

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 November 16, 2018 appellant, then a 46-year-old legal assistant, filed a traumatic injury claim (Form CA-1) alleging that on November 15, 2018 she sustained a back injury when she reached into her overhead cubicle and felt back pain while in the performance of duty.⁴ She did not initially stop work.

In a November 20, 2018 report, Dr. Taufiq Azamy, a neurologist, noted appellant's history of injury and physical examination findings. He indicated that she was disabled from work. Dr. Azamy opined, within a reasonable degree of medical certainty, that the employment injury was a competent provocative cause of appellant's disability and, thus, "there is causal relationship."

A November 27, 2018 magnetic resonance imaging (MRI) scan of the lumbar spine interpreted by Dr. Mark Lodespoto, a Board-certified diagnostic radiologist, revealed lumbar multilevel discopathy, L3-4 and L4-5 herniations, L2-3 and L5-S1 annular bulges, spinal canal and nerve root impingement, conus preserved, discogenic end plate irregularities, hypolordosis, minimal dextroscoliosis, and no gross lesions.

In a December 3, 2018 report, Dr. Azamy advised that an MRI scan of appellant's lumbar spine revealed multiple herniated discs. He diagnosed lumbar spine herniated disc, rule out lumbosacral radiculopathy, and lumbar spine sprain/strain.

Dr. Azamy treated appellant on December 17, 2018 and diagnosed lumbar spine herniated disc, rule out lumbosacral radiculopathy, lumbar sprain/strain. He recommended physical therapy and completed a disability certificate, which indicated that appellant was medically disabled from work for two more weeks. In progress reports dated December 28, 2018 and January 11, 2019, Dr. Azamy continued to note appellant's diagnoses and continued to place appellant off work.

In a development letter dated January 22, 2019, OWCP noted that when appellant's claim was first received, it appeared to be a minor injury that resulted in minimal or no lost time from work, payment of a limited amount of medical expenses was administratively approved. However, the claim was being reopened. OWCP advised appellant of the deficiencies of her claim and instructed her as to the factual and medical evidence necessary to establish her claim. It provided her a questionnaire to complete regarding the circumstances of the claimed November 15, 2018 employment incident. OWCP afforded appellant 30 days to submit the necessary evidence.

Appellant provided a February 8, 2019 statement describing the claimed employment incident. She reiterated that she was reaching for something overhead in her work cubicle when

⁴ Appellant has a prior claim for a March 20, 2012 traumatic injury accepted for sprain of back, lumbar region under OWCP File No. xxxxxx913. Her claims have not been administratively combined.

she felt something pull in her lower back, as if she strained it. Appellant noted shooting pain that felt like sciatic pain radiating down to both legs, especially her right leg.

Dr. Azamy continued to treat appellant and noted diagnoses of lumbar spine herniated disc, rule out lumbar radiculopathy, and lumbar spine sprain/strain. He related that she remained disabled in a January 25, 2019 report, January 26, 2019 disability certificate, and a February 8, 2019 report and disability certificate. In a February 8, 2019 report, Dr. Azamy also reiterated his opinion that “with a reasonable degree of medical certainty, the injury of [appellant] is a competent provocative cause of the impairment and disability and in my opinion there is causal relationship.”

Dr. Azamy, in a March 4, 2019 report, noted that appellant had been under his care for several years for lower back pain, which was a work-related condition. He indicated that she continued to have lower back pain radiating to both legs and that the pain was getting worse with prolonged sitting, standing, lifting, and bending. Dr. Azamy opined that appellant was unable to work for the last four months due to exacerbation of her lower back pain caused by a new work-related injury. He indicated that, in addition to appellant’s low back symptoms, she also suffered from fibromyalgia and had been medically disabled from work since November 15, 2018.

In a March 21, 2019 decision, OWCP accepted that the November 15, 2018 incident occurred, as alleged; however, it denied the claim, finding that the medical evidence of record was insufficient to establish that appellant’s lumbar conditions were causally related to the accepted November 15, 2018 employment incident.

On June 11, 2019 appellant, through counsel, requested reconsideration. Counsel argued that the evidence of record was sufficient to establish the claim. He noted that appellant’s treating physician, Dr. Azamy, treated appellant on November 20, 2018 and recommended an MRI scan. Counsel advised that she was disabled from work, provided diagnoses, and opined “clearly and unequivocally that with a reasonable degree of medical certainty, that the injury suffered by [appellant] is the provocative cause of her impairment and disability.” He also referred to Dr. Azamy’s March 4, 2019 report and argued that he “could not be any clearer, or more unequivocal regarding causal relationship.” Counsel argued that to require appellant to remove “all possible doubt” would violate appellant’s rights. He further argued that appellant had a preexisting lower back condition that was established as work related under OWCP File No. xxxxxx913; therefore, current exacerbation of that condition was work related as well. No additional medical evidence was received.

By decision dated September 24, 2019, OWCP denied appellant’s request for reconsideration of the merits of the claim.

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.⁵

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or an argument which: (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.⁶

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.⁷ If it chooses to grant reconsideration, 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

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 November 20, 2018 and March 4, 2019 reports from Dr. Azamy could not be any clearer, or more unequivocal regarding causal relationship. He further argued that and requiring appellant to remove "all possible doubt" would violate her rights. Counsel noted that appellant had established a preexisting lower back condition as work related under OWCP File No. xxxxxx913. The medical reports cited by counsel were previously considered by OWCP in the March 21, 2019 merit decision dated. Counsel's arguments regarding the sufficiency of the medical evidence were therefore considered by OWCP in its prior decision. As the Board has held, evidence or argument that repeats or duplicates evidence previously of

⁵ 5 U.S.C. § 8128(a); *see A.H.*, Docket No. 19-1731 (issued March 23, 2020); *see L.D.*, Docket No. 18-1468 (issued February 11, 2019); *see also V.P.*, Docket No. 17-1287 (issued October 10, 2017); *D.L.*, Docket No. 09-1549 (issued February 23, 2010); *W.C.*, 59 ECAB 372 (2008).

⁶ 20 C.F.R. § 10.606(b)(3); *see L.D., id.*; *see also L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

⁷ *Id.* at § 10.607(a). The one-year period begins on the next day after the date of the originally 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 the merit 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.

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).

record has no evidentiary value and does not constitute a basis for reopening a case.¹⁰ Appellant's request for reconsideration did not show that OWCP erroneously applied or interpreted a specific point of law, nor did it advance a relevant legal argument not previously considered by OWCP. Accordingly, appellant is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under 29 C.F.R. § 10.606(b)(3).¹¹

No additional evidence was received with appellant's request for reconsideration. As appellant did not submit any relevant and pertinent new medical evidence with her request for reconsideration, she is not entitled to a merit review based on the third 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). 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 September 24, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 11, 2020
Washington, DC

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

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

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

¹⁰ *B.O.*, Docket No. 20-0156 (issued May 13, 2020); *D.K.*, 59 ECAB 141 (2007).

¹¹ *See C.B.*, Docket No. 19-0464 (issued May 22, 2020); *C.B.*, Docket No. 18-1108 (issued January 22, 2019).