

FACTUAL HISTORY

On December 21, 2020 appellant, then a 37-year-old supervisory public health veterinarian, filed a traumatic injury claim (Form CA-1) alleging that she fell on her left side and injured her left shoulder, hip, and leg on that date when she slipped on the waxed floor of an office foyer while in the performance of duty.² She related that there were no rugs provided to wipe her feet, and that following the fall she experienced stiffness in her left shoulder and neck, as well as sharp pain extending from her left hip to her knee. Appellant did not stop work.

A report of a previous magnetic resonance imaging (MRI) scan of the lumbar spine dated November 14, 2019 noted a history of low back pain and foot numbness after a fall. The study revealed lateral recess stenosis at L4-L5 due to disc protrusions.

In a December 21, 2020 witness statement, D.A., appellant's coworker, indicated that on that date she heard a scream and observed appellant laying on the floor in the employing establishment's foyer and helped her up.

In a January 22, 2021 medical report, Dr. Michael H. McGraw, a Board-certified orthopedic surgeon and sports medicine specialist, indicated that appellant presented for follow-up of a left hip surgery and also reported new complaints of left shoulder and low back pain, which she attributed to falling at work on a slippery floor. He performed a physical examination and obtained x-rays, which did not demonstrate any evidence of fracture or dislocation of the left shoulder or lumbar spine. Dr. McGraw diagnosed left shoulder rotator cuff syndrome and low back muscle pain and administered a cortisone injection to the left subacromial space.

In a March 9, 2021 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed and provided a questionnaire for her completion. OWCP afforded her 30 days to submit additional evidence and to respond to its inquiries.

In a March 16, 2021 follow-up report, Dr. McGraw performed a physical examination and diagnosed ongoing left shoulder and radicular symptoms of the lower extremities. He recommended an MRI scan of the left shoulder and lumbar spine.

In an April 14, 2021 report, Dr. Thomas Williams, a chiropractor, noted that appellant related complaints of pain on the left side of her body including the sacroiliac area, posterior thigh, posterior knee, neck, trapezius, mid-thoracic, triceps, and posterior forearm, which she attributed to a fall at work on December 21, 2020. He performed an examination and obtained x-rays, which revealed vertebral subluxation at C5, C6, C7, left and right pelvis, sacrum, and T1. Dr. Williams diagnosed cervicalgia, segmental and somatic dysfunction of the cervical and pelvic regions, cervical radiculopathy, and left-sided sciatica.

OWCP also received an April 19, 2021 follow-up report by Dr. Williams.

² OWCP assigned the present claim OWCP File No. xxxxxx486. The record reflects that appellant previously filed a traumatic injury claim on March 5, 2019 alleging that she injured her neck, back, and left hand, shoulder and hip under OWCP File No. xxxxxx171. The claims have not been administratively combined by OWCP.

By decision dated April 26, 2021, OWCP accepted that the December 21, 2020 employment incident occurred as alleged. However, it denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish a medical diagnosis in connection with the accepted December 21, 2020 employment incident. Consequently, OWCP found that she had not met the requirements to establish an injury as defined by FECA.

On May 6, 2021 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review. In support of her request, she submitted additional reports of Dr. Williams dated April 21 through June 17, 2021, who diagnosed subluxations at the left and right pelvis, sacrum, C3, C5, C6, T5, L3, and L5.

By decision dated August 11, 2021, OWCP's hearing representative affirmed the April 26, 2021 decision, as modified to find that the medical evidence of record was sufficient to establish a diagnosed medical condition in connection with the accepted employment incident. The hearing representative noted that Dr. Williams had diagnosed appellant with spinal subluxations as demonstrated by x-ray. The claim remained denied, however, because the medical evidence was insufficient to establish causal relationship between appellant's diagnosed conditions and the accepted December 21, 2020 employment incident.

On October 4, 2021 appellant requested reconsideration of the August 11, 2021 decision. In support of her request, she submitted a September 28, 2021 narrative report by Dr. Williams, who noted her history of previous low back discomfort, which had resolved, followed by a slip and fall at work on December 21, 2020. Dr. Williams diagnosed subluxations and misalignments as a result of the December 21, 2020 employment incident.

By decision dated December 7, 2021, OWCP denied modification of the August 11, 2021 decision, noting that Dr. Williams' medical opinion was insufficiently rationalized to establish causal relationship between appellant's diagnosed spinal subluxations and the accepted December 21, 2020 employment incident.

