

FACTUAL HISTORY

On July 10, 2013 appellant, then a 24-year-old carrier, filed a traumatic injury claim alleging that on July 8, 2013 he sustained muscle spasm and low back pain in the performance of duty. He alleged that he began to experience back pain after lifting a box at work. Appellant stopped work on July 8, 2013.

In a July 12, 2013 attending physician report, Dr. Jeff Mollins, a chiropractor, advised that appellant injured himself at work. He assessed strain/sprain of the lumbar spine, radicular syndrome, and lumbago. Dr. Mollins checked the box marked “yes” to indicate that appellant’s condition was caused or aggravated by his employment.

By letter dated July 23, 2013, OWCP notified appellant that evidence was insufficient to establish his claim and advised him of the type of evidence needed.

Appellant provided additional medical evidence. In a July 8, 2013 hospital discharge report, Dr. Lorraine Giordano, Board-certified in emergency medicine, advised that appellant was throwing heavy boxes into a bin that morning at work when he began experiencing mid low back pain. On physical examination she noted that there was minimal tenderness of the lower back. Dr. Giordano diagnosed low back pain.

In a July 10, 2013 chiropractic report, Dr. Mollins advised that appellant began to experience back pain when he threw a package at work. He diagnosed lumbosacral radicular syndrome, lumbosacral sprain/strain, and lumbago. Dr. Mollins noted that appellant also complained of stiffness and right leg pain.

In a July 12, 2013 report, Dr. Bhim Nangia, Board-certified in psychiatry and neurology, advised that appellant was involved in a work-related accident where he injured his back. He noted that appellant complained of lower back pain that radiated to his legs, numbness, and tingling. Dr. Nangia advised that appellant had trouble standing and walking for prolonged periods of time. On physical examination he noted that appellant had an antalgic gait, pain in back forward flexion, increased pain on extension of the lumbar spine, multiple areas of mild tenderness along the lumbosacral spine and paraspinal muscles especially at L1-L5, and paraspinal muscle spasm with restriction in range of motion. Dr. Nangia assessed lumbar strain/sprain and lumbar radiculitis. He opined that based on the history and physical examination there was a reasonable degree of medical certainty that appellant’s injuries were “causally related to the accident noted above.”

In a July 31, 2013 attending physician’s report (Form CA-20), Dr. Nangia advised that appellant was injured at work on July 8, 2013. He assessed lumbosacral radiculopathy and noted that he was unsure when appellant would be able to return to work. Dr. Nangia checked the box marked “yes,” indicating that appellant’s condition was caused or aggravated by his employment.

By decision dated September 5, 2013, OWCP denied appellant’s claim because the medical evidence was insufficient to establish that there was a condition diagnosed in connection with the work-related incident.

Appellant continued to submit evidence. In a September 25, 2013 report, Dr. Nangia advised that appellant injured his lower back while at work. Appellant related that he was handling a heavy package when he felt a sudden onset of pain in his lower back that radiated down his right leg. On physical examination Dr. Nangia noted that appellant had an antalgic gait, pain in back forward flexion, increased pain on extension of the lumbar spine, multiple areas of mild tenderness along the lumbosacral spine and paraspinal muscles especially at L1-L5, and paraspinal muscle spasm with restriction in range of motion. He opined that based on the history and physical examination there was a reasonable degree of medical certainty that the patient's condition was "causally related to accident noted above."

In a July 10, 2013 disability status report, Dr. Mollins advised that appellant was being treated for injuries he sustained in a work-related accident and was unable to do his job for an undetermined period of time. In an August 23, 2013 disability status report, he advised that appellant was injured at work on July 8, 2013 and that he was able to return to work.

On December 16, 2013 appellant requested reconsideration. In an accompanying undated statement, received on December 27, 2013, he advised that he picked up a parcel at work using proper lifting technique. Appellant noted that he initially felt slight discomfort, but not long afterward, he began to experience agonizing pain that prevented him from walking or standing. He advised that he was transported to the emergency room by ambulance. Several witness statements from appellant's coworkers were submitted corroborating his account of the incident.

By decision dated June 16, 2014, OWCP denied appellant's claim without review of the merits. It noted that his claim was denied for insufficient medical evidence; however, she submitted no relevant medical evidence with her request.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a) of FECA, 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.³ To be entitled to a merit review of an OWCP decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.⁴ 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.⁵

³ 20 C.F.R. § 10.606(b)(2).

⁴ *Id.* at § 10.607(a).

⁵ *Id.* at § 10.608(b).

ANALYSIS

In a September 5, 2013 merit decision, OWCP denied appellant's claim finding that the medical evidence did not establish that there was a condition diagnosed in connection with the work incident. Appellant submitted a timely request for reconsideration which was denied on June 16, 2014 without a merit review.

Appellant also submitted several statements from coworkers corroborating his account of the incident. As noted, this aspect of the claim is not in dispute. Thus, this evidence is not relevant to the underlying medical issue. The disability status reports from Dr. Mollins indicate that appellant was injured at work but these reports address causal relationship in essentially the same manner of Dr. Mollins' July 10 and 12, 2013 reports. The Board has held that evidence or argument that repeats or duplicates evidence previously of record has no evidentiary value and does not constitute a basis for reopening a case.⁶ The September 25, 2013 report by Dr. Nangia does constitute relevant new evidence because it is substantially similar to his earlier July 12, 2013 report with regard to his opinion on causal relationship. In fact, his opinion on causal relationship is exactly the same. The only difference in the July 12, 2013 report and the September 25, 2013 report is that the later report includes the history of the injury as provided by appellant but, as noted, Dr. Nangia does not change the manner in which he addresses causal relationship. Consequently, new evidence submitted does not constitute relevant new evidence.

The Board finds that OWCP properly refused to reopen appellant's case for further review of the merits. The underlying issue in this case is whether appellant established that the work incident caused or contributed to a diagnosed medical condition. This is a medical issue. OWCP, in its July 23, 2013 letter, as well as its September 5, 2013 initial decision, informed appellant of the defects of his claim and particularly advised him of why the medical evidence was deficient. In his reconsideration request, appellant explained how the claimed injury occurred and what he did after the claimed injury. However, this aspect of appellant's claim is not disputed by OWCP. This does not show that OWCP erroneously applied or interpreted a specific point of law nor does it advance a relevant legal argument not previously considered by OWCP.⁷

On appeal appellant argued that the medical evidence submitted was sufficient to establish his claim. However, as noted, the Board does not have jurisdiction over the merits of the claim. Because appellant failed to meet any of the three regulatory criteria for reopening a claim, he was not entitled to further merit review of his claim.

CONCLUSION

The Board finds that OWCP properly refused to reopen appellant's case for further review of the merits.

⁶ *E.M.*, Docket No. 09-39 (issued March 3, 2009).

⁷ See *Darletha Coleman*, 55 ECAB 143 (2003) (evidence that does not address the particular issue involved does not constitute a basis for reopening a case).

ORDER

IT IS HEREBY ORDERED THAT the June 16, 2014 decision of Office of Workers' Compensation Programs is affirmed.

Issued: May 26, 2015
Washington, DC

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

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board