

<sup>2</sup> The Board notes that, following the January 7, 2021 decision, appellant submitted additional evidence to the Board on appeal. However, the Board's *Rules of Procedures* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

## **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 April 18, 2017 appellant, then a 54-year-old revenue agent, filed a traumatic injury claim (Form CA-1) alleging that on April 13, 2017 she sustained low back and lower abdominal injuries when a chair she was about to sit in rolled from under her, causing her to fall sideways onto the floor while in the performance of duty. In a supporting statement, she noted the immediate onset of tingling in the lumbar spine, which progressed overnight to significant pain.

Prior to the present claim, appellant had filed claims for previous employment injuries accepted by OWCP: OWCP File No. xxxxxx763, accepted for cervical spine subluxations at C3, C5, and C7 sustained in a September 11, 1987 work-related motor vehicle accident; OWCP File No. xxxxxx505, accepted for a lumbar strain sustained on August 20, 1996 when she lifted a heavy case file; and OWCP File No. xxxxxx606, accepted for bilateral carpal tunnel syndrome, right epicondylitis, and bilateral shoulder tendinitis.

In an April 19, 2017 report, Dr. Jane Wu, an internist, recounted that on April 13, 2017, appellant had fallen from a chair at work and had developed vaginal bleeding and lower abdominal pain. On examination, she observed tenderness to palpation of both lower abdominal quadrants. Dr. Wu diagnosed diarrhea and nausea. She prescribed medication.

In an April 27, 2017 report, Dr. J. Alex Lira, a Board-certified internist, diagnosed right-sided neck pain and low back pain. He ordered x-rays of the cervical and lumbar spine. April 27, 2017 x-rays of the cervical spine demonstrated mild degenerative disc disease at C5-6 with mild bilateral neural foraminal narrowing, greater on the right. April 27, 2017 x-rays of the lumbar spine demonstrated mild degenerative disc narrowing at L4-5 and L5-S1, accentuated by facet sclerosis and hypertrophy, grade 1 anterior listhesis of L4 relative to L5 secondary to facet hypertrophy.

In a report of April 27, 2017, Dr. Fidel F. Pinzon, a Board-certified anatomic pathologist, opined that appellant had injured her neck and low back while at work on April 13, 2017, when she sat down on a chair and fell to the floor.<sup>3</sup>

In a May 23, 2017 work slip, Dr. Deslin Thomas, a Board-certified family practitioner, held appellant off from work that day and returned her to work effective May 24, 2017.

On June 29, 2017 appellant filed a claim for compensation (Form CA-7) for disability from work for the period June 4 through 24, 2017.

---

<sup>3</sup> OWCP also received an April 14, 2017 work slip and report by Daniel H. Tran, a physician assistant, and reports dated from April 14 through June 30, 2017 by Stephen A. Harvey, a physician assistant.

In a development letter dated July 10, 2017, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence required and provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit the necessary evidence.

On July 11 and 27, 2017 appellant filed Form CA-7 claims for disability from work for the period June 25 to July 22, 2017.

By decision dated August 31, 2017, OWCP accepted that the April 13, 2017 employment incident occurred as alleged, but denied the claim as the medical evidence of record was insufficient to establish a medical diagnosis in connection with the accepted employment incident. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

A December 9, 2017 magnetic resonance imaging (MRI) scan of the lumbar spine demonstrated severe facet degeneration at L4-5 with spondylolisthesis, lateral recess stenosis, and foraminal stenosis.

In a June 16, 2018 duty status report (Form CA-17), Dr. Bryan X. Lee, a pain management specialist, recounted the April 13, 2017 employment incident and diagnosed lumbar and cervical facet syndrome with chronic pain and lumbar stenosis. He noted work restrictions.

On July 31, 2018 appellant requested reconsideration.

In a September 18, 2018 attending physician's report (Form CA-20), Dr. Lee diagnosed cervical disc degeneration, lumbar disc degeneration, and lumbar stenosis. He opined that the lumbar spinal disc degeneration was causally related to the April 13, 2017 employment incident. Dr. Lee returned appellant to light-duty work with restrictions.

In a September 18, 2018 Form CA-17, Dr. Lee opined that appellant's lumbar disc disease had been caused by the April 13, 2017 employment incident. He returned appellant to full-time light-duty work with restrictions.

By decision dated October 29, 2018, OWCP modified its August 31, 2017 decision finding that a medical diagnosis was provided. However, the claim remained denied as causal relationship had not been established.

In an August 15, 2019 Form CA-20, Dr. Lee opined, with an affirmative check mark, that the April 13, 2017 employment incident had caused lumbar disc disease,<sup>4</sup> spinal stenosis, and facet syndrome. He noted that her "desk job" would increase back and neck pain. Dr. Lee found appellant totally disabled from work for the period August 15 through October 25, 2019.

---

<sup>4</sup> A July 15, 2019 MRI scan of the cervical spine demonstrated multilevel degenerative disc disease without central canal stenosis or neuroforaminal narrowing.

In an August 15, 2019 Form CA-17, Dr. Lee diagnosed cervical disc disease and lumbar spinal stenosis. He indicated that these conditions were causally related to the April 13, 2017 employment incident.

On October 15, 2019 appellant requested reconsideration. She contended that the April 13, 2017 employment incident had aggravated her prior employment injuries.

