

ISSUE

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

FACTUAL HISTORY

On January 26, 2018 appellant, then a 31-year-old casual carrier associate, filed a traumatic injury claim (Form CA-1) alleging that he injured his back on January 24, 2018 when he lifted tubs and parcels and heard his back "pop" while in the performance of duty. He stopped work on that date and returned to a full-time modified casual carrier associate position on March 2, 2018. OWCP accepted the claim for acute disc herniation at L5-S1 without radiculopathy.⁴

Dr. David W. Stamm, a Board-certified family practitioner, completed notes on February 7 and 21, May 21, and July 26, 2018 describing the January 24, 2018 employment incident. He provided work restrictions and prescribed physical therapy. Dr. Stamm recounted that appellant was performing light-duty work and developed pain after performing five hours of work. He advised that appellant pursue a new line of work. On November 26, 2019 Dr. Stamm examined appellant on December 16, 2019 and medically cleared him for surgery.

In reports dated July 30, 2018, and September 23 and 25, 2019, Dr. John S. Treves, a Board-certified neurologist, described appellant's history of multiple work-related back injuries including the accepted January 24, 2018 employment injury. He reviewed the July 10, 2018 magnetic resonance imaging (MRI) scan and diagnosed left S1 radiculopathy, L4-5 and L5-S1 disc degeneration, and large left L5-S1 disc herniation. Dr. Treves advised that appellant had lifting restrictions and required modification of his work schedule. He noted that appellant was no longer working at the employing establishment and recommended a lighter-duty job with less lifting, bending, and twisting following surgery.

On December 24, 2019 appellant underwent an OWCP-authorized left L5-S1 lateral recess decompression, foraminotomy, and discectomy. OWCP paid appellant wage-loss compensation on the supplemental rolls beginning December 24, 2019.

Dr. Treves completed a duty status report (Form CA-17) on June 4, 2020 listing a series of work restrictions, including lifting and carrying up to 25 pounds, no climbing, kneeling, bending, stooping, twisting, pushing, or pulling.

On June 2, 2020 Dr. Sara M. Putnam, a Board-certified orthopedic surgeon, determined that appellant could perform sedentary work, including casing mail, walking one mile or less, and lifting up to 25 pounds.

⁴ OWCP assigned the present claim OWCP File No. xxxxxx046. The Board notes that by decision dated March 29, 2017, under OWCP File No. xxxxxx285, OWCP denied appellant's claim for a disc herniation at L5-S1 in connection with a December 5, 2016 lifting injury. Appellant's claims have not been administratively combined by OWCP.

Appellant returned to work in a full-time, modified carrier position on June 25, 2020 with restrictions on standing for up to two hours; twisting for up to two hours intermittently; casing mail for two hours; lifting up to 25 pounds for eight hours; climbing, bending, kneeling, and stooping for one hour intermittently; and pushing and pulling for up to three hours intermittently.

Beginning on July 18, 2021, appellant filed claims for compensation (Form CA-7) for intermittent disability from work for the periods commencing May 26, 2018.

In a development letter dated August 11, 2021, OWCP informed appellant of the deficiencies of his claims for disability from work commencing May 26, 2018. It advised him of the type of medical evidence needed and afforded him 30 days to submit the necessary evidence.

Appellant subsequently provided physical therapy notes.

By decisions dated October 25, 2021, OWCP denied appellant's claims for compensation, finding that the medical evidence of record was insufficient to intermittent disability from work commencing May 26, 2018.

On November 23, 2021 appellant, through counsel, requested a review of the written record by a representative of OWCP's Branch of Hearings and Review. Counsel contended that the October 25, 2021 OWCP decisions were incomplete and inconsistent and that the medical evidence of record was sufficient to establish disability from work for the periods May 26, 2018 through March 1, 2019, April 27 through July 5, 2019, October 26 through November 8, 2019, November 9 through December 6, 2019, and May 26, 2020 to the present.

OWCP continued to receive medical evidence. On June 2, 2020 Dr. Putnam opined that appellant could return to work on June 22, 2020 performing sedentary work only, walking up to one mile, casing mail, and lifting up to 25 pounds. On October 30, 2020 Dr. Treves reviewed a July 23, 2020 functional capacity evaluation (FCE) and found appellant could walk five hours a day and push, pull, and lift 30 pounds for five hours a day. Appellant accepted a different modified carrier technician position based on the October 30, 2020 restrictions on December 1, 2020.

By decision dated March 25, 2022, OWCP's hearing representative reversed the October 25, 2021 decisions in part to find that appellant had established four hours of disability on July 30, 2018 to attend a medical appointment with Dr. Treves. However, the hearing representative affirmed in part the denial of the remaining claimed disability.

By decision dated October 13, 2022, OWCP formally approved appellant's claim for four hours of wage-loss compensation on July 30, 2018.

On November 24, 2022 Dr. Treves again opined that appellant had permanent restrictions in keeping with the July 23, 2020 FCE.

