

ISSUE

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

FACTUAL HISTORY

On March 28, 2019 appellant, then a 52-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on January 17, 2019 she sustained left carpal tunnel syndrome while in the performance of duty. She related that the cause of injury was unknown. On the reverse side of the claim form appellant's supervisor indicated that appellant had not reported her injury to management.

In support of her claim, appellant submitted a report dated January 17, 2019 from an urgent care facility, authored by an attending physician and nurse practitioner whose signatures are illegible. The report indicated that appellant experienced intermittent, fluctuating moderate pain in her left shoulder. It also noted that she worked at the employing establishment and lifted heavy objects. A clinical impression of trapezius spasm on the left was listed.

OWCP also received a report dated January 18, 2019 from the same urgent care facility, authored by an attending physician whose signature is illegible. The physician indicated that appellant was seen for pain in her left shoulder and left bicep. Appellant also related that her left upper extremity strength had decreased, she experienced pain down to her left hand, and she was unable to externally rotate her left shoulder. A clinical impression was noted of bilateral carpal tunnel syndrome, acute trapezius spasm and acute left bicep pain.

Appellant submitted an electromyography (EMG) report dated March 12, 2019 from Quinn Millington, a physical therapist. Mr. Millington related that appellant experienced bilateral shoulder pain as well as pain between the neck and the shoulder and along the base of the neck. He diagnosed moderate-to-severe compromise of the bilateral median nerves at the wrists.

Appellant also submitted a magnetic resonance imaging (MRI) report, dated March 13, 2019, from Dr. Stephen C. Ashe, an osteopathic physician specializing in diagnostic radiology. Dr. Ashe related findings and diagnosed broad-based herniation at C6-7 with severe central canal narrowing and moderate-to-severe stenosis bilaterally, as well as a small focus of myelomalacia at the cord at C6-7, small annular bulge at C3-4 with mild central canal narrowing and moderate foraminal stenosis on the left due to spondylitic changes, and small central protrusion at C4-5 with mild-to-moderate central canal narrowing and mild foraminal stenosis bilaterally.

In a form report dated March 19, 2019, Dr. David K. Donahoe, a Board-certified orthopedic surgeon, related that appellant should remain off work from March 18 through 23, 2019.

In a letter dated March 28, 2019, an employing establishment manager, related that on March 19, 2019 appellant informed him that she wanted to file a Form CA-1 and a Form CA-2a (notice of recurrence) for injuries that occurred on January 17 and 18, 2019. He related that

appellant indicated that she did not report her injury because she was just having muscle spasms. Appellant related that she had been receiving physical therapy for six weeks.

Appellant provided a statement on April 3, 2019, explaining that on January 17, 2019 she was moving trays and felt a sensation from her shoulder descending to her fingers. She later leaned over to retrieve a parcel and felt spasms from the base of her neck down her arm and to her fingers. Appellant also related that on January 18, 2019 while delivering mail she reached out with her left arm she felt a similar pain from the base of her neck to her fingers. She went to urgent care after both incidents.

In a development letter dated April 22, 2019, OWCP advised appellant that, although she submitted a claim for a traumatic injury, she described conditions which occurred over a period longer than one workday or shift and, thus, her claim had been converted to an occupational disease claim. It advised her that additional factual and medical evidence was necessary to establish her claim. Specifically, OWCP noted that appellant's evidence was insufficient to establish that she actually experienced employment factor(s) alleged to have caused injury and that she had not provided a physician's opinion explaining how her employment activities caused, contributed to, or aggravated her medical condition. It requested that she submit a comprehensive narrative medical report and provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit the necessary evidence.

In response, appellant submitted a report dated May 1, 2019 from Dr. Charles M. Gordon, a specialist in orthopedic surgery. Dr. Gordon noted that appellant related that she had been lifting a box from a truck and felt a pop or pull on the left side of her neck that radiated down her left arm into her long finger. He noted that appellant had undergone six weeks of physical therapy, which aggravated her symptoms. Dr. Gordon diagnosed cervical myelopathy and cervical radiculopathy. He recommended that appellant undergo an anterior cervical discectomy and fusion C4 to C7 based on the progressive nature of her neurologic issues.

OWCP also received a duty status report (Form CA-17) dated May 1, 2019 from Dr. Gordon wherein he noted appellant's date of injury as January 17, 2019, listed diagnoses of carpal tunnel and herniated disc, and indicated that appellant could not return to work.

Appellant submitted a response to OWCP's development questionnaire on May 3, 2019, describing her job duties and the history of her alleged injuries.

OWCP received a form report dated May 9, 2019 from Dr. Gordon indicating that appellant was diagnosed with a herniated cervical disc, cervical myelopathy, and cervical radiculopathy. Dr. Gordon indicated that appellant had undergone anterior cervical discectomy and fusion C4 to C7.

By decision dated June 12, 2019, OWCP accepted that the employment factors had occurred as alleged and that a medical condition had been diagnosed. However, it denied appellant's claim as causal relationship has not been established.

