she sustained while employed as a mail carrier. He related her complaints of back pain aggravated with sudden turning, carrying objects, and prolonged standing, sitting, and walking. Upon examination of appellant's lumbar spine, Dr. Tariq observed tenderness to palpation of the paraspinal musculature and tenderness present at trigger points. Straight leg raise testing was positive. Dr. Tariq diagnosed lumbar strain, lumbar facet joint syndrome, lumbago, lumbar disc displacement without myelopathy, and industrial accident.

OWCP also received physical therapy referrals and evaluation reports dated September 27 to December 6, 2018.

By decision dated December 21, 2018, OWCP denied further merit review of appellant's claim under 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. The Secretary of Labor may review an award for or against compensation at any time on his own motion or on application.³

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or an argument 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.⁴

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.⁵ If OWCP chooses to grant reconsideration, it reopens and reviews the case on its merits.⁶ 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.⁷

³ 5 U.S.C. § 8128(a); *see also D.L.*, Docket No. 09-1549 (issued February 23, 2010); *W.C.*, 59 ECAB 372 (2008).

⁴ 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).

⁵ *Id.* at § 10.607(a).

⁶ *Id.* at § 10.608(a); *see also M.S.*, 59 ECAB 231 (2007).

⁷ *Id.* at § 10.608(b); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

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).

Appellant did not submit any statement along with her October 3, 2018 reconsideration request explaining why she disagreed with the July 10, 2018 merit decision. She has not shown that OWCP erroneously applied or interpreted a specific point of law, nor did she advance a relevant legal argument not previously considered. Thus, the Board finds that 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).

The Board further finds that appellant did not submit relevant and pertinent new evidence not previously considered.

Following its most recent merit decision, OWCP received additional reports, letters, and CA-17 forms by Dr. Stafford dated July 6 to December 19, 2018. Dr. Stafford reviewed appellant's history of injury and described his continued treatment of her for her diagnosed low back pain, lumbar strain, lumbar sciatica, lumbar HNP, and lumbosacral radiculopathy conditions. He further reported that, although her back pain and disability were improving, she continued to have disability associated with her lumbar back area. The Board finds, however, that these reports are substantially similar to Dr. Stafford's prior medical reports, which were previously reviewed and considered by OWCP. Dr. Stafford did not provide any new or relevant evidence explaining how appellant's inability to work beginning February 28, 2018 was causally related to her January 13, 2018 lumbar strain injury. The Board has held that the submission of evidence which duplicates or is substantially similar to evidence already in the case record does not constitute a basis for reopening a case.⁸

In a September 4, 2018 report, Dr. Lee provided physical examination findings of appellant's lumbar spine and diagnosed lumbar disc displacement, low back pain, and lumbar radiculopathy. He did not, however, provide an opinion or discussion regarding whether her disability from work beginning February 28, 2018 was causally related to her January 13, 2018 employment injury. The Board notes that the submission of evidence that does not address the particular issue involved does not constitute a basis for reopening a case.⁹ Likewise, Dr. Aggarwal's September 18, 2018 and Dr. Tariq's November 5, 2018 reports are also not relevant to the issue of appellant's disability as neither physician provided an opinion on her inability to work during the claimed period.¹⁰ Accordingly, appellant is not entitled to a review of

⁸ *S.W.*, Docket No. 18-1261 (issued February 22, 2019); *E.M.*, Docket No. 09-0039 (issued March 3, 2009); *D.K.*, 59 ECAB 141 (2007).

⁹ *M.B.*, Docket No. 17-1980 (issued May 14, 2019); *E.G.*, Docket No. 18-0270 (issued August 24 2018); *Alan G. Williams*, 52 ECAB 180 (2000); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

¹⁰ *Id.*

the merits of her claim based on the third above-noted requirement under 20 C.F.R. § 10.606(b)(3). Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.¹¹

On appeal appellant alleges that she should have not been denied disability because the diagnostic testing and narrative information established her disability. As explained above, however, the Board lacks jurisdiction to review the merits of the claim. The only decision properly before the Board on this appeal is the December 21, 2018 nonmerit decision, which denied appellant's request for further merit review.

As appellant's request for reconsideration did not meet any of the three requirements enumerated under 20 C.F.R. § 10.606(b)(3), the Board finds that OWCP properly denied her request for reconsideration without reopening the case for review on the merits.¹²

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).

¹¹ See *F.P.*, Docket No. 19-0177 (issued June 19, 2019); *D.R.*, Docket No. 18-0357 (issued July 2, 2018); *A.K.*, Docket No. 09-2032 (issued August 3, 2010); *Susan A. Filkins*, 57 ECAB 630 (2006).

¹² *T.H.*, Docket No. 18-1542 (issued April 8, 2019); *M.E.*, 58 ECAB 694 (2007).

ORDER

IT IS HEREBY ORDERED THAT the December 21, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 18, 2019
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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