

**United States Department of Labor
Employees' Compensation Appeals Board**

A.J., Appellant

and

**DEPARTMENT OF THE ARMY, REDSTONE
ARSENAL, AL, Employer**

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**Docket No. 14-1988
Issued: August 26, 2015**

Appearances:
Appellant, pro se
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
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 15, 2015 appellant filed a timely appeal of a May 7, 2014 merit decision and a July 21, 2014 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of the case.²

ISSUES

The issues are: (1) whether appellant has met her burden of proof to establish that she sustained a recurrence of her accepted medical conditions of sprain of the left hip and thigh and sprain of the left sacroiliac joint on June 4, 2013; and (2) whether OWCP properly denied appellant's request for reconsideration on the merits pursuant to 5 U.S.C. § 8128(a).

¹ 5 U.S.C. § 8101 *et seq.*

² Appellant filed a timely request for oral argument, pursuant to 20 C.F.R. § 501.5(b). After exercising its discretion pursuant to 20 C.F.R. § 501.5(a), the Board by a July 23, 2015 order, denied appellant's request because it could adequately address appellant's contentions based on a review of the case record. *Order Denying Request for Oral Argument*, Docket No. 14-1988 (issued July 23, 2015).

FACTUAL HISTORY

On April 20, 2012 appellant, then a 38-year-old human resources specialist, filed a traumatic injury claim alleging that on that date she slipped in the lobby of the employing establishment. She alleged that she pulled a muscle in her hip and thigh. OWCP accepted appellant's claim for sprain of the left hip and thigh and sprain of the left sacroiliac joint on July 12, 2012. Appellant's attending physician, Dr. Cobb Alexander, a Board-certified orthopedic surgeon, completed a note on November 14, 2012, reporting that appellant had returned to full duty and that she had no restrictions. He noted that appellant should be seen on an as needed basis only. Dr. Alexander opined that appellant did not have a residual hamstring injury and from the orthopedic standpoint he had "absolutely nothing else to offer her." He found that appellant could seek treatment from her family doctor for bilateral nocturnal leg cramps.

Appellant requested additional physical therapy on June 25, 2013. Dr. Stephen Babbino, a family practitioner, examined appellant on June 4, 2013 due to leg pain. Appellant reported chronic leg pain in the left thigh with constant aching, muscle spasm, cramping, and pain radiating up to her buttock. Appellant mentioned her April 20, 2012 hamstring injury. On physical examination, Dr. Babbino found that appellant's gait was normal with normal range of motion, no erythema, and no swelling in the left thigh. He noted that appellant demonstrated tenderness to palpation in the left thigh. Dr. Babbino diagnosed sprain/strain of the knee/leg and muscle spasm. He recommended physical therapy on June 28, 2013 because of leg pain and muscle spasm since the April 20, 2012 employment injury.

In a letter dated August 5, 2013, OWCP denied appellant's request for additional physical therapy made through Crestwood Medical Center.

Appellant filed a claim on January 16, 2013 alleging that she sustained a recurrence of a medical condition on June 4, 2013, causally related to her April 20, 2012 employment injury. She stated that she returned to full duty after the April 20, 2012 employment injury. Appellant stated that she continued to experience hamstring spasm and pain, that she occasionally experienced slight pain in her hip after walking long distances, and that she was unable to wear high heels following her injury. She stated that while sitting at her desk at work on June 4, 2013 she experienced pain in her hamstring radiating up to her buttocks and hip as well as leg spasm. Appellant stated that, as nothing worked to calm the pain, she became frightened and sought emergency medical care.

In a letter dated February 19, 2014, OWCP requested additional factual and medical evidence from appellant supporting her recurrence of the need for medical treatment.

On April 25, 2014 Dr. Julie McKibben, a Board-certified preventive medicine and occupational medicine specialist, diagnosed left hip and leg pain. She released appellant to return to work on April 27, 2014.

By decision dated May 7, 2014, OWCP denied appellant's claim for a recurrence of her accepted medical conditions. It found that she was released from medical care due to her accepted condition on November 14, 2012 and returned to full duty on November 14, 2012.

OWCP found that appellant had failed to submit evidence that she required additional medical treatment because her accepted employment injuries worsened without intervening cause.

Appellant requested reconsideration through a form dated and postmarked June 13, 2014 and received by OWCP on June 18, 2014. She alleged that Dr. Alexander directed her to seek additional medical care when needed. Appellant alleged that the claims examiner failed to provide her with full assistance and provided incorrect information regarding the development of her claim.

By decision dated July 21, 2014, OWCP declined to reopen appellant's claim for consideration of the merits as she failed to submit the necessary relevant medical opinion evidence to establish a worsening of her injury-related condition.

LEGAL PRECEDENT -- ISSUE 1

Recurrence of a medical condition means a documented need for further medical treatment after release from treatment for the accepted condition or injury when there is no accompanying work stoppage. Continuous treatment for the original condition or injury is not considered a need for further medical treatment after release from treatment, nor is an examination without treatment.³

Appellant has the burden of establishing that she sustained a recurrence of a medical condition that is causally related to her accepted employment injury. To meet her burden, appellant must furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury and supports that conclusion with sound medical rationale.⁴ Where no such rationale is present, the medical evidence is of diminished probative value.⁵

ANALYSIS -- ISSUE 1

The Board finds that appellant has not established a recurrence of a medical condition. OWCP accepted her traumatic injury claim for sprain of the left hip and thigh and sprain of the left sacroiliac joint. Appellant has claimed the need for additional medical treatment. However, she has failed to submit medical evidence to establish that she required further treatment because of a continuing employment-related condition.

Appellant's attending physician, Dr. Alexander, indicated on November 14, 2012 that appellant had returned to full duty without work restrictions. He opined that she had no residual injury and did not require further orthopedic treatment. This report constituted appellant's release from treatment.

