

January 27, 2018 employment injury; and (2) whether OWCP properly denied appellant's request for reconsideration of the merits of the claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On January 29, 2018 appellant, then a 39-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on January 27, 2018 she sustained pain and pressure in the right side of her lower back when she was shutting a door that jammed while in the performance of duty. OWCP accepted the claim for a lesion of the sciatic nerve of the right lower limb, a sprain of ligaments of the lumbar spine, and inflammatory spondylopathy of the sacral and sacrococcygeal region.

Appellant stopped work on January 29, 2018 and first returned to modified employment on January 31, 2018.

On June 14, 2018 Dr. Peyman Sarrafian, Board-certified in family practice, evaluated appellant for increased right sacroiliac pain. On examination he noted spasms and tenderness of the thoracolumbar spine and paravertebral musculature, a positive straight leg raise, and restricted range of motion. Dr. Sarrafian diagnosed lumbar sprain and arthritis, instability, and pain of the right sacroiliac joint. He noted that appellant was working modified duty. Dr. Sarrafian advised that her condition had "worsened without clinical reason" and administered an injection of the right sacroiliac joint. He advised that appellant should remain off work until June 18, 2018. In a duty status report (Form CA-17) of even date, Dr. Sarrafian diagnosed lumbar sprain and right sacroiliitis and found that appellant should not work.

In a report dated June 18, 2018, Dr. Sarrafian indicated that appellant's condition had not substantially improved, noting that she complained of moderately severe back pain with paresthesia, numbness, and tingling of the lower extremities. He diagnosed a lumbar disc herniation and advised that she should remain off work through June 25, 2018.

On June 25, 2018 Dr. Sarrafian found that appellant could resume work with restrictions of lifting, pushing, and pulling no more than 10 pounds.³ On June 29, 2018 appellant filed a claim for wage-loss compensation (Form CA-7) for the period June 14 through 22, 2018. On the reverse side of the claim form, a supervisor indicated that appellant was in leave without pay (LWOP) status from June 18 through 22, 2018 and had been working without restrictions since April 24, 2018.

In a development letter dated July 3, 2018, OWCP requested that appellant submit additional factual and medical evidence supporting that she was disabled from employment for the claimed period. It noted that she had returned to her usual employment on April 24, 2018 and stopped work on June 18, 2018. OWCP provided a questionnaire for appellant's completion and requested a report from her physician addressing the relationship between her disability and her employment injury. It afforded her 30 days to submit the necessary evidence.

³ On June 27, 2018 appellant accepted a job offer for modified duty, with physical requirements of lifting, carrying, pushing, or pulling up to 10 pounds.

In a July 6, 2018 statement, appellant reported that her low back pain had returned on June 12, 2018 and that the next day she had to leave work early because of her pain.

Subsequently, appellant submitted reports dated July 9 and 24 and August 23, 2018 from Dr. Sarrafian, who provided findings on examination and work restrictions. She also submitted acupuncture reports dated July 2018 and an August 14, 2018 progress report from Dr. Hrair Darakjian, a Board-certified orthopedic surgeon, who found that she could perform modified employment.

By decision dated September 7, 2018, OWCP denied appellant's claim for a recurrence of wage-loss compensation beginning June 18, 2018. It found that the medical evidence was insufficient to establish that she had recurrent disability from work on or after June 18, 2018 due to her accepted January 27, 2018 employment injury.

Thereafter, appellant submitted notes from physical therapists dated from July 5 through 24, 2018. She also resubmitted the June 14 and 18, 2018 reports of Dr. Sarrafian, as well as the acupuncture notes from a physical therapist dated from July 5 through 24, 2018.

In a report dated September 20, 2018, Dr. Sarrafian noted that appellant's condition had improved and that she was currently working in a modified-duty capacity. On examination he found spasms and tenderness of the thoracolumbar spine and paravertebral musculature. Dr. Sarrafian diagnosed lumbar sprain and recommended work restrictions of lifting, pushing, and pulling up to 20 pounds.

On September 27, 2018 appellant requested reconsideration of OWCP's September 7, 2018 decision.

