

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On September 18,² 2011 appellant, then a 58-year-old supervisor of transportation operations, filed an occupational disease claim alleging that on November 1, 2010 he realized that he sustained a right shoulder and arm injury due to his employment duties.

In correspondence dated October 5, 2011, OWCP informed appellant that the evidence of record was insufficient to support his claim. Appellant was advised as to the additional medical and factual evidence needed and given 30 days to provide this information. OWCP subsequently received medical and factual evidence including a position description and a September 6, 2011 magnetic resonance imaging (MRI) scan.

On April 27, 2011 Dr. David J. King, a treating Board-certified orthopedic surgeon, diagnosed right shoulder impingement, subacromial bursitis and acromioclavicular arthrosis. Appellant related that he has had right shoulder pain for a while. The physical examination revealed mild pain in the acromioclavicular joint, pain in the impingement position and no significant weakness. A review of x-ray interpretations showed no significant glenohumeral or acromioclavicular degeneration.

On August 31, 2011 Dr. King reported seeing appellant for right shoulder pain. He provided physical findings and recommended an MRI scan be performed. Dr. King's assessment of appellant's condition included possible rotator cuff pathology, subacromial bursitis and right shoulder pain from impingement. A September 6, 2011 MRI scan reported findings of right acromioclavicular joint hypertrophy and diffuse right supraspinatus tendon interstitial tear without full thickness tear.

On September 7, 2011 Dr. King diagnosed right shoulder interstitial rotator cuff degeneration, subacromial impingement and bursitis and symptomatic right shoulder acromioclavicular arthrosis. The physical examination revealed continuing pain in the impingement position, some rotator cuff weakness and extreme pain in the acromioclavicular joint with palpation and adduction. A review of an MRI scan showed acromioclavicular joint hypertrophy and interstitial tearing of the supraspinatus with no full thickness tear.

By decision dated December 12, 2011, OWCP denied appellant's claim on the grounds that the medical evidence was not sufficient to establish causal relation to his employment.

On December 29, 2011 appellant requested reconsideration. He noted that, prior to moving to a new location, he had to use three two-way radios daily instead of one two-way radio. Appellant contended that the constant reaching for the telephone and radios were the cause of his shoulder problems.

By decision dated January 25, 2012, OWCP denied reconsideration without merit review.

² The date appellant filed his claim is not clear. OWCP noted the date of filing as September 18, 2011 while the employing establishment noted it as September 15, 2011.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA³ has the burden of establishing the essential elements of his claim, including the fact that the individual is an employee of the United States within the meaning of FECA; that the claim was filed within the applicable time limitation; that an injury was sustained while 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.⁴ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁵

OWCP regulations define the term occupational disease or illness as a condition produced by the work environment over a period longer than a single workday or shift.⁶ To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit: a detailed description of the employment factors or conditions, which the claimant believes caused or adversely affected the condition or conditions for which compensation is claimed. If a claimant does establish an employment factor, he must submit medical evidence showing that a medical condition was caused by such a factor.⁷ The medical evidence required to establish causal relationship is generally rationalized medical opinion evidence from a physician. The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.⁸

ANALYSIS -- ISSUE 1

OWCP denied appellant's claim on the grounds that the evidence was insufficient to establish a causal relation between the diagnosed right upper extremity conditions and his employment. The medical evidence diagnosed of right shoulder interstitial rotator cuff degeneration, subacromial impingement and bursitis and symptomatic right shoulder acromioclavicular arthrosis. The Board finds that the medical evidence is insufficient to establish that the diagnosed conditions were caused by appellant's employment.

Dr. King obtained an MRI scan that revealed right acromioclavicular joint hypertrophy and diffuse right supraspinatus tendon interstitial tear without full thickness tear. As a diagnostic test, causal relationship was not addressed. In his various progress notes, Dr. King set forth physical finding and diagnosed right shoulder impingement, subacromial bursitis,

³ 5 U.S.C. § 8101 *et seq.*

⁴ C.S., Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

⁵ S.P., 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁶ 20 C.F.R. § 10.5(ee).

