

FACTUAL HISTORY

The case was before the Board on a prior appeal. By decision dated July 3, 2013, the Board affirmed a February 1, 2013 OWCP decision denying the claim for compensation.² Appellant had filed a claim on January 5, 2012 alleging that she sustained a spinal nerve injury causally related to repetitive movements as a mail carrier. The Board found that the medical evidence from the attending orthopedic surgeon, Dr. Darryl Miller, was insufficient to establish the claim. As the Board noted, Dr. Miller did not discuss appellant's job duties or provide a complete factual background. In addition, Dr. Miller had indicated only that appellant had been asymptomatic and this was not sufficient medical rationale to support an opinion on causal relationship with employment.

Appellant, through counsel, filed a request for reconsideration dated December 5, 2013 and a September 27, 2013 report from Dr. Miller. In his report Dr. Miller noted that he had seen appellant in November 2012, with magnetic resonance imaging (MRI) scans showing disc protrusion and bilateral foraminal stenosis at C5-6, and disc bulges at C3-7. He stated that appellant continued to have cervical symptomology. Dr. Miller further stated that appellant "previously was employed as a rural mail carrier which involved approximately 1,000 deliveries a day on her route. Additionally, she worked anywhere from five to six days per week. This involved entering and exiting the vehicle as well as rotation of body, torso, neck and upper extremities for the delivery of mail. I explained to [appellant] that due to the fact that she was asymptomatic before this event and with the type of work she does, this is certainly some type of injury that can be attributable to her work[-]related activities."

By decision dated June 2, 2014, OWCP denied merit review of the claim. It found the September 27, 2013 report from Dr. Miller was "substantially similar" to previous evidence of record.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,³ OWCP's regulations provide that a claimant may obtain review of the merits of the claim by submitting a written application for reconsideration that sets forth arguments and contains evidence that either: "(i) shows that OWCP erroneously applied or interpreted a specific point of law; (ii) advances a relevant legal argument not previously considered by OWCP; or (iii) constitutes relevant and pertinent evidence not previously considered by OWCP."⁴ 20 C.F.R. § 10.608(b) states that any application for review that does not meet at least one of the requirements listed in 20 C.F.R. § 10.606(b)(3) will be denied by OWCP without review of the merits of the claim.⁵

² Docket No. 13-900 (issued July 3, 2013).

³ 5 U.S.C. § 8128(a) (providing that "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application").

⁴ 20 C.F.R. § 10.606(b)(3).

⁵ *Id.* at § 10.608(b); *see also Norman W. Hanson*, 45 ECAB 430 (1994).

ANALYSIS

In the present case, appellant submitted on reconsideration a new medical report dated September 27, 2013 from Dr. Miller. The issue is whether the new evidence is “relevant and pertinent” to the medical issue under 20 C.F.R. § 10.606(b)(3). Although OWCP finds that the report was “substantially similar” to his prior reports, the Board finds the September 27, 2013 report is new and relevant evidence.⁶

As the Board discussed in the prior appeal, Dr. Miller’s previous reports had not discussed appellant’s actual job duties or work history. In the September 27, 2013 report, Dr. Miller refers to appellant’s job duties of delivering mail, the amount of mail and the number of days performed. In addition, Dr. Miller for the first time refers to the mechanism of injury and the specific repetitive activity that occurred. In *S.G.*, the claimant submitted on reconsideration a new medical report discussing, for the first time, the employment activity and the mechanism of injury involved.⁷ The Board found this was sufficient to require OWCP to reopen the case for merit review. As the Board noted, appellant is not required to cure all deficiencies in the claim to meet the requirements of 20 C.F.R. § 10.606(b)(3).

In this case the September 27, 2013 report is new, relevant, and pertinent evidence with respect to the medical issue in the case. Pursuant to 20 C.F.R. § 10.606(b)(3), appellant is entitled to a merit review of her claim. The case will be remanded to OWCP for a decision on the merits of the claim for compensation.

CONCLUSION

The Board finds appellant’s application for reconsideration was sufficient to warrant merit review of her claim for compensation.

⁶ The Board has reviewed the September 27, 2013 report by Dr. Miller which was submitted in support of the reconsideration request dated December 5, 2013. That request for merit review was denied by the decision presently before the Board. The September 2013 medical report differs from prior reports such as the medical reports dated June 8 and December 18, 2012.

⁷ Docket No. 12-1107 (issued January 22, 2013).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 2, 2014 is set aside and the case remanded for further action consistent with this decision of the Board.

Issued: August 17, 2015
Washington, DC

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

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board