On October 15, 2019 OWCP received operative reports by Dr. Lee dated from February 27 through July 29, 2019 of a series of right-sided L4-5 intra-articular injections.

By decision dated January 10, 2020, OWCP denied modification of the prior decision.

On January 16 and February 6, 2020 appellant underwent a series of cervical intra-articular injections performed by Dr. Marc E. Lynch, an osteopathic physician specializing in pain management.

On March 3, 2020 OWCP received an April 20, 2017 e-mail from the employing establishment regarding appellant's request to have her desk chair repaired.

On March 3, 2020 OWCP received a July 19, 2019 report by Dr. Albert Tsai, a Board-certified orthopedic surgeon, who recounted that appellant injured her left shoulder on May 29, 2019 when she pulled paper from a jammed printer. Dr. Tsai obtained left shoulder x-rays, which were negative. He prescribed an intra-articular injection and physical therapy to address a left rotator cuff issue. Dr. Tsai opined that appellant's symptoms of numbness and pain in the left upper extremity and hand were likely related to her neck.

On March 3, 2020 OWCP received October 17, 2019 and January 13, 2020 reports by Dr. Lynch, who noted a history of neck pain that had developed gradually over several months. Dr. Lynch diagnosed chronic pain syndrome, cervical radiculitis, cervical spondylosis with myelopathy, cervicgia, disc disorder of the cervical region, and muscle spasms of neck.

On March 6, 2020 appellant requested reconsideration. She contended that the April 13, 2017 employment incident caused a cervical spine injury and aggravated employment injuries accepted under prior claims.

By decision dated March 26, 2020, OWCP denied reconsideration of the merits of appellant's claim, finding that the additional evidence submitted was duplicative or irrelevant to the claim.

On October 21, 2020 appellant requested reconsideration. In a supporting statement, dated October 15, 2020, she contended that OWCP should accept her claim and grant COP as it had accepted the April 13, 2017 employment incident as factual, granted COP under a similar situation under OWCP File No. xxxxxx505, and had initially processed the present claim as a limited short-term closure.

By decision dated January 7, 2021, OWCP denied appellant's request for reconsideration of the merits of her 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 or her own motion or on application.<sup>5</sup>

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or 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.<sup>6</sup>

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.<sup>7</sup> If it chooses to grant reconsideration, it reopens and reviews the case on its merits.<sup>8</sup> If the request is timely, but fails to meet at least one of the requirements for reconsideration, OWCP will deny the request for reconsideration.<sup>9</sup>

## **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).

In her reconsideration request, appellant did not show that OWCP erroneously applied or interpreted a specific point of law and did not advance a new and relevant legal argument not previously considered. Consequently, she was not entitled to a review of the merits based on the first and second above-noted requirements under 20 C.F.R. § 10.606(b)(3).<sup>10</sup>

The Board further finds that appellant did not submit relevant and pertinent new evidence not previously considered by OWCP. Appellant's reconsideration request consisted of her October 15, 2020 statement. She contended that OWCP should accept her claim as it had accepted

---

<sup>5</sup> 5 U.S.C. § 8128(a); *see T.K.*, Docket No. 19-1700 (issued April 30, 2020); *L.D.*, Docket No. 18-1468 (issued February 11, 2019); *W.C.*, 59 ECAB 372 (2008).

<sup>6</sup> 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).

<sup>7</sup> *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 (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.

<sup>8</sup> *Id.* at § 10.608(a); *F.V.*, Docket No. 18-0230 (issued May 8, 2020); *see also M.S.*, 59 ECAB 231 (2007).

<sup>9</sup> *Id.* at § 10.608(b); *S.K.*, Docket No. 22-0248 (issued June 27, 2022); *B.S.*, Docket No. 20-0927 (issued January 29, 2021); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

<sup>10</sup> 20 C.F.R. § 10.606(b)(3); *see L.D.*, *supra* note 6; *see also L.G.*, *supra* note 6; *C.N.*, *supra* note 6.

the April 13, 2017 employment incident as factual, processed the claim as a short-form closure, and had granted COP under OWCP File No. xxxxxx505. The Board finds that appellant's statement is irrelevant to the underlying medical issue of whether she had established low back and lower abdominal injuries causally related to the accepted April 13, 2017 employment incident. The Board has held that the submission of evidence that does not address the particular issue involved does not constitute a basis for reopening a case.<sup>11</sup> Thus, appellant is not entitled to a review based on the third above-noted requirement under 20 C.F.R. § 10.606(b)(3).<sup>12</sup>

Accordingly, the Board finds that appellant has not met any of the requirements under 20 C.F.R. § 10.606(b)(3). Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.<sup>13</sup>

---

<sup>11</sup> *L.W.*, Docket No. 21-0942 (issued May 11, 2022); *see F.H.*, Docket No. 20-0309 (issued January 26, 2021); *T.T.*, Docket No. 19-0319 (issued October 26, 2020); *Alan G. Williams*, 52 ECAB 180 (2000); *Jacqueline M. Nixon-Steward*, 52 ECB 140 (2000); *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

<sup>12</sup> *Supra* note 6 at § 10.606(b)(3); *id.*

<sup>13</sup> *See D.R.*, Docket No. 18-0357 (issued July 2, 2018); *A.K.*, Docket No. 09-2032 (issued August 3, 2010); *M.E.*, 58 ECAB 694 (2007); *Susan A. Filkins*, 57 ECAB 630 (2006).

**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 January 7, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 6, 2023  
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