United States Department of Labor
Employees' Compensation Appeals Board

C.M., Appellant	)	
and	)	**Docket No. 14-1010**
	)	**Issued: September 19, 2014**
DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE, Holtsville, NY, Employer	)	

Appearances:
Thomas S. Harkins, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On March 27, 2014 appellant, through her attorney, filed a timely appeal of an October 8, 2013 decision of the Office of Workers' Compensation Programs (OWCP) which denied her request for reconsideration without conducting a merit review. Because more than 180 days has elapsed since the most recent merit decision dated August 14, 2012 to the filing of this appeal on March 27, 2014, the Board lacks jurisdiction to review the merits of the claim pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3.

ISSUE

The issue is whether OWCP properly denied appellant's request for reconsideration under 5 U.S.C. § 8128(a).

[1] 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

On March 19, 2012 appellant, then a 52-year-old accounts manager, filed an occupational disease claim alleging that she developed neck and arm pain and cervical radiculopathy due to prolonged sitting at a desk and working on a computer. She became aware of her condition on December 12, 2011 and realized it was causally related to her work on December 21, 2011.

On May 17, 2012 OWCP advised appellant of the evidence needed to establish her claim. It requested that she submit a physician's reasoned opinion addressing the causal relationship of her claimed condition to the implicated work factors.

Appellant submitted a February 17, 2012 magnetic resonance imaging (MRI) scan of the cervical spine. It revealed a broad-based disc osteophyte complex at C4-5 flattening the anterior aspect of the cervical cord, right neural foraminal narrowing at C5-6 and C6-7 and a disc protrusion at C5-6. Appellant submitted a June 13, 2012 report from Dr. Vishnu Seodat, a Board-certified family practitioner, who treated her for right thumb pain, numbness, tingling, tenosynovitis, cervical radiculopathy and right upper extremity pain. Dr. Seodat noted an electromyogram (EMG) revealed right mid-to-lower cervical radiculopathy for which she underwent cervical steroid injections. He advised that appellant was unable to work and struggled performing activities of daily living. Dr. Seodat noted her right upper extremity pain continued due to her job which consisted of continuous typing and computer use.

Appellant was also treated for neck and right arm pain by Dr. Sathish Subbaiah, a Board-certified neurologist, on July 24, 2012. She reported her job required computer work and during December, she experienced moderate-to-severe right neck and upper arm pain with numbness. Dr. Seodat diagnosed cervical radiculopathy, cervical strain and cervicalgia. He noted conservative treatment failed and recommended surgery.

In a decision dated August 14, 2012, OWCP denied appellant's claim. It accepted the work activities alleged but found that the medical evidence was insufficient to establish that her cervical condition was casually related to work events.

On August 2, 2013 appellant, through her attorney, requested reconsideration. She asserted that she provided rationalized medical evidence to support that she sustained a work-related cervical condition. Appellant submitted a February 17, 2012 cervical spine MRI scan report, a June 13, 2012 report from Dr. Seodat and a July 24, 2012 report from Dr. Subbaiah, all previously of record. A January 27, 2012 EMG revealed mild, active mid-to-lower cervical radiculopathy. Appellant submitted a November 28, 2012 report from a physician's assistant, who treated her for radiating neck pain. Dr. Seodat diagnosed cervical radiculopathy, cervical strain, cervicalgia, cervical disc displacement and lumbar herniated disc.

In a March 19, 2012 report, Dr. Seodat Dr. Jonathan Raanan, a Board-certified physiatrist, treated appellant for neck, shoulder and arm pain. Appellant reported that symptoms began in December 2011 without any inciting event but which were aggravated by prolonged driving, working at a computer, picking up objects and repetitive movement. Dr. Raanan noted limited range of motion of the cervical spine, tenderness of the paraspinal muscles bilaterally, intact sensation in the upper extremities except for the right thumb, intact strength and equal and

symmetrical reflexes in the upper extremities. He noted findings of an MRI scan of the cervical spine and an EMG. Dr. Raanan diagnosed cervicalgia with radicular right arm symptoms, multilevel cervical spondylosis and disc herniations causing foraminal stenosis at C5-6. He recommended epidural steroid injections. On April 2, 2012 Dr. Raanan provided a right C7-T1 interlaminar epidural steroid injection and diagnosed cervical disc herniation.

Appellant was treated by Dr. Subbaiah on January 8, 2013 for radiating neck and arm pain. She reported worsening pain in the cervical spine and right arm when working. Dr. Subbaiah noted diminished sensation in the C6-7 distribution limited range of motion of the neck with pain. He diagnosed cervical radiculopathy, cervical strain, cervicalgia, cervical disc displacement and lumbar herniated disc and recommended epidural steroid injections and physical therapy.

On January 16, 2013 appellant was treated by Dr. Vlada Frankenberger, an osteopath, for neck pain radiating into the bilateral upper extremities. She reported experiencing no trauma to the area but noted her condition worsened since 2012. Dr. Frankenberger noted findings on examination of tenderness of the cervical and lumbar paraspinals, trapezius, supraspinatus and trigger points with sensory diminished at C5 dermatomal distribution. He diagnosed cervical radiculopathy, cervical disc displacement, myalgia and myositis and cervical spondylosis and recommended additional cervical epidural steroid injections.

In an October 8, 2013 decision, OWCP denied appellant's request for reconsideration on the grounds that the evidence submitted was insufficient to warrant further merit review.