On March 23, 2023 appellant, through counsel, requested reconsideration of the March 25, 2022 decision. Counsel again contended that the decisions dated October 25, 2021 were incomplete and inconsistent. She further alleged that the medical evidence was sufficient to establish that appellant was totally disabled for the periods claimed. In support of the reconsideration request, appellant also resubmitted medical evidence including Dr. Stamm's

February 7 and 21, and July 26, 2018 treatment notes, and Dr. Treves' treatment notes and reports dated July 30, 2018, September 23, 2019, and November 24, 2022.

By decision dated April 25, 2023, OWCP denied appellant's request for reconsideration, finding that it was untimely filed and failed to demonstrate clear evidence of error in the October 25, 2021 merit decision.

On May 24, 2023 appellant, through counsel, clarified that the March 23, 2023 request for reconsideration was from the March 25, 2022 decision of OWCP's hearing representative.

By decision dated June 2, 2023, OWCP denied appellant's request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

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.⁵

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.⁶

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.⁷ If it chooses to grant reconsideration, it reopens and reviews the case on its merits.⁸ 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.⁹

The Board has held that the submission of evidence or argument which repeats or duplicates evidence or argument already in the case record,¹⁰ and the submission of evidence or

⁵ 5 U.S.C. § 8128(a); *see L.D.*, Docket No. 18-1468 (issued February 11, 2019); *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).

⁶ 20 C.F.R. § 10.606(b)(3); *see M.S.*, Docket No. 18-1041 (issued October 25, 2018); *L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

⁷ 20 C.F.R. § 10.607(a). The one-year period begins on the next day after the date of the original contested decision. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (September 2020). 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). *Id.* at Chapter 2.1602.4b (September 2020).

⁸ *Id.* at § 10.608(a); *see D.C.*, Docket No. 19-0873 (issued January 27, 2020); *M.S.*, 59 ECAB 231 (2007).

⁹ *Id.* at § 10.608(b); *see T.V.*, Docket No. 19-1504 (issued January 23, 2020); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

¹⁰ *N.L.*, Docket No. 18-1575 (issued April 3, 2019); *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

argument which does not address the particular issue involved, does not constitute a basis for reopening a case.¹¹

ANALYSIS

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

In his reconsideration request, appellant did not show that OWCP erroneously applied or interpreted a specific point of law, nor did he advance a new and relevant legal argument not previously considered. Counsel repeated the contentions previously raised before OWCP's hearing representative. As the arguments submitted on reconsideration were cumulative, duplicative, or repetitive in nature, they were insufficient to warrant reopening the claim for merit review.¹² Consequently, appellant was not entitled to a review of the merits based on the first and second above-noted requirements under 20 C.F.R. § 10.606(b)(3).¹³

On reconsideration appellant resubmitted treatment notes and reports from Drs. Stamm and Treves previously reviewed by OWCP. Appellant also submitted a November 24, 2022 report from Dr. Treves, which repeated his prior reports. As this evidence is cumulative, duplicative, or repetitive of evidence already of record, it does not constitute relevant and pertinent new evidence and, thus, is insufficient to reopen the claim.¹⁴ Accordingly, appellant was not entitled to a review of the merits based on the third above-noted requirement under 20 C.F.R. § 10.606(b)(3).¹⁵

Accordingly, the Board finds that appellant has not met any of the requirements enumerated under 20 C.F.R. § 10.606(b)(3). Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.¹⁶

CONCLUSION

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

¹¹ *M.K.*, Docket No. 18-1623 (issued April 10, 2019); *Edward Matthew Diekemper*; 31 ECAB 224, 225 (1979).

¹² *J.R.*, Docket No. 23-0980 (issued January 23, 2024); *J.V.*, Docket No. 19-1554 (issued October 9, 2020); *see T.B.*, Docket No. 16-1130 (issued September 11, 2017); *Eugene F. Butler*, *supra* note 10.

¹³ *Supra* note 9. *See R.S.*, Docket No. 22-1141 (issued April 18, 2023); *K.F.*, Docket No. 19-1846 (issued November 3, 2020).

¹⁴ *Supra* note 12.

¹⁵ *Supra* note 9; *R.S.*, *supra* note 13; *P.W.*, Docket No. 20-0380 (issued November 23, 2020); *M.O.*, Docket No. 19-1677 (issued February 25, 2020); *C.B.*, Docket No. 18-1108 (issued January 22, 2019).

¹⁶ *See R.S.*, *supra* note 13; *D.R.*, Docket No. 18-0357 (issued July 2, 2018); *A.K.*, Docket No. 09-2032 (issued August 3, 2010); *M.E.*, 58 ECAB 694 (2007); *Susan A. Filkins*, 57 ECAB 630 (2006).

ORDER

IT IS HEREBY ORDERED THAT the June 2, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 14, 2024
Washington, DC

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

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

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board