

ISSUE

The issue is whether OWCP properly denied appellant's January 4, 2016 request for reconsideration pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On February 10, 2014 appellant, then a 55-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on January 29, 2014 she sustained a heart attack at work. She stopped work on January 30, 2014.

A police investigation report dated January 29, 2014 indicated that appellant had collapsed on the edge of the street while delivering mail on her route. Witnesses related that appellant was not hit by a car, rather she just collapsed. The police report noted that appellant was transported *via* emergency medical services (EMS) to the hospital and it appeared that appellant had a heart attack.

By letter dated February 28, 2014, OWCP advised appellant that the evidence submitted was insufficient to establish her claim and requested that she submit additional evidence to demonstrate that the employment incident occurred as alleged and that she sustained a diagnosed condition as a result of the incident. Appellant was afforded 30 days to submit the additional evidence.

Appellant was initially examined in the emergency room by Dr. Cathy Jeon, a Board-certified internist specializing in cardiovascular disease, who noted that appellant was transported to the hospital after sustaining a ventricular fibrillation (VF) arrest while working as a postal carrier for the employing establishment. She reported that electrocardiogram (EKG) testing demonstrated ST elevations and T-wave inversions in inferior leads. A cardiac catheterization lab was performed and revealed that appellant had total occluded right coronary artery and a bare-metal stent was placed. Dr. Jeon reviewed appellant's history and provided findings on examination. She related that appellant would be admitted for further medical management.

In a February 8, 2014 hospital discharge report, Dr. Maurizio Diaco, a Board-certified internist specializing in cardiovascular disease, noted discharge diagnoses of ventricular fibrillation arrest in the setting of an inferior myocardial infarction with right ventricular component, single-vessel coronary artery disease, dyslipidemia, mild anoxic encephalopathy, and pneumonia. He described the medical treatment appellant received at the hospital and her laboratory data. Dr. Diaco listed appellant's medication at discharge and noted that appellant was advised to follow-up with her primary care physician.

OWCP denied appellant's traumatic injury claim in a decision dated April 2, 2014. It found that the evidence submitted was insufficient to establish that the January 29, 2014 incident occurred as alleged and that she sustained a diagnosed medical condition causally related to the alleged incident.

On May 13, 2015 OWCP received appellant's reconsideration request. She resubmitted her original Form CA-1 and hospital records. Appellant also provided a duty status report Form CA-17 and an attending physician's report Form CA-20 dated April 28, 2014 by Dr. Diaco, who related that on January 29, 2014 appellant worked as a city letter carrier and sustained an acute myocardial infarction. Dr. Diaco advised appellant to return to work in July 2014 with restrictions.

In a June 10, 2014 work status note, Dr. Harris Ghaus, a Board-certified internist, indicated that appellant could return to work on June 30, 2014 with restrictions of no lifting above 30 pounds and no work for more than 8 hours per day.

By decision dated July 10, 2014, OWCP affirmed the April 2, 2014 decision with modification. It accepted that the January 29, 2014 incident occurred as alleged and that she was diagnosed with a myocardial infarction, but denied appellant's claim finding that the medical evidence submitted did not establish that her diagnosed condition resulted from the accepted incident.

On November 20, 2014 appellant again request reconsideration. Appellant indicated that she had a written statement from Dr. Diaco that demonstrated that her injury was a direct result of her work.

In an October 28, 2014 narrative report, Dr. Diaco related that appellant had a recent myocardial infarction in January. He opined that the event that happened on January 29, 2014 was related to a plaque rupture. Dr. Diaco explained that although there may have been some preexisting plaque prior to the work event, working during cold weather and according to appellant's strenuous work on that specific day, did cause the plaque rupture. He reported that this was a well-reported and documented phenomenon that the plaque in the coronary artery may persist for years, but there is always a trigger that brings on the event. Dr. Diaco concluded that appellant's work activity in cold weather was the cause of her myocardial infarction and more precisely was the trigger of a plaque rupture which caused the heart attack and the cardiac arrest.

In a decision dated January 21, 2015, OWCP denied modification of the July 10, 2014 decision. It found that the new medical report dated October 28, 2014 by Dr. Diaco provided only speculative support for causal relationship and did not constitute rationalized medical opinion evidence sufficient to establish causal relationship.

On January 4, 2016 appellant, through counsel, again requested reconsideration. Counsel noted that he was providing a report by Dr. Ghaus who opined that appellant's high blood pressure had been under control since 2007 and could hardly have been a cause of her heart attack. He also alleged that Dr. Diaco previously provided an opinion in his October 28, 2014 report that the cold weather and strenuous activity of appellant's job caused her heart attack on January 29, 2014. Counsel asserted that appellant did not have a long-standing history of smoking or a history of heart problems in her family. He argued that the evidence of record provided ample evidence that appellant's preexisting condition became "disabling because of aggravation causally related to employment."

