

FACTUAL HISTORY

On September 26, 2009 appellant, then a 45-year-old mail handler, filed a traumatic injury claim alleging that on September 15, 2009 she pulled a muscle in her right arm when her supervisor yanked a postal container (POSTCON) she was holding and tried to take it away. She stopped work on September 16, 2009 and returned on September 21, 2009. Appellant submitted a September 28, 2009 duty status report and another undated duty status report from an unknown provider.³ These reports noted her history of injury and provided work restrictions.

In an October 7, 2009 statement, Shaun Blaine, appellant's supervisor, reported that he politely asked appellant to move a container of equipment. When she responded with a nasty attitude and sarcasm, he stated that he would take care of it himself. Mr. Blaine explained that appellant was standing with her body in front of the container with both of her hands on the handle and he put his right hand on the side of the container to push it towards her. He let go of the container when Randi Charron, another supervisor, advised him to let appellant do her job. Mr. Blaine noted that the container never moved more than an inch. Appellant reported the injury after she consulted with her local labor union and sought medical help the next day. The employing establishment also submitted a witness statement from Raymond M. Bourbeau, the plant manager.

In a decision dated November 3, 2009, OWCP denied appellant's claim finding that the evidence submitted was insufficient to establish that the September 15, 2009 employment incident occurred as alleged. It also stated that the medical evidence did not demonstrate that appellant sustained a diagnosed condition as a result of the alleged work event.

On November 15, 2009 appellant submitted a request for reconsideration. Prior to submitting her reconsideration request, she provided an October 24, 2009 statement. Appellant explained that, on September 15, 2009, Mr. Blaine instructed her to bring a POSTCON of empty letter trays to a Delivery Bar Code Sorter (DBCS) machine. She jokingly answered, "You took it that far, why don't you take it the rest of the way?" and grabbed the POSTCON. Mr. Blaine grabbed the POSTCON at the same time and yanked it away from her. Appellant felt a burning sensation in her arm and told Mr. Blaine that he hurt her. She provided witness statements from coworkers Bruce Kelly, Dave Port and Joe Fitzgerald.

In a September 16, 2009 report, Dr. Charlotte Reback, a Board-certified family practitioner, stated that appellant injured herself holding onto a carrying case at work when a coworker pulled it away from her. Appellant complained of moderate pain in her right arm, which had improved, but worsened with lifting. Dr. Reback observed that appellant had normal range of motion and no bony tenderness in her right shoulder but exhibited tenderness in her right upper arm.

In September 16, 2009 discharge instructions, Dr. Reback diagnosed arm sprain and noted that appellant injured herself holding onto a carrying cage at work when a coworker pulled it away from her.

³ The signatures are illegible.

In an October 22, 2009 report, Dr. Reback stated that on September 16, 2009 she examined appellant regarding right arm pain and opined that it “could have been” a result of the injury which appellant described in the history portion of her September 16, 2009 evaluation.

By decision dated February 12, 2010, OWCP affirmed the November 3, 2009 decision with modification. It accepted that on September 15, 2009 appellant’s supervisor yanked a POSTCON away from her and caused pain to her arm, but denied the claim finding the medical evidence insufficient to establish that she sustained a strained muscle causally related to the accepted incident.

On June 17, 2010 appellant submitted a request for reconsideration. In an undated medical report, Dr. Reback stated that on September 16, 2009 she examined appellant for an arm injury sustained at work. She referred to the September 16, 2009 treatment note and pointed out that it included a description of appellant’s symptoms and a diagnosis of arm sprain. Dr. Reback further stated that to anyone reading the report it “must be obvious that this was secondary to the injury the day prior to the visit.” She concluded that appellant “incurred an injury to her arm on October 21, 2009 which resulted in an arm sprain for which she sought medical attention.”

By decision dated June 11, 2010, OWCP denied appellant’s request for reconsideration because she failed to submit new or relevant evidence and raise arguments not previously considered sufficient to warrant further review under 5 U.S.C. § 8128(a). It noted that along with her June 17, 2010 request for reconsideration, she submitted two copies of September 16, 2009 medical reports that were previously considered by OWCP.

LEGAL PRECEDENT

Section 8128(a) of FECA vests OWCP with discretionary authority to determine whether to review an award for or against compensation.⁴ OWCP’s regulations provide that it may review an award for or against compensation at any time on its own motion or upon application. The employee shall exercise his right through a request to the district OWCP.⁵

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or an argument that: (1) shows that it 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 it.⁶

A request for reconsideration must also be submitted within one year of the date of the OWCP decision for which review is sought.⁷ A timely request for reconsideration may be

⁴ 5 U.S.C. § 8128(a); *see also D.L.*, Docket No. 09-1549 (issued February 23, 2010); *W.C.*, 59 ECAB 372 (2008).

⁵ 20 C.F.R. § 10.605; *see also R.B.*, Docket No. 09-1241 (issued January 4, 2010); *A.L.*, Docket No. 08-1730 (issued March 16, 2009).

⁶ *Id.* at § 10.606(b); *see also L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

⁷ *Id.* at § 10.607(a).

granted if OWCP determines that the employee has presented evidence or provided an argument that meets at least one of the requirements for reconsideration. If OWCP 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

ANALYSIS

As noted above, the Board does not have jurisdiction over the merits of this case. The issue presented on appeal is whether appellant met any of the requirements of 20 C.F.R. § 10.606(b)(2), requiring OWCP to reopen the case for review of the merits of the claim. The Board finds that OWCP improperly denied appellant's June 17, 2010 request for reconsideration.

After initially denying appellant's claim finding that she had not established that the incident occurred as alleged, by decision dated February 12, 2010, OWCP accepted the incident but denied her claim on the grounds of insufficient medical evidence establishing causal relationship. On June 17, 2010 appellant requested reconsideration. In support of her request, she submitted an undated medical report by Dr. Reback, which was not previously considered by OWCP. Dr. Reback stated that appellant incurred an arm injury at work one day prior to her September 16, 2009 examination. She diagnosed "arm sprain" and opined that it was "obvious that this was secondary to the injury the day prior to the visit." Dr. Reback's report addressed the issue of causal relationship, which was the issue for denial in the February 12, 2010 decision. As this evidence is new to the record and relevant to the issue of causal relationship, it is sufficient to warrant merit review.¹⁰ The case will be remanded for OWCP to review this evidence. After such further development of the claim as it deems necessary, it shall issue an appropriate decision.

CONCLUSION

The Board finds that OWCP improperly denied appellant's June 17, 2010 request for reconsideration.

⁸ *Id.* at § 10.608(a); *see also M.S.*, 59 ECAB 231 (2007).

⁹ *Id.* at § 10.608(b); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

¹⁰ *See Joseph R. Alsing*, 39 ECAB 1012 (1988); *R.M.*, Docket No. 09-1231 (issued July 27, 2010).

ORDER

IT IS HEREBY ORDERED THAT the August 5, 2010 nonmerit decision of the Office of Workers' Compensation Programs be set aside. The case is remanded for further action consistent with this decision of the Board.

Issued: October 17, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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