

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

G.E., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Little Rock, AR, Employer**

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**Docket No. 12-1286
Issued: December 21, 2012**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA HOWARD FITZGERALD, Judge
ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On May 24, 2012 appellant filed a timely appeal from the January 20 and March 26, 2012 merit decisions of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant sustained injuries to his head, neck and back while in the performance of duty on November 8, 2010; and (2) whether OWCP properly refused to reopen his case for reconsideration under 5 U.S.C. § 8128.

FACTUAL HISTORY

Appellant, a 50-year-old city carrier, filed a claim for benefits on November 9, 2010, alleging that he sustained injuries to his head, neck and lumbar spine as a result of a motor vehicle collision in the performance of duty on November 8, 2010.

¹ 5 U.S.C. § 8101 *et seq.*

By letter dated November 16, 2010, OWCP advised appellant that it required additional factual and medical evidence to determine whether he was eligible for compensation benefits. It asked him to submit a comprehensive medical report from a treating physician describing his symptoms and the medical reasons for his condition and an opinion as to whether his claimed condition was causally related to his federal employment.

An Arkansas Uniform Motor Vehicle Collision Report dated November 8, 2010 stated that appellant had not reported any injury. Appellant appeared to be in normal condition and his vehicle had an estimated \$800.00 of property damage.

In a form report dated November 30, 2010, Dr. William F. Hefley, Board-certified in orthopedic surgery, stated that appellant had strained his neck and back on November 8, 2010 due to a motor vehicle accident. He diagnosed a cervical strain and checked a box indicating that the condition found was caused or aggravated by an employment activity. This form report also described an October 13, 2010 knee injury.

On December 7, 2010 OWCP received the November 5, 2010 narrative report of Dr. Hefley who described a left shoulder injury that appellant sustained in April 2008, as well as a right shoulder injury in October 2008. Dr. Hefley noted that appellant hung his mailbag over each shoulder alternately while walking his mail route. He diagnosed bilateral shoulder impingement with advanced acromioclavicular degenerative joint disease.

By decision dated December 17, 2010, OWCP denied appellant's claim, finding that he failed to submit sufficient medical evidence to establish that he sustained head, neck or back injuries on November 8, 2010.

Appellant requested reconsideration on December 31, 2010.

On January 4, 2011 OWCP received emergency room records from the Baptist Health Medical Center dated November 8, 2010. The records provided a history that appellant came to the emergency room after his postal vehicle was rear-ended by another motor vehicle and was spun around. He complained of back, neck and head pain. Appellant's diagnosis was stated as cervical, thoracic and lumbar strain.

On January 4, 2011 OWCP received a November 15, 2010 report from Dr. Hefley, who noted that appellant had been involved in a motor vehicle collision one-week prior while driving his mail truck. Appellant's vehicle was struck at a high rate of speed and he felt his neck snap. Dr. Hefley concluded that appellant was one week postmotor vehicle collision with a cervical sprain/strain.

In a January 7, 2011 report, Dr. Hefley noted that the employing establishment had not yet accepted his injuries from the motor vehicle collision November 2010 as work related because of appellant's multiple orthopedic issues and multiple dates of injury. He stated that appellant had not returned to work since the motor vehicle accident. Dr. Hefley diagnosed right knee strain, bilateral shoulder impingement and status postmotor vehicle accident, which resulted in cervical strain/sprain with brachial radiculopathy.

In a January 12, 2011 report, Dr. Brad A. Thomas, a Board-certified neurosurgeon, stated that appellant had a very confusing and complex history. Appellant had complaints of neck pain

stemming from a 2008 incident when a door from a truck fell and hit him. In October 2010, he was put in a headlock by his boss, which hurt his neck. On November 8, 2010 appellant was hit while driving a mail truck and had not returned to work. The accident resulted in neck pain and pain in his right arm and hand. Appellant related that he had weakness in both arms; he rated the pain in his neck and right arm as a 7 on a scale of 1 to 10. On examination, appellant had full range of motion in the cervical spine and in all of the joints of the upper extremities, with no pain or tenderness. He advised that cervical x-rays showed no fractures, subluxations or abnormal motion. Appellant underwent a magnetic resonance imaging (MRI) scan which indicated a moderate, right-sided, C6-7 herniated disc that could be causing his right arm and hand pain. Dr. Thomas recommended light duty, no heavy lifting greater than 15 pounds. He also recommended a course of physical therapy and medication. Dr. Thomas stated that if appellant's condition did not improve with conservative management he might schedule appellant for a C6-7 anterior cervical discectomy with fusion.

