

Act³ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of this case.

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

This case has previously been before the Board.⁴ The facts and circumstances of the case as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On August 25, 2015 appellant, then a 62-year-old dental assistant, filed a traumatic injury claim (Form CA-1) alleging that on August 17, 2015 she sustained an injury to her back when lifting trays of instruments to weigh and load into a cart while in the performance of duty. She stopped work on August 18, 2015.

An August 18, 2015 treatment note from Dr. Ahmad Shaker, a family medicine physician, diagnosed back pain secondary to muscle spasm and recommended light duty.

In an August 25, 2015 report, Dr. Elizabeth Werns, a Board-certified family practitioner, noted that appellant sustained an injury to the lower back on August 17, 2015 while moving an instrument tray. She diagnosed lumbar sprain, "likely disc herniation."

In an August 25, 2015 report and duty status report (Form CA-17), Dr. Ernest Chisena, a Board-certified orthopedic surgeon, noted that appellant was seen for a back injury that occurred on August 17, 2015. He indicated that she had pain down both legs to her feet. Dr. Chisena reviewed August 18, 2015 x-rays of appellant's lumbar spine and provided a provisional diagnosis of disc herniation and lumbar sprain. He indicated that the lower back pain was "probably related to sprain *versus* disc injury." In the duty status report, Dr. Chisena diagnosed low back pain and indicated that appellant injured her back lifting instrument bins. He also responded "Yes" with regard to whether the diagnosis was due to the injury.

OWCP received September 10, 17, 22, and 24 and October 1 and 9, 2015 notes from a physical therapist.

In a September 9, 2015 report, Dr. Chisena reviewed a September 2, 2015 magnetic resonance imaging (MRI) scan of appellant's lumbar spine and diagnosed low back sprain. He explained that she indicated that she had a lower back injury on November 1, 1995 and reinjured it on July 2, 1996. Dr. Chisena related that appellant believed that she had reaggravated her prior injuries while lifting a red container weighing 23 pounds. He reviewed a July 27, 1996 MRI scan

³ 5 U.S.C. § 8101 *et seq.*

⁴ Docket No. 17-0354 (issued July 10, 2018), *petition for recon. denied*, Docket No. 17-0354 (issued March 5, 2019).

and found a mild bulging of the annulus fibrosis at L5-S1. Dr. Chisena also reviewed an August 18, 2015 MRI scan and diagnosed lumbar disc syndrome and low back pain. He opined that appellant remained totally disabled. In a Form CA-17 of even date, Dr. Chisena noted restricted motion of the lumbar spine and indicated “Yes” with regard to whether the diagnosis was due to the claimed work injury. He provided work restrictions.

The employing establishment controverted appellant’s claim in a September 15, 2015 letter, noting that she overstated the weight of the trays she was lifting.

In a September 18, 2015 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence necessary to establish her claim and attached a questionnaire for her completion and afforded her 30 days to respond.

In an October 9, 2015 Form CA-17, Dr. Chisena diagnosed lumbar disc syndrome and low back pain due to the August 17, 2015 injury. He indicated that appellant remained totally disabled from work.

By decision dated October 22, 2015, OWCP denied appellant’s claim. It found that she had not provided a response to the questions provided in its September 18, 2015 development letter or a response to the employing establishment’s challenge. OWCP also found that appellant did not submit any medical evidence to establish that a diagnosed condition was causally related to a work-related incident.

Dr. Cathryn Ruth Turley, a Board-certified neurologist, noted that an October 9, 2015 MRI scan of appellant’s lumbar spine revealed mild degenerative spondylosis at L1-2 and L5-S1, with disc bulge and annular fissure with no significant spinal canal or neural foraminal stenosis, moderate facet arthropathy of the lower lumbar spine, and a small tarlov cyst.

Dr. Chisena provided treatment notes and a Form CA-17 dated January 21, 2016 recommending appellant return to work on January 28, 2016 with restrictions.

By decision dated February 25, 2016, OWCP found that the evidence of record was insufficient to establish that the claimed event(s) occurred as described as appellant had not responded to the questions posed in the September 18, 2015 development letter. It also found that she had not submitted any medical evidence to establish a diagnosed condition causally related to an established employment incident.

In a November 6, 2015 report, Dr. Chisena noted complaints of lower back pain occasionally radiating into appellant’s feet. He diagnosed lumbar disc syndrome/low back sprain.

On June 1, 2016 appellant, through counsel, requested reconsideration. Counsel argued that the medical evidence of record was sufficient to establish appellant’s claim.

OWCP received copies of previously submitted reports as well as appellant’s answers to the questions posed by OWCP.