By decision dated October 9, 2018, OWCP denied appellant's request for reconsideration finding that she had not raised a pertinent argument or submitted new and relevant evidence sufficient to warrant reopening her case for further merit review under 5 U.S.C. § 8128(a).

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA⁴ has the burden of proof to establish the essential elements of his or her claim.⁵ Under FECA the term disability means incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.⁶ For each period of disability claimed, the employee has the burden of proof to establish that he or she was disabled from work as a result of the accepted employment injury.⁷ Whether a particular injury causes an employee to become disabled from work, and the duration of that disability, are

⁴ *Supra* note 1.

⁵ *See L.S.*, Docket No. 18-0264 (issued January 28, 2020); *B.O.*, Docket No. 19-0392 (issued July 12, 2019).

⁶ 20 C.F.R. § 10.5(f); *J.S.*, Docket No. 19-1035 (issued January 24, 2020).

⁷ *T.W.*, Docket No. 19-1286 (issued January 13, 2020).

medical issues that must be proven by a preponderance of probative and reliable medical opinion evidence.⁸

A recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition that had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness. The term also means an inability to work when a light-duty assignment made specifically to accommodate an employee's physical limitations due to the work-related injury or illness is withdrawn (except when such withdrawal occurs for reasons of misconduct, nonperformance of job duties or a reduction-in-force), or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.⁹

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that light duty can be performed, the employee has the burden of proof to establish by the weight of reliable, probative, and substantial evidence a recurrence of total disability. As part of this burden of proof, the employee must show either a change in the nature and extent of the injury-related condition, or a change in the nature and extent of the limited-duty requirements.¹⁰

An employee who claims a recurrence of disability resulting from an accepted employment injury has the burden of proof to establish that the disability is related to the accepted injury. This burden requires furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.¹¹

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met her burden of proof to establish recurrent disability from work for the period June 18 through 22, 2018 causally related to her accepted January 27, 2018 employment injury.¹²

Initially, the Board notes that while appellant claimed wage loss from June 14 through 22, 2018, the employing establishment, on the Form CA-7, indicated that she had used LWOP from June 18 through 22, 2018.

In a report dated June 14, 2018, Dr. Sarrafian diagnosed lumbar sprain and right sacroiliac joint arthritis, pain, and instability. On examination he found a positive straight leg raise and spasms and tenderness of the spine and paravertebral musculature. Dr. Sarrafian found that

⁸ *S.G.*, Docket No. 18-1076 (issued April 11, 2019); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

⁹ 20 C.F.R. § 10.5(x); *see D.T.*, Docket No. 19-1064 (issued February 20, 2020).

¹⁰ *See R.N.*, Docket No. 19-1685 (issued February 26, 2020); *Terry R. Hedman*, 38 ECAB 222 (1986).

¹¹ *Id.*

¹² The Board notes that OWCP adjudicated the Form CA-7 as a notice of recurrence of disability (Form CA-2a); however, appellant filed a claim for wage-loss compensation rather than alleging a recurrence of disability.

appellant's condition had "worsened without a clinical reason." He administered a steroid injection and advised that she should remain off work. Dr. Sarrafian also completed a Form CA-17 of even date finding that appellant was disabled from employment. On June 18, 2018 he noted that her condition had not significantly improved, diagnosed a lumbar disc herniation, and opined that she should remain off work until June 25, 2018. Dr. Sarrafian did not, however, explain why appellant was unable to perform the duties of her position on or after June 18, 2018 due to a recurrence of her accepted employment injury. A mere conclusion without medical rationale supporting a period of disability due to the accepted employment condition is insufficient to meet a claimant's burden of proof.¹³

Appellant submitted reports from Dr. Sarrafian dated July 9 and 24 and August 2, 2018 and a report from Dr. Darakjian dated August 14, 2018. In these reports, Dr. Sarrafian and Dr. Darakjian failed to address her disability status from June 18 through 22, 2018, and thus this evidence is insufficient to meet her burden of proof.¹⁴

OWCP received reports from physical therapists; however, these reports are also of no probative value as physical therapists are not considered physicians as defined under FECA.¹⁵ On appeal counsel asserted that the physician's office had confirmed that appellant's treatment in June 2018 was related to her original employment injury. However, the issue of whether a claimant's recurrent disability from work is related to an accepted condition must be established by a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disability is causally related to the employment injury and supports that conclusion with sound medical reasoning.¹⁶ Appellant failed to submit such evidence and thus has not met her burden of proof.¹⁷

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

¹³ *A.A.*, Docket No. 19-1165 (issued December 16, 2019); *S.H.*, Docket No. 19-1128 (issued December 2, 2019).

