United States Department of Labor
Employees' Compensation Appeals Board

A.M., Appellant	)	
and	)	**Docket No. 16-1875**
	)	**Issued: August 23, 2017**
U.S. POSTAL SERVICE, POST OFFICE, Mobile, AL, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On June 6, 2016 appellant filed a timely appeal from a March 14, 2016 merit decision and a May 20, 2016 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant met his burden of proof to establish a recurrence of disability on or after September 1, 2015 due to his accepted work injury; and (2) whether OWCP properly denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On January 19, 2015 appellant, then a 52-year-old city carrier, filed an occupational disease claim (Form CA-2) for a low back condition that he attributed to performing repetitive work duties over time, including opening and closing the door to his postal vehicle, getting in and out of the vehicle, and pulling the handbrake on the vehicle. He indicated that he first became aware of his claimed condition on December 1, 2014 and first realized on January 15, 2015 that it was caused or aggravated by his federal employment.

In a report dated February 10, 2015, Dr. John Hamilton, an attending Board-certified occupational medicine physician, noted that appellant reported experiencing pain and swelling in his low back.[2] He indicated that, upon physical examination of the back, appellant's reported pain on motion of the back was "almost gone." There was no swelling or pain on palpation of the back, and range of back motion had improved. Dr. Hamilton diagnosed lumbar sprains/strains and restricted appellant from lifting more than 20 pounds, performing overhead work, and bending, twisting, or stooping for more than 20 minutes.

On February 23, 2015 Dr. Hamilton indicated that his examination on that date revealed normal lumbar/back range of motion and no back pain upon palpation or motion. He advised that appellant could return to regular duty.

On March 31, 2015 OWCP accepted appellant's claim for lumbar sprain.

On September 23, 2015 appellant filed a notice of recurrence (Form CA-2a) claiming a recurrence of disability on September 1, 2015 due to the accepted work injury. He indicated that beginning approximately September 1, 2015 he experienced a worsening of his low back symptoms, including pain, tightness, and swelling, which made it more difficult to perform his work duties.[3]

Appellant submitted a September 21, 2015 report from Dr. Hamilton who listed the date of injury as January 17, 2015 and noted continuing complaints of back pain and swelling. Dr. Hamilton diagnosed lumbar sprains/strains and indicated that appellant could not lift over 20 pounds and could only occasionally engage in bending, twisting, and stooping. In a duty status report (Form CA-17) dated September 21, 2015, he indicated that appellant could not perform his regular work, but that he could work with restrictions. Dr. Hamilton diagnosed lumbar spine strain and provided work restrictions of no lifting over 20 pounds and only occasional bending, twisting, and stooping. He limited appellant's "route work" to six hours per day.

OWCP interpreted appellant's September 23, 2015 Form CA-2a as a claim for a recurrence of disability on September 1, 2015 due to the accepted lumbar sprain and, in an

[2] Dr. Hamilton listed the date of injury as January 17, 2015, but he did not provide any explanation for listing such a date of injury. The evidence of record does not contain a claim for a January 17, 2015 work injury.

[3] Appellant placed a question mark next to the portion of the Form CA-2a asking him to indicate whether he was claiming a recurrence due to time loss from work or a recurrence due to medical treatment only. He did not stop work around the time he filed the Form CA-2a.

October 9, 2015 letter, it requested that he submit additional factual and medical evidence in support of his claim. It requested that he submit a physician's opinion supported by a medical explanation as to the relationship between his disability/condition and the accepted work condition within 30 days.

In an October 12, 2015 report, Dr. Hamilton listed the date of injury as January 17, 2015 and noted that appellant reported "the problem began on January 17, 2015."[4] He indicated that his October 12, 2015 examination revealed normal back range of motion and no pain upon palpation of the back, but also showed pain over the back upon motion. Dr. Hamilton diagnosed sprain of lumbar spine ligaments and recommended restricted work status from October 12 to 19, 2015, including no lifting over 20 pounds and only occasional bending, twisting, and stooping (20 minutes per hour).