On May 24, 2022 appellant requested reconsideration of the December 7, 2021 decision. In support of the request, she submitted a May 24, 2022 narrative report by Dr. Williams, who explained that she sustained an acceleration/deceleration whiplash injury to the cervical and lumbar/pelvic spinal areas on December 21, 2020 and that her complaints and treatment were the direct result of the workplace fall.

By decision dated July 27, 2022, 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.³

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.⁴

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.⁵ If it 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

ANALYSIS

The Board finds that OWCP improperly denied appellant's request for reconsideration of the merits of her claim.

The underlying issue on reconsideration is the medical question of whether appellant's diagnosed spinal subluxations were causally related to the accepted December 21, 2020 employment incident. With her May 24, 2022 reconsideration request, she submitted a narrative report of even date, wherein Dr. Williams diagnosed vertebral subluxations in the cervical and lumbo-pelvic spines due to an acceleration/deceleration whiplash injury to the cervical and lumbar/pelvic spinal areas on December 21, 2020. The Board finds that, as the May 24, 2022 report addresses the underlying issue of causal relationship between appellant's diagnosed medical conditions and the accepted December 21, 2020 employment incident, the report constitutes relevant and pertinent new evidence that is not substantially similar to evidence previously of

³ 5 U.S.C. § 8128(a); *see M.S.*, Docket No. 19-1001 (issued December 9, 2019); *L.D.*, Docket No. 18-1468 (issued February 11, 2019); *see also V.P.*, Docket No. 17-1287 (issued October 10, 2017); *W.C.*, 59 ECAB 372 (2008).

⁴ 20 C.F.R. § 10.606(b)(3); *see also E.W.*, Docket No. 19-1393 (issued January 29, 2020); *L.D., id.*; *B.W.*, Docket No. 18-1259 (issued January 25, 2019).

⁵ *Id.* at § 10.607(a). The one-year period begins on the next day after the date of the original contested decision. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (September 2020). 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.

⁶ *Id.* at § 10.608(a); *see also Y.H.*, Docket No. 18-1618 (issued January 21, 2020); *R.W.*, Docket No. 18-1324 (issued January 21, 2020); *M.S.*, 59 ECAB 231 (2007).

⁷ *Id.* at § 10.608(b); *D.C.*, Docket No. 19-0873 (issued January 27, 2020); *M.S.*, Docket No. 19-0291 (issued June 21, 2019).

record. Therefore, the submission of this evidence requires reopening of appellant's claim for merit review, pursuant to the third above-noted requirement of 20 C.F.R. § 10.606(b)(3).⁸

In addition, OWCP's procedures provide that cases should be administratively combined when correct adjudication of the issues depends on frequent cross-referencing between files.⁹ For example, if a new injury case is reported for an employee who previously filed an injury claim for a similar condition or the same part of the body, doubling is required.¹⁰ Herein, appellant's claims under OWCP File Nos. xxxxxx486 and xxxxxx171 both involve injuries to her left leg, hip, shoulder, and neck. Thus, for a full and fair adjudication, upon return of the case record, OWCP shall administratively combine the current case record with OWCP File No. xxxxxx171, so that it can consider all relevant claim files and accompanying evidence in adjudicating the present claim.¹¹

The Board will therefore set aside OWCP's July 27, 2022 decision and remand the case for an appropriate merit decision.

CONCLUSION

The Board finds that OWCP improperly denied appellant's request for reconsideration of the merits of her claim.

⁸ See *R.L.*, Docket No. 21-0220 (issued October 19, 2021); *L.M.*, Docket No. 20-1185 (issued January 13, 2021); *C.H.*, Docket No. 17-1065 (issued December 14, 2017); *J.W.*, Docket No. 18-0822 (issued July 1, 2020); *D.M.*, Docket No. 10-1844 (issued May 10, 2011); *Kenneth R. Mroczkowski*, 40 ECAB 855 (1989).

⁹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance and Management*, Chapter 2.400.8c (February 2000).

¹⁰ *Id.*; *M.L.*, Docket No. 20-1176 (issued April 29, 2021); *L.M.*, Docket No. 19-1490 (issued January 29, 2020); *L.H.*, Docket No. 18-1777 (issued July 2, 2019).

¹¹ *Supra* note 9 at Chapter 2.400.8c(1); *W.D.*, Docket No. 19-0961 (issued March 31, 2021); *L.P.*, Docket Nos. 18-1558, 18-1568 (issued June 21, 2019).

ORDER

IT IS HEREBY ORDERED THAT the July 27, 2022 decision of the Office of Workers' Compensation Programs is reversed and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: December 13, 2023
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board