United States Department of Labor
Employees' Compensation Appeals Board

K.S., Appellant	)	
and	)	**Docket No. 16-1084**
	)	**Issued: October 21, 2016**
U.S. POSTAL SERVICE, STOCKBRIDGE POST OFFICE, Stockbridge, GA, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant[1]
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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On April 25, 2016 appellant, through counsel, filed a timely appeal from a March 31, 2016 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days elapsed since the most recent OWCP merit decision dated March 26, 2015, to the filing of the current appeal, pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of this case.

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] 5 U.S.C. § 8101 *et seq.*

ISSUE

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

FACTUAL HISTORY

On June 1, 2010 appellant, then a 52-year-old letter carrier, sustained a lower back, buttocks, left leg, and right arm injury when she slipped on stairs at work. OWCP accepted the claim for lumbar sprain and left buttock contusion. Appellant stopped work and later accepted a modified-duty position as a rural carrier on January 7, 2011. She was placed on the supplemental compensation rolls and began receiving wage-loss compensation for the hours she was unable to work until June 28, 2012 when the employing establishment was no longer able to provide limited-duty work. Beginning November 18, 2012, appellant was placed on the periodic compensation rolls.

Initial medical evidence included a June 17, 2010 report from Dr. Frank Chevres, an orthopedic surgeon, who noted that appellant fell down steps while delivering a package. He noted that she had severe low back pain, swelling, and bruising in the left buttock area. Appellant also had preexisting occasional mild back pain. Dr. Chevres reported examination findings and assessed contusion, left buttock hematoma, left hip sprain/strain, lumbosacral strain/sprain, and possible mild lumbar degenerative disc disease. Initial diagnostic testing performed on October 12, 2010 revealed degenerative changes greatest at L5-S1, no evidence of nerve root compromise, and mild L5-S1 facet degenerative changes. Dr. Chevres continued to submit status reports on appellant's condition.

In a May 30, 2013 report, Dr. Chevres noted the history of appellant's injury and her treatment. On examination he advised that appellant had pain reproduction with all movements of the lumbar spine more on the right than left, tenderness over the right lumbar paraspinal muscles with myositis, tenderness over the right sacroiliac (SI) joint, pain on straight leg raising, good reflexes of the lower extremities, and slight limping due to an unrelated condition. Dr. Chevres assessed chronic lumbar sprain/strain, chronic lumbar pain, spinal stiffness, lower extremity and hip pain, lumbar degenerative disc disease, and prior contusion/hematoma of the left buttock area. He found that appellant remained unable to work.

On June 26, 2013 OWCP referred appellant to Dr. Raju Vanapalli, a Board-certified orthopedic surgeon, for a second opinion regarding the status of her work-related conditions. In a July 28, 2013 report, Dr. Vanapalli noted the history of appellant's injury and treatment history. On examination he noted normal gait, no deformity of the spine, tenderness over the lumbosacral region, hypersensitivity to touch over the right SI joint, no tenderness or deformity over the left buttock or hip, right straight leg raising to 40 degrees, left straight leg raising to 50 degrees, and negative sciatic stretch on both sides. Dr. Vanapalli opined that appellant's aggravation of degenerative disc disease of the lumbar spine resolved in 2012 and that the persistence of pain was due to her preexisting degenerative spondylosis. He noted that she only had subjective complaints of pain and self-limiting spinal movements. Dr. Vanapalli indicated that appellant was not capable of performing the duties of a regular rural carrier for eight hours per day and indicated that she could perform light-to-medium work for six-to-seven hours per

day. Appellant continued submitting status reports from Dr. Chevres as well as from Dr. Vicente Galan, Board-certified in anesthesiology and pain medicine, to whom appellant was referred by Dr. Chevres.

OWCP determined that there was a conflict in the medical evidence between the treating physician, Dr. Chevres and OWCP's referral physician, Dr. Vanapalli, regarding whether the accepted conditions had resolved. By letter dated September 27, 2013, it informed appellant that it had determined a conflict in the medical evidence and scheduled an impartial medical examination with Dr. Alexander N. Doman, a Board-certified orthopedic surgeon.

