

duty. He explained that he was lifting his delivery point sequencing tray from the floor when he experienced a sharp pain in his lower back and developed back cramps. Appellant did not stop work.

In a June 15, 2018 medical report by Dr. Vishal Rekhala, an osteopath Board-certified in physical medicine and rehabilitation, noted that appellant presented with low back pain after bending over to pick up mail at work on June 7, 2018. On evaluation, he diagnosed acute right-sided lower back pain with right-sided sciatica and a lumbar sprain. Dr. Rekhala opined that appellant was temporarily totally disabled and was unable to perform any significant physical activity or return to work at this time. He requested that an out-of-work note be prepared and referred appellant for physical therapy for the lower back, noting and that, if there was no improvement, a magnetic resonance imaging (MRI) scan of the lumbar spine would be scheduled. Appellant was to follow up in four weeks. In a medical note of even date, Dr. Rekhala recommended that appellant remain out of work from June 15 to July 13, 2018 for the same condition.

In a July 13, 2018 medical report, Dr. Rekhala noted that appellant had participated in physical therapy to treat his lower back pain, but reported no significant interval changes. He diagnosed acute right-sided lower back pain with right-sided sciatica and a lumbar sprain. In a July 13, 2018 medical note, Dr. Rekhala ordered an MRI scan of appellant's lumbar spine.

In a duty status report (Form CA-17) dated July 13, 2018, Stephen Lebitsch, a nurse practitioner, noted appellant's diagnosis of lumbar sprain caused when he bent down to pick up mail at work. He advised that appellant was temporarily totally disabled from work.

In a July 25, 2018 attending physician's report (Form CA-20), Nurse Lebitsch diagnosed lumbar sprain and checked a box marked "Yes" to indicate his belief that appellant injured his back when he bent over to pick up mail at work on June 7, 2018. He advised that appellant return to physical therapy, modify his activity, and requested authorization for a lumbar spine MRI scan.

Appellant also submitted a position description of his duties as a city carrier.

In an August 24, 2018 development letter, OWCP noted that, when appellant's claim was received, it appeared to be a minor injury that resulted in minimal or no lost time from work. Based on this criteria, it had administratively approved payment of a limited amount of medical expenses without formally considering the merits of his claim. However, a formal decision was now required. OWCP advised appellant of the deficiencies of his claim and instructed him as to the factual and medical evidence necessary to establish his claim. It requested that he submit a narrative medical report from his physician, which provided a diagnosis and the physician's rationalized medical explanation as to how the alleged employment incident caused the diagnosed condition. OWCP afforded appellant 30 days to respond.

Appellant submitted physical therapy notes dated from June 28 to July 16, 2018, which noted his treatment for lumbago with right-sided sciatica and a sprain of the ligaments of the lumbar spine.

In an August 13, 2018 medical note, Nurse Lebitsch advised that appellant remain out of work from August 13 to September 10, 2018 due to appellant's acute right-sided low back pain with right-sided sciatica.

In an August 18, 2018 diagnostic report, Dr. Gary Kronfeld, a Board-certified diagnostic radiologist, reported that he had performed a lumbar spine MRI scan on August 17, 2018. On evaluation he diagnosed degenerative disc changes predominate at L3-4 and at L5.

Dr. Rekhala, in an August 21, 2018 medical report, reviewed the results of the August 17, 2018 MRI scan and diagnosed lumbar disc degeneration, lumbar herniated disc, lumbar facet arthropathy, lumbar facet syndrome, and acute bilateral lower back pain with right-sided sciatica. He recommended that appellant undergo bilateral L3, L4, and L5 medial branch block injections to treat appellant's conditions.

In an August 21, 2018 Form CA-20 report, Nurse Lebitsch checked a box marked "Yes" to indicate his belief that appellant's condition was caused or aggravated by the claimed June 7, 2018 employment incident. In an August 24, 2018 Form CA-17 report, he advised that appellant was temporarily totally disabled from work.

The employing establishment controverted appellant's claim in an August 29, 2018 letter, arguing that his medical evidence was signed by a nurse practitioner and that disc degeneration could not be caused by a single incident, such as picking up a tray of mail.

Dr. Rekhala recommended, in a September 10, 2018 medical note, that appellant remain off work from September 10 to October 22, 2018 due to appellant's diagnosed lumbar conditions.

In an October 1, 2018 Form CA-20, Nurse Lebitsch diagnosed lumbar disc degeneration and checked a box marked "Yes" to indicate his belief that appellant's condition was caused or aggravated by the alleged June 7, 2018 employment incident.

By decision dated October 9, 2018, OWCP denied appellant's traumatic injury claim, finding that the medical evidence of record failed to establish causal relationship between appellant's lumbar conditions and the accepted June 7, 2018 employment incident.

On October 19, 2018 appellant requested reconsideration of OWCP's October 9, 2018 decision.

In an attached October 15, 2018 letter, appellant asserted that, in his 11 years working with the employing establishment, he had never had any injury with his back until the June 7, 2018 employment incident.