³ 20 C.F.R. § 10.5(y) (2002); *J.H.*, Docket No. 15-0633 (issued July 10, 2015).

⁴ *Ronald A. Eldridge*, 53 ECAB 218 (2001).

⁵ *Albert C. Brown*, 52 ECAB 152 (2000).

Appellant submitted a report dated June 4, 2013 from Dr. Babbino diagnosing sprain/strain of the knee/leg and muscle spasm. Dr. Babbino recommended physical therapy on June 28, 2013 due to leg pain and muscle spasm since the April 20, 2012 injury. On April 25, 2014 Dr. McKibben diagnosed left hip and leg pain and released her to return to work on April 27, 2014.

Appellant must submit an attending physician's report with a description of objective findings and which supports a causal relationship between her current medical condition and the previously accepted sprain of the left hip and thigh and sprain of the left sacroiliac joint.⁶ She has the burden of submitting sufficient medical evidence to document the actual need for further specific medical treatment.⁷ Appellant submitted no such medical evidence in support of her claim for recurrence and thus failed to establish a need for continuing medical treatment. The brief reports from Dr. Babbino and Dr. McKibben did not contain an opinion describing how appellant's accepted conditions, sprain of the left hip and thigh and sprain of the left sacroiliac joint, would have caused a recurrence of her medical condition and would have necessitated medical treatment in 2013 and 2014. This is especially critical given the paucity of medical evidence relating to appellant's accepted condition from 2012 to 2013. As noted, appellant has the burden of proof to submit rationalized medical evidence establishing the relationship of the claimed recurrence to the original injury. The weight of the medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of physician's knowledge of the facts of the case, the medical history provided, the care of analysis manifested, and the medical rationale expressed in support of stated conclusions.

Appellant has not submitted a reasoned opinion from a physician explaining why her condition of June 4, 2013 was causally related to the April 20, 2012 work injury. The Board therefore affirms OWCP's May 7, 2014 decision.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

⁶ See *V.P.*, Docket No. 14-1557 (issued December 2, 2014). OWCP procedures provide that, after 90 days of release from medical care (based on the physician's statement or instruction to return as needed or computed by the claims examiner from the date of last examination), a claimant is responsible for submitting an attending physician's report which contains a description of the objective findings and supports causal relationship between the claimant's current condition and the previously accepted work injury. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.4(b) (June 2013).

⁷ While the medical opinion of a physician supporting causal relationship does not have to reduce the cause or etiology of a disease or condition to an absolute certainty, neither can such opinion be speculative or equivocal. The opinion of a physician supporting causal relationship must be one of reasonable medical certainty that the condition for which compensation is claimed is causally related to federal employment, and such relationship must be supported with affirmative evidence, explained by medical rationale and be based upon a complete and accurate medical and factual background of the claimant. See *Thomas A. Faber*, 50 ECAB 566, 569 (1999); *Samuel Senkow*, 50 ECAB 370, 377 (1999).

LEGAL PRECEDENT -- ISSUE 2

FECA provides in section 8128(a) that OWCP may review an award for or against payment of compensation at any time on its own motion or on application by the claimant.⁸ Section 10.606(b) of the Code of Federal Regulations provide that a claimant may obtain review of the merits of the claim by submitting in writing an application for reconsideration which sets forth arguments or evidence and shows that OWCP erroneously applied or interpreted a specific point of law; or advances a relevant legal argument not previously considered by OWCP; or includes relevant and pertinent new evidence not previously considered by OWCP.⁹ Section 10.608 of OWCP's regulations provide that when a request for reconsideration is timely, but does meet at least one of these three requirements, OWCP will deny the application for review without reopening the case for a review on the merits.¹⁰

The Board has held that the submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case. The Board has also held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case. While the reopening of a case may be predicated solely on a legal premise not previously considered, such reopening is not required where the legal contention does not have a reasonable color of validity.¹¹

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly declined to reopen appellant's claim for consideration of the merits on July 21, 2014. Appellant requested reconsideration through a form dated and postmarked June 13, 2014 and received by OWCP on June 18, 2014. She alleged that Dr. Alexander directed her to seek additional medical care when needed. Appellant further argued that the claims examiner failed to provide her with full assistance and provided incorrect information regarding the development of her claim.

Appellant did not satisfy the first standard under section 10.608 of OWCP's regulations as she did not identify any point of law. She did not meet the second standard because she did not show that OWCP erroneously applied or interpreted the law. In addition, appellant did not submit any pertinent new and relevant evidence in support of her request for reconsideration and therefore did not comply with the third standard. With respect to the second standard, advancing a relevant legal argument not previously considered by OWCP, she also failed to meet this standard. The application for reconsideration generally alleged that the claims examiner failed to aid appellant in her claim without providing any additional explanation, legal precedent, or any

⁸ 5 U.S.C. §§ 8101-8193, 8128(a).

⁹ 20 C.F.R. § 10.606.

¹⁰ *Id.* at § 10.608.

¹¹ *M.E.*, 58 ECAB 694 (2007).

other supporting evidence. Where the legal argument has no basis, OWCP is not required to reopen the case for merit review.¹²

The Board accordingly finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(3). In accord with 20 C.F.R. § 10.608, OWCP properly declined to review the merits of the claim.

CONCLUSION

The Board finds that appellant did not establish a recurrence of her medical condition causally related to the April 20, 2012 employment injury requiring further treatment. The Board further finds that OWCP properly declined to reopen her claim for consideration of the merits in its July 21, 2014 decision.

ORDER

IT IS HEREBY ORDERED THAT the July 21 and May 7, 2014 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: August 26, 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

¹² A.P., Docket No. 12-0851 (issued August 27, 2012).