LEGAL PRECEDENT

Under section 8128(a) of FECA,[2] OWCP has the discretion to reopen a case for review on the merits. It must exercise this discretion in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations, which provides that a claimant may obtain review of the merits of his or her written application for reconsideration, including all supporting documents, sets forth arguments and contain evidence that:

> "(1) Shows that OWCP erroneously applied or interpreted a specific point of law; or
>
> "(2) Advances a relevant legal argument not previously considered by OWCP; or
>
> "(3) Constitutes relevant and pertinent new evidence not previously considered by OWCP."[3]

[2] *Id.* at § 8128(a).

[3] 20 C.F.R. § 10.606(b)(2).

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by OWCP without review of the merits of the claim.[4]

ANALYSIS

OWCP denied appellant's claim for an occupational disease on the grounds that the medical evidence was insufficient to establish that her claimed conditions were casually related to work events. Thereafter, it denied her reconsideration request, without a merit review.

The issue presented on appeal is whether appellant met any of the requirements of 20 C.F.R. § 10.606(b)(2), requiring OWCP to reopen the case for review of the merits of the claim. In her request for reconsideration, appellant did not show that OWCP erroneously applied or interpreted a specific point of law. In her August 2, 2013 statement, she asserts that she provided rationalized medical evidence to support that she sustained a work-related cervical condition causally related to her employment duties including sitting at a desk, working on a computer and answering telephone calls. Appellant's contention did not identify a legal error by OWCP nor is it a new and relevant legal argument. The underlying issue in this case is whether her diagnosed cervical condition was causally related to her work duties. That is a medical issue which must be addressed by relevant new medical evidence.[5]

Appellant submitted an MRI scan of the cervical spine dated February 17, 2012, a report from Dr. Seodat dated June 13, 2012 and a report from Dr. Subbaiah dated July 24, 2012. However, these reports are duplicative of evidence previously submitted and considered by OWCP in its August 14, 2012 decision. The Board has held evidence that repeats or duplicates that already in the case record has no evidentiary value and does not constitute a basis for reopening a case.[6] Therefore, these reports are insufficient to require OWCP to reopen the claim for a merit review.

Appellant submitted a March 19, 2012 report from Dr. Raanan who treated her for neck, shoulder and arm pain. Dr. Raanan listed diagnoses and advised that her reported symptoms began in December 2011 without any inciting event but were aggravated with prolonged driving, working at a computer, picking up objects and repetitive movement. On April 2, 2012 he performed a right C7-T1 interlaminar epidural steroid injection and diagnosed cervical disc herniation. However, these reports are not relevant because Dr. Raanan did not address the issue of causal relationship. He did not state whether appellant developed a work-related cervical condition or provide any specific opinion on whether her work factors caused or contributed to

[4] *Id.* at § 10.608(b).

[5] *See Bobbie F. Cowart*, 55 ECAB 746 (2004).

[6] *See Daniel Deparini*, 44 ECAB 657 (1993); *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984).

the diagnosed medical condition.[7] Therefore, this evidence is not relevant and is insufficient to warrant reopening the case for a merit review.

Appellant was treated by Dr. Subbaiah on January 8, 2013. Dr. Subbaiah reported worsening pain in the cervical spine and right arm when working. He diagnosed cervical radiculopathy, cervical strain, cervicalgia, cervical disc displacement and lumbar herniated disc and recommended epidural steroid injections and physical therapy. In a January 16, 2013 report, Dr. Frankenberger noted that appellant experienced no trauma to the area but noted her condition worsened since 2012. He diagnosed cervical radiculopathy, cervical disc displacement, myalgia and myositis and cervical spondylosis and recommended additional cervical epidural steroid injections. A January 27, 2012 EMG showed mild, active mid-to-lower cervical radiculopathy. Although these reports are new, they are not relevant because neither Dr. Subbaiah nor Dr. Frakenberger addressed whether appellant developed a cervical condition causally related to her employment duties. Although Drs. Subbaiah and Frankenberger noted appellant's symptoms, they did not provide any opinion on whether appellant developed a cervical condition causally related to her account manager duties. Therefore, this evidence is not relevant and is insufficient to warrant reopening the case for a merit review.

Appellant submitted a November 28, 2012 report from a physician's assistant. However, this evidence is of no probative medical value as the Board has held that a physician's assistant is not competent to render a medical opinion under FECA.[8] Thus, this evidence is not relevant since the underlying issue is medical in nature.

The Board finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(2). 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.

On appeal, appellant through counsel asserts that she submitted sufficient evidence to establish that she developed a cervical condition causally related to her employment duties and that OWCP improperly denied her reconsideration request. As noted, the Board does not have jurisdiction to review the merits of the claim. Appellant did not submit any evidence or argument in support of her reconsideration request that warrants reopening of her claim for a merit review under 20 C.F.R. § 10.606(b)(2).

CONCLUSION

The Board finds that OWCP properly denied appellant's request for reconsideration.

[7] *See C.N.*, Docket No. 08-1569 (issued December 9, 2008) (evidence that does not address the particular issue involved does not constitute a basis for reopening a case).

[8] *See S.E.*, Docket No. 08-2214 (issued May 6, 2009); 5 U.S.C. § 8101(2).

ORDER

IT IS HEREBY ORDERED THAT the October 8, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 19, 2014
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

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

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