In an October 19, 2015 report, Dr. Hamilton indicated that examination on that date revealed normal range of back motion and no back pain upon palpation or motion. He advised that appellant could return to regular duty effective October 19, 2015.

On October 26, 2015 Dr. Hamilton diagnosed sprain of lumbar spine ligaments and recommended that appellant work restricted duty from October 26 to November 11, 2015. The only work restriction he mentioned was no working over eight hours per day.[5]

In a decision dated November 20, 2015, OWCP denied appellant's claim for a recurrence of disability on or after September 1, 2015 because he failed to submit medical evidence establishing a worsening of his accepted work-related condition which caused work stoppage.

On January 12, 2016 appellant requested reconsideration of OWCP's November 20, 2015 decision. He indicated that he was submitting a handwritten statement from Dr. Hamilton, but appellant did not submit any such statement.

In a September 28, 2015 report, Dr. Hamilton indicated that his examination on that date revealed normal range of back motion and no pain upon palpation of the back, but also showed pain over the back upon motion and the presence of back spasms. He diagnosed lumbar sprains/strains and indicated that appellant should be on restricted duty from September 28 to October 4, 2015, including no lifting over 20 pounds and only occasional bending, twisting, and stooping.

In a November 11, 2015 report, Dr. Hamilton indicated that appellant could perform regular duty from November 11 to December 2, 2015. On December 2, 2015 he noted that appellant could perform regular duty from December 2, 2015 to January 4, 2016.

[4] In all of his subsequent reports in the evidence of record, Dr. Hamilton listed the date of injury as January 17, 2015 without any further explanation.

[5] Appellant also submitted reports from his attending physical therapists describing physical therapy sessions beginning on September 25, 2015.

In a March 14, 2016 decision, OWCP denied appellant's claim for a work-related recurrence of disability on or after September 1, 2015. It noted that the new evidence submitted by appellant was insufficient to meet his burden of proof to establish his claim.

On May 10, 2016 appellant requested reconsideration of OWCP's March 14, 2016 decision denying his recurrence claim. He asserted that his continuing back condition was work related. Appellant indicated that he had enclosed a "detail[ed] statement of my work-related injury and aggravations," but no such statement was enclosed.

Appellant resubmitted Dr. Hamilton's February 10, 2015 report. He also submitted an April 28, 2016 report of Dr. Donald Ellis, an attending chiropractor. Dr. Ellis indicated that appellant's bilateral knee and plantar fasciitis problems affected the spinal problems in his cervical, thoracic, and lumbar spines. He described his treatment of appellant's medical condition through manual spinal manipulation and electric muscle stimulation, and indicated that appellant should not be pressed into work he could not physically withstand.

By decision dated May 20, 2016, OWCP denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a). It found that the evidence and argument he had submitted in support of his reconsideration request was either repetitive or irrelevant.

LEGAL PRECEDENT -- ISSUE 1

A recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.[6] Where an employee claims a recurrence of disability due to an accepted employment-related injury, he or she has the burden of proof to establish that the recurrence is causally related to the original injury.[7] This burden includes the necessity of furnishing evidence from a qualified physician who concludes that the condition is causally related to the employment injury.[8] The physician's opinion must be based on a complete and accurate factual and medical history and supported by sound medical reasoning.[9]

ANALYSIS -- ISSUE 1

OWCP accepted appellant's occupational disease claim for lumbar sprain. As of February 23, 2015, appellant's treating physician, Dr. Hamilton, discharged appellant from treatment and advised that he was able to resume his regular duties. On September 23, 2015 appellant filed a notice of recurrence and he identified September 1, 2015 as the date of

[6] 20 C.F.R. § 10.5(x).

[7] *Id*. at § 10.104(b); *see* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.5 and 2.1500.6 (June 2013).

[8] *See S.S.*, 59 ECAB 315, 318-19 (2008).