Appellant provided a print-out which demonstrated that the temperature on January 29, 2014 was a high of 24 degrees and low of 12 degrees. She also provided emergency room records dated September 17, 2015 which indicated that she was treated that day for a twisted left ankle by Dr. Brian Lawner, a Board-certified diagnostic radiologist, who noted a history of myocardial infarction and conducted an examination. Dr. Lawner reported full range of motion and tenderness over the left lateral malleolus. He diagnosed left ankle sprain and recommended that appellant be excused from work for one week.

In a December 14, 2015 letter, Dr. Ghaus noted that appellant had been his patient since 2007 and was on medication for hypertension. He related that her blood pressure had been well-controlled since 2007.

In a January 15, 2016 letter, Dr. Diaco indicated that he was clarifying his statement regarding the connection between appellant's myocardial infarction on January 29, 2014 and the physical activity in cold weather. He related that the connection between physical exertion in cold weather to a myocardial infarction is not mere speculation, but is based on an extensive body of medical research on cardiac event triggers. Dr. Diaco reported that based on his evaluation of appellant, he felt comfortable in stating that the "sustained physical activity in very cold weather was more likely than not the trigger of [appellant's] myocardial infarction on January 29, 2014." He also included a partial statement from a medical note dated January 29, 2014 describing that appellant worked as a postal carrier and was on duty delivering mail when she had a witnessed fall and collapsed. Appellant also resubmitted Dr. Diaco's October 28, 2014 medical report.

By decision dated January 27, 2016, OWCP denied appellant's request for reconsideration, finding that she failed to submit any evidence sufficient to warrant further merit review under 5 U.S.C. § 8128(a). It found that Dr. Diaco's October 28, 2014 report was previously considered by OWCP and that Dr. Ghaus' December 14, 2015 report was irrelevant and failed to address the particular issue of causal relationship.

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 payment of compensation at any time on his own motion or on application.³

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or an argument that: (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.⁴

³ 5 U.S.C. § 8128(a).

⁴ 20 C.F.R. § 10.606(b)(3); *see also L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

A request for reconsideration must also be received by OWCP within one year of the date of OWCP's decision for which review is sought.⁵ If OWCP chooses to grant reconsideration, it reopens and reviews the case on its merits.⁶ If the request is timely, but fails to meet at least one of the requirements for reconsideration, OWCP will deny the request for reconsideration without reopening the case for review on the merits.⁷

ANALYSIS

OWCP denied appellant's request for reconsideration finding that no new medical evidence was received that warranted further merit review. The Board notes, however, that appellant submitted a medical report dated January 15, 2015 by Dr. Diaco. This report was received by OWCP on January 26, 2016. Although appellant submitted this new medical evidence in support of her reconsideration request, the Board finds that OWCP did not review this new evidence from Dr. Diaco. In *E.R.*,⁸ the Board remanded the case on the issue of OWCP's denial of the claimant's reconsideration request in order to determine whether medical evidence that was received three days before OWCP issued its decision denying further merit review and not reviewed by OWCP was sufficient to require further merit review of appellant's claim. Likewise, in this case, OWCP failed to address Dr. Diaco's January 15, 2015 medical report, which was received by OWCP one day before it issued its final January 27, 2016 decision. Because the Board's jurisdiction of a case is limited to reviewing the evidence that was before OWCP at the time of its final decision, it is critical that OWCP review all evidence relevant to that subject matter and received by OWCP prior to the issuance of its final decision.⁹

The Board finds that this case is not in posture for decision. The Board will set aside the January 27, 2016 decision denying appellant's reconsideration request and remand the case to OWCP for consideration of the evidence in order to determine whether this evidence required further merit review of appellant's claim.

CONCLUSION

The Board finds that the claim is not in posture for decision regarding whether OWCP properly denied appellant's reconsideration request.

⁵ 20 C.F.R. § 10.607(a).

⁶ *Id.* at § 10.608(a); *see also M.S.*, 59 ECAB 231 (2007).

⁷ *Id.* at § 10.608(b); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

⁸ Docket No. 15-1655 (issued December 18, 2015).

⁹ *See E.Z.*, Docket No. 14-274 (issued March 16, 2015); *Linda Johnson*, 45 ECAB 439 (1994); *William A. Couch*, 41 ECAB 548 (1990).

ORDER

IT IS HEREBY ORDERED THAT the January 27, 2016 decision of the Office of Workers' Compensation Programs is set aside and remanded for further action consistent with this decision of the Board.

Issued: December 20, 2016
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board