¹⁴ *J.S.*, Docket No. 17-1121 (issued April 17, 2019); *K.M.*, Docket No. 17-1730 (issued February 9, 2018).

¹⁵ *See F.D.*, Docket No. 18-0199 (issued March 20, 2019); *S.E.*, Docket No. 15-0888 (issued September 14, 2016); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA); 5 U.S.C. § 8101(2) (this subsection defines a physician as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by state law).

¹⁶ *See G.B.*, Docket No. 16-1033 (issued December 5, 2016).

¹⁷ *See K.A.*, Docket No. 17-1718 (issued February 12, 2018).

LEGAL PRECEDENT -- ISSUE 2

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 payment of compensation at any time on his or her own motion or on application.¹⁸

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.¹⁹

A request for reconsideration must also be received by OWCP within one year of the date of OWCP decision for which review is sought.²⁰ If OWCP chooses to grant reconsideration, it reopens and reviews the case on its merits.²¹ 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.²²

ANALYSIS -- ISSUE 2

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).

The Board finds that appellant has not alleged or demonstrated that OWCP erroneously applied or interpreted a specific point of law. Moreover, appellant has not advanced a relevant legal argument not previously considered. Consequently, she 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).²³

The Board further finds that appellant did not submit relevant and pertinent new evidence in support of her reconsideration request. Appellant resubmitted the June 14 and 18, 2018 reports of Dr. Sarrafian and acupuncture notes dated from July 5 through 24, 2018. Evidence which is duplicative, cumulative, or repetitive in nature is insufficient to warrant reopening a claim for merit

¹⁸ 5 U.S.C. § 8128(a).

¹⁹ 20 C.F.R. § 10.606(b)(3); *see also B.W.*, Docket No. 18-1259 (issued January 25, 2019).

²⁰ *Id.* at § 10.607(a). For merit decisions issued on or after August 29, 2011, a request for reconsideration must be received by OWCP within one year of OWCP's decision for which review is sought. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (February 2016). Timeliness is determined by the document receipt date of the request for reconsideration as indicated by the received date in the Integrated Federal Employees Compensation System (iFECS). *Id.* at Chapter 2.1602.4b.

²¹ *Id.* at § 10.608(a); *see also A.P.*, Docket No 19-0224 (issued July 11, 2019).

²² *Id.* at § 10.608(b); *A.G.*, Docket No 19-0113 (issued July 12, 2019).

²³ *C.B.*, Docket No. 18-1108 (issued January 22, 2019).

review.²⁴ Appellant also submitted a report from Dr. Sarrafian dated September 20, 2018. While not previously of record, Dr. Sarrafian failed to address the issue of her claimed disability from June 14 through 22, 2018. The Board has held that the submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.²⁵

The Board accordingly finds that appellant has not met any of the requirements of 20 C.F.R. § 10.606(b)(3). Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.²⁶

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish recurrent disability for the period June 18 through 22, 2018 causally related to her accepted January 27, 2018 employment injury. The Board further finds that OWCP properly denied her request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

²⁴ See *L.C.*, Docket No. 19-0503 (issued February 7, 2020); *Denis M. Dupor*, 51 ECAB 482 (2000).

²⁵ See *Y.K.*, Docket No. 18-1167 (issued April 2, 2020); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

²⁶ See *L.S.*, Docket No. 19-1790 (issued March 11, 2020); *M.E.*, 58 ECAB 694 (2007); *Susan A. Filkins*, 57 ECAB 630 (2006).

ORDER

IT IS HEREBY ORDERED THAT the October 9 and September 7, 2018 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: May 22, 2020
Washington, DC

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

Christopher J. Godfrey, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board