On March 17, 2011 OWCP received a November 24, 2010 report from Dr. Kenneth R. Johnston, Board-certified in family practice, who reported a history that appellant had pulled his back on October 13, 2010 while "playing around" with his boss, and that he was involved in a hit and run collision with his mail truck on October 8, 2010, which was severe enough to spin the mail truck around. Dr. Johnston diagnosed tenderness of the lumbar spine and pelvis.

In a progress report dated June 17, 2011, Dr. Thomas noted that appellant had two accidents one in October 2010 and one in November 2010. He stated that appellant had returned for evaluation with complaints of continued pain in both arms. Dr. Thomas recommended that appellant undergo an MRI scan examination of the cervical spine. On July 1, 2011 he reported that appellant had undergone an MRI scan examination of the cervical spine, which showed a right-sided C6-7 herniated disc. Dr. Thomas offered no opinion regarding the cause of this condition.

In an August 12, 2011 report, Dr. Thomas advised that appellant's condition was essentially unchanged, as he continued to experience pain down his right arm and right shoulder. He stated that he had scheduled him to undergo physical therapy on July 1, 2011; however, this had been not approved and appellant had not received any physical therapy. Dr. Thomas stated that he would try to reorder physical therapy.

By decision dated September 19, 2011, OWCP denied modification of the December 17, 2010 decision.

On September 19, 2011 appellant requested reconsideration.

In a report dated October 10, 2011, Dr. Thomas advised that appellant continued to have pain down his right arm in a C7 distribution. He recommended physical therapy; but it had not yet been approved. Dr. Thomas noted no changes in the medical history. He advised that the MRI scan showed a right-sided, C6-7 foraminal stenosis that could impinge the C1 nerve root. Dr. Thomas reiterated that he would try to schedule appellant for physical therapy and prescribe medication.

In a report dated March 9, 2011, received by OWCP on November 15, 2011, Dr. Thomas noted that appellant had undergone physical therapy. He stated that it had significantly improved appellant's condition, to the extent that he was ready to return to work. Dr. Thomas advised that

appellant had good strength throughout bilateral upper and lower extremities. He released appellant to return to regular duty as of March 14, 2011.

By decision dated January 20, 2012, OWCP denied modification of the September 19, 2011 decision.

On March 9, 2012 appellant requested reconsideration. He alleged that OWCP' decision had made findings which were not pertinent to this claim. Appellant did not submit any additional medical evidence.

By decision dated March 26, 2012, OWCP denied appellant's application for review on the grounds that it neither raised substantive legal questions nor included new and relevant evidence sufficient to require it to review its prior decision.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA² has the burden of establishing that the essential elements of his or her claim including the fact that the individual is an "employee of the United States" within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA, that an injury was sustained in the performance of duty as alleged, and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.³ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "fact of injury" has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.⁵ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.⁶ The medical evidence required to establish causal relationship is usually rationalized medical evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors.⁷

² 5 U.S.C. §§ 8101-8193.

³ *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁵ *John J. Carlone*, 41 ECAB 354 (1989).

⁶ *Id.* For a definition of the term "injury," see 20 C.F.R. § 10.5(a)(14).

⁷ *Id.*

The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.⁸

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that his condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship.⁹ Causal relationship must be established by rationalized medical opinion evidence and appellant failed to submit such evidence.

ANALYSIS -- ISSUE 1

OWCP accepted that appellant's postal truck was struck from behind by another vehicle on November 8, 2010. The question of whether the employment incident caused a personal injury can only be established by probative medical evidence.¹⁰ The Board finds that appellant has not submitted sufficient rationalized, medical evidence to establish that the November 8, 2010 employment incident caused the claimed head, neck and back injuries.

Appellant submitted reports from Drs. Hefley, Thomas and Johnston. In a November 15, 2010 report, Dr. Hefley addressed prior treatment of appellant in 2008. He stated that appellant's vehicle had been struck at a high rate of speed and that appellant felt his head snap. Dr. Hefley concluded that appellant was one-week postcervical sprain/strain. The police report noted that appellant had snapped his head, but stated that he had not sustained any injury and appeared to be in normal conation. In a November 30, 2010 report, Dr. Hefley advised that appellant had been involved in a motor vehicle collision on November 8, 2010, as a result of which he strained his neck and back. He diagnosed cervical strain/sprain with brachial radiculopathy and bilateral shoulder impingement. However, Dr. Hefley did not provide any medical rationale explaining how these conditions were causally related to the November 8, 2010 incident. He noted causal relationship with a checkmark, which the Board has held is not sufficient to establish causation.¹¹