⁷ C.D., Docket No. 09-1881 (issued April 20, 2010); *Effie Morris*, 44 ECAB 470 (1993).

⁸ D.S., Docket No. 09-860 (issued November 2, 2009); *I.J.*, 59 ECAB 408 (2008); *B.B.*, 59 ECAB 234 (2007); *Solomon Polen*, 51 ECAB 341 (2000); *Victor J. Woodhams*, 41 ECAB 345 (1989).

acromioclavicular arthrosis, acromioclavicular joint hypertrophy and interstitial tearing of the supraspinatus with no full thickness tear. He did not address the issue of causal relationship in his reports. Dr. King did not explain how appellant's work duties caused or contributed to the diagnosed right upper extremity conditions. The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.⁹ Dr. King's reports are insufficient to establish appellant's claim.

By letter dated October 5, 2011, OWCP informed appellant of the medical and factual evidence required to support his claim. Appellant failed to provide a medical report adequately explaining how his right arm condition was causally related to his employment. An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that work activities may produce symptoms revelatory of an underlying condition nor the belief that her condition was caused, precipitated, or aggravated by his employment is sufficient to establish causal relationship.¹⁰ Such a relationship must be shown by rationalized medical opinion evidence.¹¹

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

LEGAL PRECEDENT -- ISSUE 2

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,¹² OWCP's regulations provide that 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.¹³ 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.¹⁴ When a claimant fails to meet one of the above standards, OWCP

⁹ C.B., Docket No. 09-2027 (issued May 12, 2010); S.E., Docket No. 08-2214 (issued May 6, 2009); Jaja K. Asaramo, 55 ECAB 200 (2004).

¹⁰ See Dennis M. Mascarenas, 49 ECAB 215 (1997)

¹¹ Patricia J. Bolleter, 40 ECAB 373 (1988).

¹² 5 U.S.C. §§ 8101-8193. Section 8128(a) of FECA provides that the Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application.

¹³ 20 C.F.R. § 10.606(b)(3). See J.M., Docket No. 09-218 (issued July 24, 2009); Susan A. Filkins, 57 ECAB 630 (2006).

¹⁴ Id. at § 10.607(a). See S.J., Docket No. 08-2048 (issued July 9, 2009); Robert G. Burns, 57 ECAB 657 (2006).

will deny the application for reconsideration without reopening the case for review on the merits.¹⁵

ANALYSIS -- ISSUE 2

In his December 29, 2011 request for reconsideration, appellant asked only that his case be reviewed. He did not allege or demonstrate that OWCP erroneously applied or interpreted a specific point of law, or advance a relevant legal argument not previously considered by OWCP. In support of his request for reconsideration, appellant submitted his statement regarding his duties. The statement from him is irrelevant to the underlying medical issue of causal relationship. The Board has held that submission of evidence that does not address the particular issue involved does not constitute a basis for reopening a case.¹⁶ Consequently, appellant is not entitled to further merit review of his claim under section 10.606(b)(1)-(3).¹⁷

Appellant did not show that OWCP erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by OWCP, or submit relevant and pertinent new evidence not previously considered. OWCP did not abuse its discretion by denying her reconsideration.¹⁸

CONCLUSION

The Board finds that appellant failed to meet his burden of proof to establish that he sustained a right shoulder condition causally related to his federal employment. The Board further finds that OWCP properly refused to reopen his claim for further review of the merits pursuant to 5 U.S.C. § 8128(a).

¹⁵ *Id.* at § 10.608(b). See *Y.S.*, Docket No. 08-440 (issued March 16, 2009); *Tina M. Parrelli-Ball*, 57 ECAB 598 (2006).

¹⁶ *R.M.*, 59 ECAB 690 (2008); *Betty A. Butler*, 56 ECAB 545 (2005).

¹⁷ 20 C.F.R. § 10.606(b)(1)-(3). See *L.D.*, 59 ECAB 648 (2008); *Desiderio Martinez*, 55 ECAB 245 (2004).

¹⁸ See *Susan A. Filkins*, *supra* note 13.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated January 25, 2012 and December 12, 2011 are affirmed.

Issued: November 13, 2012
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

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