[9] *Id.* at 319.

recurrence. Although he continued to work, he claimed that his work-related condition had worsened such that he had difficulty performing his employment duties.

The Board finds that appellant did not submit sufficient medical evidence to establish a recurrence on or after September 1, 2015 due to his accepted work injury.

Appellant submitted a September 21, 2015 report from Dr. Hamilton, an attending physician, who listed the date of injury as January 17, 2015 and noted continuing complaints of back pain and swelling. Dr. Hamilton diagnosed lumbar sprains/strains and indicated that appellant could not lift over 20 pounds and could only occasionally engage in bending, twisting, and stooping. In a September 21, 2015 Form CA-17, he indicated that appellant could not perform his regular work, but that he could work with restrictions. Dr. Hamilton diagnosed lumbar spine strain and provided work restrictions of no lifting over 20 pounds, no more than six hours of route work per day, and only occasional bending, twisting, and stooping.

The Board finds that the submission of these reports do not establish appellant's claim for a work-related recurrence on or after September 1, 2015 because they are of limited probative value on the relevant issue of this case. Dr. Hamilton did not provide a clear opinion that the recommended work restrictions were necessitated by the accepted lumbar sprain.[10] He did not describe the accepted work condition in any detail or present objective findings showing that appellant's lumbar condition worsened such that the delineated work restrictions were required. The Board has held that medical evidence that does not offer a clear opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[11]

In a September 28, 2015 report, Dr. Hamilton diagnosed lumbar sprains/strains and indicated that appellant should be on restricted duty from September 28 to October 4, 2015, including no lifting over 20 pounds and only occasional bending, twisting, and stooping. In an October 12, 2015 report, he recommended restricted work status from October 12 to 19, 2015 and provided work restrictions similar to those contained in his September 28, 2015 report.

In an October 19, 2015 report, Dr. Hamilton discharged appellant to return to regular duty, but just a week later on October 26, 2015, he diagnosed sprain of lumbar spine ligaments and recommended that appellant work restricted duty from October 26 to November 11, 2015, with "[n]o work over eight hours per day." The Board finds that the October 26, 2015 report is also of limited probative value regarding appellant's claim for a work-related recurrence on or after September 1, 2015. Again, Dr. Hamilton did not provide a clear opinion that the recommended work restrictions were necessitated by the accepted work injury.[12] He did not provide a rationalized medical opinion relating the need for work restrictions to appellant's accepted work condition, and his report did not otherwise establish that appellant's work-related condition worsened such that he could not perform his regular city carrier duties on or after

[10] In this report and all subsequent reports, Dr. Hamilton listed the date of injury as January 17, 2015. He did not provide any clarification of why he listed this date of injury, other than noting in a later report that appellant reported that "the problem began on January 17, 2015."

[11] *See Charles H. Tomaszewski*, 39 ECAB 461 (1988).

[12] *See id.*

September 1, 2015. The Board has held that the medical evidence required to establish causal relationship generally is rationalized medical opinion evidence, and appellant failed to submit such medical evidence in support of his recurrence of disability claim.[13]

For these reasons, the Board finds that appellant failed to establish a work-related recurrence on or after September 1, 2015 and has thus failed to meet his burden of proof.

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.

LEGAL PRECEDENT -- ISSUE 2

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,[14] OWCP's regulations provide that the evidence or argument submitted by a claimant must: (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.[15] To be entitled to a merit review of an OWCP decision denying or terminating a benefit, a claimant's application for review must be received within one year of the date of that decision.[16] When a claimant fails to meet one of the above standards, OWCP will deny the application for reconsideration without reopening the case for review on the merits.[17] The Board has held that the submission of evidence or argument which repeats or duplicates evidence or argument already in the case record[18] and the submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.[19]

