

ISSUE

The issue is whether OWCP properly refused to reopen appellant's case for further review of the merits pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On March 12, 2013 appellant, then a 59-year-old mail handler, filed a traumatic injury claim alleging that on March 7, 2013 she sustained lower back pain due to unloading trucks.

In a March 7, 2013 treatment note, Dr. Abdullah Baig, an examining Board-certified internist, stated that appellant was seen for chronic back pain and was released to light-duty work.

Dr. Arsen H. Manugian, a treating Board-certified orthopedic surgeon, reported on April 2, 2013 that appellant was seen that day for a lumbar complaint. He related that on March 7, 2013 she reported an acute onset of pain due to pushing a container of mail weighing approximately 300 pounds. Dr. Manugian noted that in October 2012 appellant was informed that she had degenerative arthritis. Physical examination findings revealed a hyperlordotic lumbar spine, diffuse tenderness over the lower lumbar area and restricted left-side rotation, extension and lateral flexion. A review of a lumbar x-ray showed multilevel degenerative changes. Dr. Manugian diagnosed lumbar degenerative disc disease with lumbar radiculopathy.

On April 9, 2013 Dr. Manugian diagnosed low back discogenic pain and lumbar radiculopathy. He provided physical findings and noted an injury date of March 7, 2013. Dr. Manugian advised that appellant was capable of working with work restrictions.

In a May 16, 2013 letter, OWCP informed appellant that initially her claim had been considered a minor injury so that payment of a limited amount of medical expenses had been administratively approved without adjudicating the merits of the claim. Appellant was advised that her claim had been reopened for consideration and that the evidence of record was insufficient to support her claim. OWCP advised her as to the medical and factual evidence required to establish her claim. Appellant was given 30 days to provide this information.

In a May 21, 2013 report, Dr. Manugian stated that appellant was seen for lumbar complaints and noted a March 7, 2013 injury date. Appellant related that she continued to have back pain and worked in a modified-job position. The physical examination revealed moderate back motion restriction and tenderness over the anterior thigh and left greater trochanter. Dr. Manugian diagnosed lumbar radiculopathy and lumbar degenerative disc disease. He noted that appellant could work with restrictions as previously indicated.

By decision dated June 27, 2013, OWCP denied appellant's claim. It found that the medical evidence was insufficient to establish that her back condition was causally related to the March 7, 2013 incident.

On July 5, 2013 OWCP received an April 10, 2013 attending physician's report (Form CA-20) from Dr. Manugian and an occupational disease claim form signed by appellant on

June 20, 2013.³ Dr. Manugian diagnosed degenerative lumbar disc disease and lumbar radiculopathy. He listed an injury date of March 7, 2013 and noted that appellant injured herself while pushing mail containers weighing more than 300 pounds. Dr. Manugian checked “yes” to the question of whether the diagnosed condition was caused or aggravated by her employment.

In a July 30, 2013 report, Dr. Manugian noted the history of the injury. He diagnosed discogenic low back pain, lumbosacral spondylosis and lumbar degenerative disc disease. Dr. Manugian stated that appellant’s degenerative changes were not caused by the March 7, 2013 incident, but that the incident had aggravated her preexisting lumbar condition.

In a form dated October 21, 2013, appellant requested reconsideration. She noted the duties she performed every day and that Dr. Manugian checked “yes” on a Form CA-20 as to whether her duties aggravated her condition.

By decision dated November 1, 2013, OWCP denied reconsideration. It found that the evidence submitted to support the request was irrelevant, repetitious and cumulative.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,⁴ OWCP’s regulations provide that 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.⁵ To be entitled to a merit review of an OWCP decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.⁶ When a claimant fails to meet one of the above standards, OWCP will deny the application for reconsideration without reopening the case for review on the merits.⁷

ANALYSIS

On October 21, 2013 appellant disagreed with OWCP’s June 27, 2013 decision, finding that her lumbar back condition had not been caused or aggravated by the March 7, 2013 work incident. She requested reconsideration. The Board finds that appellant did not establish that

³ In the June 20, 2013 occupational disease claim, appellant attributed her degenerative disc disease to her employment and that her supervisor filled out the wrong claim form. She indicated that she first became aware of the condition on April 2, 2013 but was aware of its connection to her employment on March 7, 2013.

⁴ 5 U.S.C. §§ 8101-8193. Section 8128(a) of FECA provides that the Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application.

⁵ 20 C.F.R. § 10.606(b)(3). See *J.M.*, Docket No. 09-218 (issued July 24, 2009); *Susan A. Filkins*, 57 ECAB 630 (2006).

⁶ *Id.* at § 10.607(a). See *S.J.*, Docket No. 08-2048 (issued July 9, 2009); *Robert G. Burns*, 57 ECAB 657 (2006).

⁷ *Id.* at § 10.608(b). See *Y.S.*, Docket No. 08-440 (issued March 16, 2009); *Tina M. Parrelli-Ball*, 57 ECAB 598 (2006).

OWCP erroneously applied or interpreted a specific point of law. Moreover, she did not advance a relevant legal argument not previously considered.

Appellant submitted an April 10, 2013 CA-20 form report and a July 30, 2013 report from Dr. Manugian. The CA-20 report reiterated the diagnosed degenerative lumbar disc disease and lumbar radiculopathy and described the employment incident that appellant was injured at work due to pushing a heavy container of mail on March 7, 2013. Dr. Manugian checked “yes” that appellant’s injury was caused or aggravated by the March 7, 2013 incident. In the July 30, 2013 report, he informed her that, while her degenerative disc disease had not been caused by the March 7, 2013 work incident, the incident had aggravated the condition. The Board finds that this evidence is duplicative of the prior reports submitted by Dr. Manugian. The reports are essentially repetitious of materials previously submitted by Dr. Manugian and reviewed by OWCP. As Dr. Manugian’s reports are duplicative of his earlier reports, the Board finds that it is insufficient to reopen appellant’s claim for further merit review.⁸

The Board finds that appellant did not submit arguments or evidence showing that OWCP erroneously applied or interpreted a specific point of law; advanced a relevant legal argument not previously considered; or constituted relevant and pertinent new evidence not previously considered by OWCP. Appellant did not meet any of the regulatory requirements and OWCP properly declined to reopen her claim for further merit review.⁹

CONCLUSION

The Board finds that OWCP properly refused to reopen appellant’s case for further review of the merits pursuant to 5 U.S.C. § 8128(a).

⁸ *Eugene F. Butler*, 36 ECAB 393 (1984).

⁹ *A.K.*, Docket No. 09-2032 (issued August 3, 2010); *M.E.*, 58 ECAB 694 (2007); *Susan A. Filkins*, 57 ECAB 630 (2006) (when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), OWCP will deny the application for reconsideration without reopening the case for a review on the merits).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 1, 2013 is affirmed.

Issued: July 29, 2014
Washington, DC

Patricia Howard Fitzgerald, Acting Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board