Dr. Thomas submitted several reports from January to October 2011. He noted that appellant had a complex and confusing medical history. Dr. Thomas advised that appellant had complaints of neck pain stemming from a November 2008 incident in which he was hit by a truck door; neck pain from an October 2010 incident during which his boss placed him in a neck hold and that appellant had not returned to work following the November 8, 2010 motor vehicle incident while driving a mail truck. He noted appellant's complaints that the accident resulted in neck pain and pain in his right arm and hand. Dr. Thomas stated findings on examination and diagnosed moderate, right-sided, C6-7 herniated, as showed by MRI scan. He stated that this could be the cause of his neck, right arm and right hand pain. Dr. Thomas prescribed medication and physical therapy, which temporarily ameliorated appellant's condition. He indicated that he would consider performing surgery if his condition did not improve with conservative management. The weight of medical opinion is determined by the opportunity for and

⁸ See *Joe T. Williams*, 44 ECAB 518, 521 (1993).

⁹ *Id.*

¹⁰ *Carlone*, *supra* note 5.

¹¹ *Debra S. King*, 44 ECAB 203 (1992); *Salvatore Dante Roscello*, 31 ECAB 247 (1979).

thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts of the case, the medical history provided, the care of analysis manifested and the medical rationale expressed in support of stated conclusions.¹² Dr. Thomas' reports diagnosed a herniated disc at C6-7 but did not provide a rationalized medical opinion addressing how this condition related to the November 8, 2010 work incident. His opinion on causal relationship is of limited probative value in that he did not provide adequate medical rationale in support of his conclusions.¹³ Dr. Thomas did not describe appellant's accident in any detail or how the accident would have been competent to cause an injury. Moreover, his opinion is of limited probative value for the further reason that it is generalized in nature and equivocal in that he only noted summarily that appellant's condition was causally related to the November 8, 2010 work incident. Dr. Thomas did not explain why that November 8, 2010 incident caused the herniated disc and neck strain, rather than the earlier October 2010 incident wherein appellant was placed in a neck hold by his boss, or the 2008 incident when a truck door fell on his head. Therefore, appellant failed to provide a medical report from a physician that explains how the work incident of November 8, 2010 caused or contributed to the claimed neck and back injury.

Dr. Johnston stated in his November 24, 2010 report that appellant had pulled his back while "playing around" with his boss. He also noted that appellant had been involved in the October 8, 2010 motor vehicle incident. Dr. Johnston diagnosed tenderness of the lumbar spine and pelvis, but offered no opinion or explanation as to whether the diagnosed condition was causally related to the October 2010 incident or the November 8, 2010 event.

OWCP advised appellant of the evidence required to establish his claim; however, appellant failed to submit such evidence. Appellant did not provide a medical opinion which describes or explains the medical process through which the November 8, 2010 work accident would have caused the claimed injuries. Accordingly, he did not establish that he sustained injuries to his neck and back in the performance of duty. OWCP properly denied appellant's claim for compensation.

LEGAL PRECEDENT -- ISSUE 2

Under 20 C.F.R. § 10.606(b), a claimant may obtain review of the merits of his or her claim by showing that OWCP erroneously applied or interpreted a specific point of law; by advancing a relevant legal argument not considered by OWCP; or by constituting relevant and pertinent evidence not previously considered by OWCP.¹⁴ Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.¹⁵

¹² See *Anna C. Leanza*, 48 ECAB 115 (1996).

¹³ *William C. Thomas*, 45 ECAB 591 (1994).

¹⁴ 20 C.F.R. § 10.606(b)(1); see generally 5 U.S.C. § 8128(a).

¹⁵ *Howard A. Williams*, 45 ECAB 853 (1994).

ANALYSIS -- ISSUE 2

Appellant has not shown that OWCP erroneously applied or interpreted a specific point of law; he has not advanced a relevant legal argument not previously considered by OWCP; and he has not submitted relevant and pertinent evidence not previously considered by OWCP. He alleged that OWCP made findings which were not pertinent to this claim. However appellant did not explain how factual findings which incorporate appellant's entire medical history constituted error by OWCP. The Board also notes that appellant did not submit any new medical evidence with his request for reconsideration. OWCP did not abuse its discretion in refusing to reopen appellant's claim for a review on the merits in its March 26, 2012 nonmerit decision.

CONCLUSION

The Board finds that appellant has failed to establish that he sustained neck and back injuries in the performance of duty on November 8, 2010. The Board finds that OWCP properly refused to reopen appellant's case for reconsideration on the merits of his claim under 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the March 26 and January 20, 2012 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: December 21, 2012
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board