United States Department of Labor
Employees' Compensation Appeals Board

J.T., Appellant	)	
and	)	**Docket No. 12-1903**
	)	**Issued: February 15, 2013**
U.S. POSTAL SERVICE, POST OFFICE, Rock River, WY, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
PATRICIA HOWARD FITZGERALD, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 18, 2012 appellant filed a timely appeal from the Office of Workers' Compensation Programs' (OWCP) August 15, 2012 merit decision denying her traumatic injury claim and the September 5, 2012 nonmerit decision denying reconsideration. Pursuant to the Federal Employees' Compensation Act[1] (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 a right finger/thumb injury while in the performance of duty on March 22, 2012; and (2) whether OWCP's refusal to reopen appellant's case for further consideration on the merits pursuant to 5 U.S.C. § 8128(a) constituted an abuse of discretion.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On March 26, 2012 appellant, a 62-year-old substitute postmaster, filed a traumatic injury claim alleging that she sprained her right finger and thumb while lifting a heavy box in the performance of duty on March 22, 2012.

Appellant submitted a Form CA-17 (duty status report) dated March 27, 2012, which was illegibly signed by a physician's assistant. Clinical findings included right thumb and wrist pain. The date of injury was identified as March 22, 2012. In response to a question regarding how the injury occurred, the physician's assistant indicated: "sprain: right thumb -- sprain finger-thumb."

In a letter dated April 3, 2012, OWCP informed appellant that the information submitted was insufficient to establish her claim and allowed her 30 days to submit additional information, including a detailed account of the alleged injury and a physician's report, with a diagnosis and a rationalized opinion as to the cause of the diagnosed condition. Appellant was advised that a physician's assistant is not considered a physician under FECA and that she must provide a report prepared by a qualified physician.

The record contains the second page of a March 27, 2012 attending physician's report signed by a physician's assistant. The report contains a diagnosis of wrist trauma and provides a history of injury reflecting that a heavy box slid onto the interior portion of appellant's wrist, resulting in thumb and wrist pain. The physician's assistant stated: "It appears that the above symptoms may be caused by the described incident."

Appellant submitted an April 17, 2012 duty status report, bearing a physician assistant's illegible signature. The report contained a diagnosis of wrist pain and recommended that appellant be off work until April 20, 2012. Examination findings included pain in the right wrist consistent with a sprain.

By decision dated May 17, 2012, OWCP denied appellant's claim on the grounds that the medical evidence was insufficient to establish a causal relationship between a diagnosed condition and the claimed event.

On May 21, 2012 appellant requested reconsideration. She stated that she submitted medical reports signed by a physician's assistant because she lives in a remote area in Wyoming and the physician's assistant is her treating physician. Appellant indicated that she would be resubmitting a report that had been countersigned by her physician assistant's supervisor.

Appellant provided a copy of the previously-submitted April 17, 2012 duty status report signed by a physician's assistant. The report was counter-signed, but the signature was illegible, and there was no information identifying the credentials of the signatory. The record also contains a report of a March 27, 2012 x-ray of the right wrist.

By decision dated August 15, 2012, OWCP modified its prior decision to accept that the incident had occurred as alleged. It denied appellant's claim, however, on the grounds that she had failed to establish a causal relationship between a diagnosed condition and the accepted event.

On August 21, 2012 appellant again requested reconsideration. She stated that it was not convenient for her to obtain a medical report from a medical doctor because she lives in a rural community. Appellant indicated that she felt OWCP's treatment of her was insulting because she did not have the luxury of being treated by a medical doctor.

By decision dated September 5, 2012, OWCP denied appellant's request for reconsideration on the grounds that she had failed to submit evidence or argument warranting merit review.

LEGAL PRECEDENT -- ISSUE 1

FECA provides for payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.[2] The phrase "sustained while in the performance of duty" is regarded as the equivalent of the coverage formula commonly found in workers' compensation laws, namely, arising out of and in the course of employment.[3]

An employee seeking benefits under FECA has the burden of proof to establish 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, that an injury was sustained in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.[4] When an employee claims that he or she sustained a traumatic injury in the performance of duty, he or she must establish the fact of injury, consisting of two components, which must be considered in conjunction with one another. The first is whether the employee actually experienced the incident that is alleged to have occurred at the time, place and in the manner alleged. The second is whether the employment incident caused a personal injury, and generally this can be established only by medical evidence.[5]

The claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of employment.[6] An award of compensation may not be based on appellant's belief of causal relationship.[7] Neither the mere

[2] *Id.* at § 8102(a).

[3] This construction makes the statute effective in those situations generally recognized as properly within the scope of workers compensation law. *Charles E. McAndrews*, 55 ECAB 711 (2004); *see also Bernard D. Blum*, 1 ECAB 1 (1947).

[4] *Robert Broome*, 55 ECAB 339 (2004).

[5] *Deborah L. Beatty*, 54 ECAB 340 (2003). *See also Tracey P. Spillane*, 54 ECAB 608 (2003); *Betty J. Smith*, 54 ECAB 174 (2002). The term injury as defined by FECA, refers to a disease proximately caused by the employment. 5 U.S.C. § 8101(5). *See* 20 C.F.R. § 10.5(q)(ee).

[6] *Katherine J. Friday*, 47 ECAB 591, 594 (1996).