By decision dated August 30, 2016, OWCP modified its February 25, 2016 decision. It found that the factual component of fact of injury had been established. However, the claim

remained denied because the medical evidence of record was insufficient to establish a diagnosed condition causally related to the accepted August 17, 2015 employment incident.

Appellant appealed OWCP's August 30, 2016 merit decision to the Board and, by decision dated July 10, 2018, the Board affirmed the August 30, 2016 decision.⁵ The Board found that she had not met her burden of proof to establish a traumatic injury causally related to the accepted August 17, 2015 employment incident.

On June 30, 2019 appellant, through counsel, requested reconsideration. Counsel argued that he was submitting detailed medical evidence not previously considered which documented the history and accepted factors.

OWCP received a copy of an August 18, 2015 treatment note from Dr. Shaker who diagnosed back pain secondary to muscle spasm.

OWCP also received a copy of an August 25, 2015 report from Dr. Werns who noted that appellant sustained an injury to her lower back on August 17, 2015 when she was moving an instrument tray, and diagnosed lumbar sprain, with a "likely disc herniation."

Copies of several reports from Dr. Chisena were also received, including an August 25, 2015 report wherein he reviewed the results of an August 18, 2015 x-ray. OWCP also received a copy of his September 9 and October 9, 2015 progress reports.

Physical therapy reports from September and October 2015 were also resubmitted.

By decision dated July 2, 2019, 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. The Secretary of Labor may review an award for or against compensation at any time on his own motion or on application.⁶

To require OWCP to reopen a case for merit review under section 8128(a), OWCP's regulations provide that the evidence or argument submitted by 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.⁷

⁵ See *supra* note 3.

⁶ 5 U.S.C. § 8123(a); *H.A.*, Docket No. 18-1253 (issued April 23, 2020); *L.S.*, Docket No. 19-1790 (issued March 11, 2020).

⁷ 20 C.F.R. § 10.606(b)(3); *L.S.*, *id.*; *D.K.*, 59 ECAB 141 (2007).

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.⁸ If it chooses to grant reconsideration, it reopens and reviews the case on its merits.⁹ 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.¹⁰

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).

On reconsideration counsel argued that the medical evidence of record was sufficient to establish appellant's claim. This allegation was previously considered by OWCP in its August 30, 2016 decision and by the Board in its July 10, 2018 decision. Evidence or argument that repeats or duplicates evidence previously of record has no evidentiary value and does not constitute a basis for reopening a case.¹¹

Appellant also did not show that OWCP erroneously applied or interpreted a specific point of law, or advance a new and relevant legal argument not previously considered. As such, she was not entitled to a 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).

With her request for reconsideration, appellant resubmitted a copy of an August 18, 2015 treatment note from Dr. Shaker, a copy of the August 25, 2015 report from Dr. Werns, August 25, September 9 and October 9, 2015 reports from Dr. Chisena. Copies of physical therapy reports were also resubmitted. These reports were duplicative of evidence previously before OWCP when it issued its August 30, 2016 decision, and were reviewed by the Board in its July 10, 2018 decision. Evidence or argument that repeats or duplicates evidence previously of record has no evidentiary value and does not constitute a basis for reopening a case.¹² Thus, appellant is not entitled to a review of the merits of her claim based on the third requirement under 20 C.F.R. § 10.606(b)(3).¹³

⁸ *Id.* at § 10.607(a). The one-year period begins on the next day after the date of the original contested decision. 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.

⁹ *Id.* at § 10.608(a); *see J.W.*, Docket No. 19-1795 (issued March 13, 2020).

¹⁰ *Id.* at § 10.608(b).

¹¹ *M.G.*, Docket No. 18-0654 (issued October 17, 2018).

¹² *See B.O.*, Docket No. 20-0156 (issued May 13, 2020); *M.G., id.*; *D.K., supra* note 7.

¹³ *Id.*

Appellant did not show that OWCP erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by OWCP, or submit relevant and pertinent evidence not previously considered. Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.¹⁴

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 July 2, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 29, 2020
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

¹⁴ *H.A.*, *supra* note 6; *A.F.*, Docket No. 18-1154 (issued January 17, 2019); *see A.R.*, Docket No. 16-1416 (issued April 10, 2017); *A.M.*, Docket No. 16-0499 (issued June 28, 2016); *A.K.*, Docket No. 09-2032 (issued August 3, 2010); *M.E.*, 58 ECAB 694 (2007); *Susan A. Filkins*, 57 ECAB 630 (2006) (when a request for reconsideration does not meet at least one of the three requirements enumerated under 20 C.F.R. § 10.606(b), OWCP will deny the request for reconsideration without reopening the case for a review on the merits).