

**United States Department of Labor
Employees' Compensation Appeals Board**

M.P., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
North Haven, CT, Employer**

)
)
)
)
)
)
)
)
)
)
)
)

**Docket No. 17-0653
Issued: July 20, 2017**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On January 31, 2017 appellant filed a timely appeal from a December 20, 2016 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days elapsed from the last merit decision dated June 28, 2016 to the filing of this appeal, pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of this case.

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 September 28, 2000 appellant, then a 52-year-old mark-up clerk, filed a traumatic injury claim (Form CA-1) alleging that on September 27, 2000 she was in an employment-

¹ 5 U.S.C. § 8101 *et seq.*

related motor vehicle accident and that, as a result thereof, she sustained contusions of the left hand, left arm, left leg, both knees, abdomen, right wrist, right hip, and upper left chest. She also noted abrasions on her right outer hand and wrist. Appellant initially stopped work on September 27, 2000 but returned to work on October 2, 2000. On November 27, 2000 OWCP accepted appellant's claim for contusion shoulder/arm, contusion of hands, contusion of chest wall, and contusion of knee/lower leg.² Appellant's claim was later expanded to include aggravation of bilateral knee osteoarthritis and crushing injury of the bilateral knees and legs.

Authorized bilateral total knee replacements were performed on October 22, 2003. Appellant received intermittent wage-loss compensation and medical benefits on the supplemental rolls from April 10, 2004 to October 25, 2008.

On January 30, 2008 appellant filed a claim for a schedule award (Form CA-7). By decision dated November 12, 2008, OWCP granted 37 percent permanent impairment of each lower extremity.

An authorized left knee patellar arthroplasty was performed on October 26, 2009.

On August 26, 2015 appellant filed a recurrence of disability claim (Form CA-2a) beginning August 18, 2015 due to the accepted September 27, 2000 employment injury. She noted that during surgery a hematoma was discovered in her right breast. Appellant indicated that she had a prior mastectomy and implant. She noted that she had not had diagnostic studies, and that therefore the underlying injury to her right breast was not realized or treated. Appellant alleged that the only injury she ever received in the chest and abdomen were from the seat belt and airbag deployment in her employment-related accident.

An operative note dated August 12, 2015 was prepared by Dr. Deborah Pan, a Board-certified plastic surgeon. Dr. Pan related that appellant was status post implant reconstruction of the right breast 30 years ago, and now presented with progressive pain and severe superior displacement and capsular contracture of the right breast. She explained that appellant underwent right breast implant removal, with immediate insertion of implant for reconstruction, as well as abdominal scar excision to relieve painful tethering to the rectus abdominis muscle.

On October 14, 2015 OWCP advised appellant that a comprehensive medical report was necessary from her treating physician which addressed how her current medical condition and need for treatment was causally related to the original injury. Appellant was afforded 30 days to submit the necessary medical evidence. No additional evidence was received.

By decision dated November 25, 2015, OWCP denied appellant's claim for a recurrence. It determined that she had not provided any medical opinion with sound reasoning which related her large right hematoma in her chest area and the need for the right breast implant removal to the accepted employment injury of September 27, 2000.

² Appellant had prior claims for injury. In a June 8, 1999 claim, in OWCP File No. xxxxxx024, OWCP accepted calcifying tendinitis of left shoulder. In a claim for an April 3, 2003 employment injury, File No. xxxxxx627, OWCP accepted bilateral knee contusions, bilateral hand contusions, and sprain of left hip and thigh, and contusion of left thigh.

On February 9, 2016 appellant requested reconsideration. In support of her request, she submitted an October 29, 2015 report from Dr. Pan. Dr. Pan noted that a hematoma was discovered during surgery on August 12, 2015 for right breast reconstruction revision due to progressively severe and painful capsular contracture. She noted that material consistent with a very old hematoma was encountered, and that the hematoma could have occurred any time in the past 1 to 20 years if the original hematoma was significant and never initially addressed. Dr. Pan indicated that she could not speculate how it had not been detected earlier. She noted that trauma was the only viable explanation for this type of hematoma, and it was likely that the hematoma was a major contributor to capsular contracture formation. Dr. Pan also noted that late detection of the hematoma typically does not affect overall health.

By decision dated June 28, 2016, OWCP reviewed the merits of appellant's claim, but denied modification of its prior decision.