[7] *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish a causal relationship.[8] Simple exposure to a workplace hazard does not constitute a work-related injury entitling an employee to medical treatment under FECA.[9]

Causal relationship is a medical issue, and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion must be based on a complete factual and medical background of the claimant, 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 established incident or factor of employment.[10]

ANALYSIS -- ISSUE 1

OWCP accepted that appellant was a federal employee, that she timely filed her claim for compensation benefits and that the March 22, 2012 workplace incident occurred as alleged. The issue, therefore, is whether appellant has submitted sufficient medical evidence to establish that the employment incident caused an injury. The medical evidence presented does not contain a rationalized medical opinion from a qualifying physician establishing that the work-related incident caused or aggravated any particular medical condition or disability. Therefore, appellant has failed to satisfy her burden of proof.

Medical evidence submitted by appellant consists of a March 27, 2012 duty status report bearing an illegible signature of a physician's assistant; the second page of a March 27, 2012 attending physician's report signed by a physician's assistant; an April 17, 2012 duty status report, bearing a physician assistant's illegible signature; and a copy of the April 17, 2012 duty status report, which bore an illegible countersignature dated May 11, 2012. None of these reports constitutes probative medical evidence.

OWCP correctly found that the March 27 and April 17, 2012 reports signed by a physician's assistant alone do not constitute probative medical evidence, as physician's assistants do not qualify as "physicians" under FECA.[11] In order to cure this defect, appellant resubmitted the April 17, 2012 report, which she claimed to have been countersigned by a physician. The Board has held that a report of a physician's assistant which has been countersigned by a medical

[8] *Id.*

[9] 20 C.F.R. § 10.303(a).

[10] *John W. Montoya*, 54 ECAB 306 (2003).

[11] A medical report may not be considered as probative medical evidence if there is no indication that the person completing the report qualifies as "physician" as defined in 5 U.S.C. § 8101(2). Section 8101(2) of FECA provides as follows: "(2) 'physician' includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law." *See Merton J. Sills*, 39 ECAB 572, 575 (1988).

physician constitutes medical evidence.[12] In this case, however, the countersignature was illegible and there was no information identifying the credentials of the signatory. Therefore, the report may not be considered to be probative medical evidence.

Appellant expressed her belief that her right hand condition resulted from the March 22, 2012 employment incident. 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.[13] Neither the fact that the condition became apparent during a period of employment, nor the belief that the condition was caused or aggravated by employment factors or incidents, is sufficient to establish causal relationship.[14] Causal relationship must be substantiated by reasoned medical opinion evidence, which it is appellant's responsibility to submit. Therefore, appellant's belief that her condition was caused by the work-related incident is not determinative.

OWCP advised appellant that it was her responsibility to provide a comprehensive medical report which described her symptoms, test results, diagnosis, treatment and the doctor's opinion, with medical reasons, on the cause of her condition. Appellant failed to submit appropriate medical documentation in response to OWCP's request. As there is no probative, rationalized medical evidence addressing how her claimed right hand condition was caused or aggravated by her employment, appellant has not met her burden of proof in establishing that she sustained an injury in the performance of duty causally related to factors of her federal employment.

Appellant contends that she had always been treated by a physician's assistant and that it would be inconvenient for her to obtain an opinion from a licensed physician because she lives in an extremely remote area. As noted, physician's assistants are not considered "physicians" under 5 U.S.C. § 8101(2) or under OWCP procedures.[15] Neither FECA nor OWCP procedures contain an exception to this provision.

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

FECA provides that OWCP may review an award for or against compensation upon application by an employee (or his or her representative) who receives an adverse decision. The

[12] *See Lyle E. Dayberry*, 48 ECAB 369 (1998). Federal (FECA) Procedure Manual, Part 3 -- Medical, *Overview*, Chapter 3.100.3(c) (March 2010). A report prepared by a physician's assistant which is countersigned by a physician should be accepted as medical evidence.

[13] *See Joe T. Williams*, 44 ECAB 518, 521 (1993).

[14] *Id.*

[15] *Supra* notes 11 and 12.

employee may obtain this relief through a request to the district OWCP. The request, along with the supporting statements and evidence, is called the "application for reconsideration."[16]

The application for reconsideration must set forth arguments and contain evidence that either: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by; or (3) constitutes relevant and pertinent new evidence not previously considered.[17]

A timely request for reconsideration may be granted if OWCP determines that the employee has presented evidence and/or argument that meets at least one of these standards. If reconsideration is granted, the case is reopened and the case is reviewed on its merits.[18] Where the request is timely but fails to meet at least one of these standards, OWCP will deny the application for reconsideration without reopening the case for a review on the merits.[19]

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly refused to reopen appellant's case for further consideration on the merits pursuant to 5 U.S.C. § 8128(a).

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. In her August 24, 2012 application for reconsideration, appellant did not allege or show that OWCP erroneously applied or interpreted a specific point of law. She did not advance a new and relevant legal argument. Rather, appellant merely reiterated arguments previously made and considered by OWCP.[20] A claimant may be entitled to a merit review by submitting new and relevant evidence, but appellant did not submit any new and relevant medical evidence in this case. In fact, she did not submit any evidence in support of her reconsideration request.

The Board accordingly finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(2). Appellant did not show that OWCP erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered, or submit relevant and pertinent evidence not previously considered. Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

CONCLUSION

The Board finds that appellant has failed to meet her burden of proof to establish that she sustained a traumatic injury in the performance of duty on March 22, 2012. The Board further

[16] 20 C.F.R. § 10.605.

[17] *Id*. at § 10.606.

[18] *Donna L. Shahin*, 55 ECAB 192 (2003).

[19] 20 C.F.R. § 10.608.

[20] Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a claim for merit review. *Denis M. Dupor*, 51 ECAB 482 (2000).

finds that OWCP did not abuse its discretion in refusing to reopen appellant's case for further review of the merits pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the September 5 and August 15, 2012 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: February 15, 2013
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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