Appellant resubmitted Dr. Ashe's March 13, 2019 MRI scan report and Dr. Gordon's May 1, 2019 narrative report.

On July 7, 2019 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review. She submitted additional evidence with her request.

In a letter dated June 26, 2019, Dr. Gordon noted that he felt appellant's cervical radiculopathy and cervical myelopathy was the result of her repetitive work environment. He noted that appellant was responsible for casing mail, delivering mail, picking up packages, and lifting trays, which weighed between 5 and 25 pounds. Dr. Gordon concluded that "I do feel like" appellant's cervical myelopathy and spinal cord compression was the result of her work environment. He indicated that he planned to perform an anterior cervical discectomy and fusion with decompression of the nerve roots to relieve her symptoms.

By decision dated September 24, 2019, OWCP's hearing representative affirmed the June 12 2019 decision, finding that appellant had failed to establish that her diagnosed conditions were causally related to the accepted factors of her employment.

On January 13, 2020 appellant requested reconsideration of OWCP's September 24, 2019 decision. She argued that OWCP's decision should be reversed because she had evidence that she did report her injury to her supervisor. Appellant enclosed a duplicate copy of Dr. Gordon's letter dated June 26, 2019, a duplicate copy of her Form CA-17 dated May 1, 2019, and copies of her text messages to her supervisor informing him that she went to urgent care.

By decision dated April 10 2020, OWCP denied appellant's request for reconsideration.

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 compensation at any time on his or her 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 which: (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); *see L.D.*, Docket No. 18-1468 (issued February 11, 2019); *see also V.P.*, Docket No. 17-1287 (issued October 10, 2017); *D.L.*, Docket No. 09-1549 (issued February 23, 2010); *W.C.*, 59 ECAB 372 (2008).

⁴ 20 C.F.R. § 10.606(b)(3); *see L.D., id.*; *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 be received by OWCP within one year of the date of OWCP's decision for which review is sought.⁵ If it 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

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

On reconsideration appellant asserted that Dr. Gordon's letter dated June 26, 2019 was sufficient to vacate OWCP's prior decision. Causal relationship is a medical issue that must be addressed by relevant medical evidence.⁸ Appellant's opinion is not relevant to the underlying issue in this case, which is whether the medical evidence establishes that she sustained cervical radiculopathy and cervical myelopathy causally related to the accepted factors of her federal employment. She also alleged that she had timely reported her injury. However, appellant's timely report of injury is not in question. As the Board has held, the submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.⁹ Consequently, appellant is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under 20 C.F.R. § 10.606(b)(3).¹⁰

The Board further finds that appellant has not provided any relevant and pertinent new evidence not previously considered. Appellant submitted duplicate reports from Dr. Gordon dated May 1 and June 26, 2019. She also submitted cumulative evidence regarding her medical appointments at an urgent care facility. Evidence which repeats or duplicates evidence already of record has no evidentiary value and does not constitute a basis for reopening a case.¹¹ As appellant

⁵ *Id.* at § 10.607(a). The one-year period begins on the next day after the date of the original contested decision. For merit decisions issued on or after August 29, 2011, a request for reconsideration must be received by OWCP within one year of OWCP's decision for which review is sought. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (February 2016). Timeliness is determined by the document receipt date of the request for reconsideration as indicated by the received date in the Integrated Federal Employees' Compensation System (iFECS). Chapter 2.1602.4b.

⁶ *Id.* at § 10.608(a); *see also* *A.F.*, Docket No. 19-1832 (issued July 21, 2020); *M.S.*, 59 ECAB 231 (2007).

⁷ *Id.* at § 10.608(b); *J.B.*, Docket No. 20-0145 (issued September 8, 2020); *Y.K.*, Docket No. 18-1167 (issued April 2, 2020); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

⁸ *A.G.*, Docket No. 20-0290 (issued June 24, 2020).

⁹ *I.M.*, Docket No. 20-0980 (February 2, 2021); *M.K.*, Docket No. 18-1623 (issued April 10, 2019); *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

¹⁰ *A.G.*, *supra* note 8; *C.B.*, Docket No. 18-1108 (issued January 22, 2019).

¹¹ *V.L.*, Docket No. 19-0069 (issued February 10, 2020); *A.K.*, Docket No. 19-1210 (issued November 20, 2019); *R.S.*, Docket No. 19-0312 (issued June 18, 2019); *Richard Yadron*, 57 ECAB 207 (2005).

did not provide relevant and pertinent new evidence, she is not entitled to a merit review based on the third requirement under 20 C.F.R. § 10.606(b)(3).¹²

The Board, accordingly, finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(3). Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.¹³

CONCLUSION

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the April 10, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 13, 2021
Washington, DC

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

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

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

¹² See *T.W.*, Docket No. 18-0821 (issued January 13, 2020).

¹³ *J.B.*, *supra* note 7; *D.G.*, Docket No. 19-1348 (issued December 2, 2019).