In a November 5, 2013 report, Dr. Doman noted the history of appellant's injury and treatment history. In reviewing the medical records, he noted that appellant had a long history of low back and neck pain preceding the June 1, 2010 work injury, a history of Crohn's disease, fibromyalgia, carpal tunnel syndrome, and plantar fasciitis. Dr. Doman also noted that diagnostic testing performed on October 12, 2010 revealed a minor disc bulge at L4-L5, L5-S1 moderate-to-severe degenerative disc disease with degenerative changes and disc height, mild narrowing at the neuroforamen, and slight left lateral recesses narrowing. On examination he noted a normal gait, obvious signs of symptom exaggeration, no objective evidence of muscle atrophy or weakness in the legs, negative straight leg raising, and symmetrical deep tendon reflexes. Dr. Doman opined that appellant sustained a temporary aggravation of lumbar degenerative disc disease and lumbar facet joint arthrosis at the L5-S1 level and that she no longer had any residuals of the June 1, 2010 work injury. He advised of possible symptom exaggerating, explaining that appellant related severe low back pain with simple attempts to flex her knee while in the prone position when there was no physiologic possibility that such a maneuver would result in low back pain. Dr. Doman indicated that appellant was able to work full time without restrictions for eight hours per day.

By letter dated March 17, 2014, OWCP advised appellant that it proposed to terminate wage-loss compensation and medical benefits. It advised that the weight of the evidence was represented by Dr. Doman who found that there were no residuals of her accepted conditions.

Appellant provided a February 11, 2014 report from Dr. Chevres who noted Dr. Doman's findings and disagreed with his opinion. Dr. Chevres noted appellant's current status and opined that she could not work as a letter carrier. In a March 26, 2014 report, he reviewed appellant's history of treatment and again expressed his disagreement with Dr. Doman's conclusion. He advised that appellant had not recovered from her accepted condition and recommended that she undergo a functional capacity evaluation. Appellant continued to submit status reports from Drs. Chevres and Galan.

By decision dated June 11, 2014, OWCP terminated appellant's wage-loss compensation and medical benefits effective June 11, 2014.

On June 17, 2014 appellant, through counsel, requested a telephone hearing before an OWCP hearing representative. On January 12, 2015 an oral telephone hearing took place. Counsel argued that the case should be remanded because new evidence from Dr. Chevres was not considered. Appellant continued to submit reports from Dr. Chevres indicating that she remained disabled due to her accepted conditions.

By decision dated March 26, 2015, an OWCP hearing representative affirmed the termination of appellant's compensation benefits.

By letter dated February 25, 2016 received on February 29, 2016, appellant, through counsel, requested reconsideration and submitted a January 26, 2016 diagnostic report from Dr. Ronald Gay, a Board-certified diagnostic radiologist. He noted that magnetic resonance imaging (MRI) scan of the lumbosacral spine revealed multilevel degenerative disc and L4-L5 spondylosis with L5-S1 small right central disc protrusion.

By decision dated March 31, 2016, OWCP denied appellant's request for reconsideration of the merits.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a) of FECA, OWCP's regulations provide that the evidence or argument submitted by a claimant must either: (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.[3] Where the request from reconsideration fails to meet at least one of these standards, OWCP will deny the application for reconsideration without opening the case for a review of the merits.[4]

ANALYSIS

In a March 26, 2015 merit decision, an OWCP hearing representative affirmed the termination of appellant's compensation benefits. Appellant submitted a timely request for reconsideration on February 29, 2016, which OWCP denied on March 31, 2016.

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits. In support of reconsideration appellant submitted a January 26, 2016 diagnostic report from Dr. Gay. However, while this report is new it is not relevant because it does not address whether appellant continues to have residuals or disability causally related to the accepted conditions. The submission of evidence that does not address the particular issue involved does not constitute a basis for reopening a case.[5]

Furthermore, appellant did not show that OWCP erroneously applied or interpreted a specific point of law, nor did she advance a relevant legal argument not previously considered by OWCP. Because she failed to meet one of the standards enumerated under 20 C.F.R. § 10.606(b)(3), OWCP properly denied further merit review of her claim, pursuant to 5 U.S.C. § 8128(a).

[3] *E.K.*, Docket No. 09-1827 (issued April 27, 2010). *See* 20 C.F.R. § 10.606(b)(3).

[4] *L.D.*, 59 ECAB 648 (2008). *See* 20 C.F.R. § 10.606(b).

[5] *Jacqueline M. Nixon-Steward*, 52 ECAB 140, 142 (2000).

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the March 31, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 21, 2016
Washington, DC

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

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

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