[13] *F.S.*, Docket No. 15-1052 (issued July 17, 2015); *Tomas Martinez*, 54 ECAB 623 (2003). On appeal, appellant argues that he continues to have back symptoms, but the Board has explained that the medical evidence does not establish disability on or after September 1, 2015 due to a worsening of the accepted work-related injury. The Board further notes that, in several reports produced after September 1, 2015, Dr. Hamilton indicated that appellant could work regular duty. As noted, in an October 19, 2015 report, he advised that appellant could return to regular duty effective October 19, 2016. On November 11, 2015 Dr. Hamilton indicated that appellant could perform regular duty from November 11 to December 2, 2015 and, on December 2, 2015, he noted that appellant could perform regular duty from December 2, 2015 to January 4, 2016.

[14] Under section 8128 of FECA, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application." 5 U.S.C. § 8128(a).

[15] 20 C.F.R. § 10.606(b)(3).

[16] *Id.* at § 10.607(a).

[17] *Id.* at § 10.608(b).

[18] *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Jerome Ginsberg*, 32 ECAB 31, 33 (1980).

[19] *Edward Matthew Diekemper*, 31 ECAB 224-25 (1979).

ANALYSIS -- ISSUE 2

OWCP issued a decision on March 14, 2016. Appellant requested reconsideration of this decision in a letter received by OWCP on May 10, 2016.

The Board finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(3), requiring OWCP to reopen the case for review of the merits of the claim. In his application for reconsideration, appellant did not show that OWCP erroneously applied or interpreted a specific point of law. He did not identify a specific point of law or show that it was erroneously applied or interpreted, nor did he advance a new and relevant legal argument not previously considered by OWCP. In his letter requesting reconsideration, appellant argued that he continued to have work-related back problems causing disability beginning September 1, 2015. The underlying issue in this case was whether appellant submitted probative medical evidence establishing a recurrence of disability on or after September 1, 2015 due to his accepted work injury, a lumbar sprain. That is a medical issue that must be addressed by relevant medical evidence.[20] A claimant may be entitled to a merit review by submitting relevant and pertinent new evidence, but appellant did not submit any such evidence in this case.

In connection with his reconsideration request, appellant resubmitted Dr. Hamilton's February 10, 2015 report, which did not pertain to the claimed recurrence on or about September 1, 2015. It is not only irrelevant, but the submission of this evidence would not require reopening appellant's claim for merit review because the Board has held that evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.[21] Moreover, the submission of evidence or argument which does not address the particular issue included does not constitute a basis for reopening a case.[22]

Appellant also submitted an April 28, 2016 report of Dr. Ellis, an attending chiropractor. The submission of this evidence would not require reopening appellant's claim for merit review because it is not relevant to his recurrence of disability claim and the Board has held that the submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.[23] The April 28, 2016 report of Dr. Ellis is not relevant to the main issue of this case because he is not a physician within the meaning of FECA and his report does not constitute probative medical evidence. Under section 8101(2) of FECA, chiropractors are only considered physicians, and their reports considered medical evidence, to the extent that they treat spinal subluxations as demonstrated by x-ray to exist.[24] In this instance,

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

[21] *See John F. Critz*, 44 ECAB 788, 794 (1993).

[22] *See supra* note 19.

[23] *Id*.

[24] 5 U.S.C. § 8101(2). *See Jack B. Wood*, 40 ECAB 95, 109 (1988). OWCP's regulations define subluxation as an incomplete dislocation, off-centering, misalignment, fixation or abnormal spacing of the vertebrae which must be demonstrable on any x-ray film to an individual trained in the reading of x-rays. 20 C.F.R. § 10.5(bb); *see also Bruce Chameroy*, 42 ECAB 121, 126 (1990).

Dr. Ellis did not indicate that appellant had a spinal subluxation as demonstrated by x-rays to exist.

The Board accordingly finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(3). Therefore, pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish a recurrence of disability on or after September 1, 2015 due to his accepted work injury. The Board further finds that OWCP properly denied his request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the May 20 and March 14, 2016 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: August 23, 2017
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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