On September 29, 2016 appellant requested reconsideration and contended that the only injuries she received to the chest and abdomen were from the September 27, 2000 employment-related accident. In support of her reconsideration request, she resubmitted the October 29, 2015 report from Dr. Pan. Appellant argued that OWCP erred when it indicated that Dr. Pan had reported that the hematoma could have occurred anytime in the past 1 to 10 years. Rather, Dr. Pan had clearly reported that the hematoma could have occurred anytime in the past 1 to 20 years.

Appellant also submitted a new September 21, 2016 follow-up report from Dr. Philip P. Luchini, appellant's Board-certified orthopedic surgeon, wherein he noted that appellant had complained of left thumb painful crepitus with range of motion at the carpometacarpal joint, and indicated that he administered an injection. Dr. Luchini diagnosed unilateral post-traumatic osteoarthritis of first carpometacarpal joint, left hand. He noted that this was the result of appellant's employment injury. Appellant also submitted physical therapy notes, detailing treatment from June 29 through July 29, 2016. One of the reports, the report from July 18, 2016, was countersigned by Dr. John D. McCallum, a Board-certified orthopedic surgeon. In this report, appellant's diagnoses are listed as arthralgia of left knee, artificial left knee joint, chronic left hip pain, and presence of artificial hip joint. The progress note indicated continued work on appellant's gait.

By decision dated December 20, 2016, OWCP denied appellant's request for reconsideration without conducting a merit review.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,³ 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.⁴ When a claimant fails to meet one

³ 5 U.S.C. § 28128(a).

⁴ 20 C.F.R. § 10.606(b)(3).

of the above standards, OWCP will deny the application for reconsideration without reopening the case for review on the merits.⁵

ANALYSIS

Appellant filed a claim for a recurrence alleging that on August 18, 2015 a hematoma was discovered in her right breast, and that this was causally related to her accepted September 27, 2000 employment-related motor vehicle accident. OWCP denied appellant's recurrence claim by decision dated November 25, 2015. She requested reconsideration, but on June 28, 2016 OWCP denied modification of its prior decision. On September 26, 2016 appellant again requested reconsideration.

OWCP reviewed appellant's request for reconsideration under the appropriate criteria for timely filed reconsideration petitions. Appellant has not shown that OWCP erroneously applied or interpreted a specific point of law, nor has she advanced a relevant legal argument not previously considered by OWCP.⁶

OWCP had found that Dr. Pan noted that the hematoma could have occurred at any time in the past 1 to 10 years. As noted by appellant, Dr. Pan actually noted that it could have occurred any time in the past 1 to 20 years. Regardless, Dr. Pan did not clearly indicate a causal relationship between the accepted employment incident and the hematoma in her breast discovered 15 years later. OWCP's factual error constituted harmless error.

Furthermore, appellant submitted no relevant and pertinent new evidence not previously considered by OWCP. The underlying issue in this case is whether the hematoma in appellant's right breast was causally related to her accepted employment injury. In support of her reconsideration request, appellant resubmitted the October 29, 2015 report by Dr. Pan. This report is a duplicate of a previously submitted report. Evidence which is duplicative, cumulative, or repetitive in nature is insufficient to warrant reopening a claim for merit review.⁷

The remaining evidence does not address the newly discovered hematoma. Dr. Luchini treated appellant's left thumb and did not provide any opinion on the hematoma. The physical therapy report signed by Dr. McCallum also did not discuss the hematoma. As these reports do not address the critical issue with regard to appellant's hematoma, they do not constitute a basis for reopening the case.⁸

Appellant did not meet any requirements of 20 C.F.R. § 10.606(b)(3). She did not submit any evidence along with her request for reconsideration to show that OWCP erroneously applied or interpreted a specific point of law or advances a relevant legal argument not previously

⁵ *Id.* at § 10.608(b).

⁶ *See J.F.*, Docket No. 16-1233 (issued November 23, 2016).

⁷ *Denis M. Dupor*, 51 ECAB 482 (2000).

⁸ *Joseph A. Brown, Jr.*, 55 ECAB 542 (2004).

considered by OWCP. Pursuant to 20 C.F.R. § 10.608(b), OWCP properly declined to reopen the case for review of the merits.

Accordingly, as appellant has not met any of the criteria warranting reopening her claim for further merit review, pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 20, 2016 is affirmed.

Issued: July 20, 2017
Washington, DC

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

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board