Dr. Rekhala opined in an October 15, 2018 letter that the June 7, 2018 employment incident aggravated appellant's preexisting degenerative changes and caused the onset of appellant's lower back pain. He explained that appellant had no prior history of back problems and that his MRI scan showed degenerative changes.

In an October 16, 2018 medical report, Dr. Rekhala reviewed appellant's history and symptoms of lower back pain and indicated that he was awaiting authorization to undergo medial

branch blocks. He diagnosed lumbar facet syndrome and lumbar facet arthropathy and prescribed a medication to treat appellant's associated pain.

Dr. Rekhala, in an October 25, 2018 medical report, noted that appellant reported that appellant's back pain had improved since his last visit and that he would like to return to work. He requested authorization for a bilateral lumbar medial branch block injection and diagnosed a lumbar herniated disc, lumbar sprain, lumbar facet arthropathy, and lumbar disc degeneration.

By decision dated January 8, 2019, OWCP denied modification of its October 9, 2018 decision.

On January 6, 2020 appellant requested reconsideration of OWCP's January 8, 2019 decision, indicating that he attached new evidence establishing causal relationship and noted that, in his 12 years of working with the employing establishment, he had never had a history of back pain.

OWCP continued to receive evidence. Dr. Rekhala reported, in a February 8, 2019 medical report, that appellant aggravated appellant's back again the day prior, when he was putting packages in his work truck. He noted that appellant's original work-related injury occurred on June 7, 2018 and diagnosed a lumbar sprain, lumbar herniated disc, and lumbar disc degeneration.

In a December 27, 2019 letter, Dr. Rekhala indicated that disc degeneration was a natural progression of age, but the diagnosis of a lumbar strain would be a direct diagnosis due to heavy lifting. He explained that, when taking into consideration the length of time appellant had worked for the employing establishment without incident, the correlation between lifting a heavy tray of mail resulting in a lumbar strain was not unreasonable. Dr. Rekhala concluded that appellant's lumbar strain was clearly a direct result of lifting the heavy tray of mail.

By decision dated January 9, 2020, 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 own motion or on application.²

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

² 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).

OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.³

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.⁴ If it chooses to grant reconsideration, it reopens and reviews the case on its merits.⁵ 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.⁶

ANALYSIS

The Board finds that OWCP improperly denied appellant's request for reconsideration of the merits of his claim.

Appellant filed a timely request for reconsideration on January 6, 2020,⁷ but he did not establish that OWCP erroneously applied or interpreted a specific point of law, or advance a relevant legal argument not previously considered by OWCP. Consequently, the Board finds that he is not entitled to a review of the merits based on either the first or second requirement under 20 C.F.R. § 10.606(b)(3).⁸

The underlying issue on reconsideration was whether appellant had met his burden of proof to establish that his lumbar conditions were causally related to the accepted June 7, 2018 employment incident. This is a medical question that requires rationalized medical opinion evidence to resolve the issue.⁹ In support of his request for reconsideration, appellant submitted medical evidence that was not previously considered by OWCP. In a December 27, 2019 letter, Dr. Rekhala, distinguished the progression of disc degeneration from a lumbar strain. He opined that, when taking into account the length of time appellant worked for the employing establishment without incident, it was clear that his lumbar strain was a direct result of lifting a heavy tray of mail. The Board finds that Dr. Rekhala's December 27, 2019 letter provided an opinion on the correlation between appellant's diagnosed lumbar strain and the accepted factors of his federal employment. As such, this report constitutes relevant and pertinent new evidence in support of

³ 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).

⁴ *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 the merit 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). *Id.* at Chapter 2.1602.4b.

⁵ *Id.* at § 10.608(a); *see also M.S.*, 59 ECAB 231 (2007).

⁶ *Id.* at § 10.608(b); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

⁷ *Supra* note 4; *J.F.*, Docket No. 16-1233 (issued November 23, 2016).

⁸ *Supra* note 3.

⁹ *E.T.*, Docket No. 14-1087 (issued September 5, 2014).

appellant's claim for a lumbar condition. Therefore, the submission of this evidence requires reopening of his claim for merit review pursuant to the third prong of section 10.606(b).¹⁰

The Board will therefore set aside OWCP's January 9, 2020 decision and remand the case for an appropriate merit decision on appellant's claim.

CONCLUSION

The Board finds that OWCP improperly denied appellant's request for reconsideration of the merits of his claim.

ORDER

IT IS HEREBY ORDERED THAT the January 9, 2020 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.¹¹

Issued: February 10, 2021
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

¹⁰ See *C.H.*, Docket No. 17-1065 (issued December 14, 2017); *J.W.*, Docket No. 18-0822 (issued July 1, 2020); *D.M.*, Docket No. 10-1844 (issued May 10, 2011); *Kenneth R. Mroczkowski*, 40 ECAB 855 (1989).

¹¹ Christopher J. Godfrey, Deputy Chief Judge, who participated in the preparation of the decision, was no longer a member of the Board after January 20, 2021.