

hip and groin while sweeping out a flat sorting machine. Susan Shaner, a supervisor, stated that, at approximately 3:30 a.m., appellant requested transportation to the emergency room because of left leg pain. Appellant indicated that she felt fine upon arrival at work but later felt a sharp pain in her groin which radiated into her upper left leg and left hip. Ms. Shaner instructed her to go to the break room to wait for the paramedics. Appellant appeared to walk normally and without pain. When the paramedics arrived, she appeared to walk normally as she left with them. Linda Peters, another supervisor, observed that appellant did not appear to be in pain when she left with the paramedics. An emergency room discharge form dated April 11, 2008 contained a diagnosis of left hip strain with no history provided.

By letter dated April 28, 2008, the Office asked appellant to submit additional factual evidence establishing that the claimed incident on April 12, 2008 occurred as alleged and medical evidence establishing causal relationship between the work incident and a diagnosed medical condition.

In a May 14, 2008 report, Dr. Pietro Seni, a Board-certified orthopedic surgeon, stated that appellant had pain in her left hip and groin radiating to her thigh. The groin pain began two weeks earlier at work while she was sweeping a machine and the task required a twisting movement getting the mail tubs, pulling them off the conveyor belt and loading them into other equipment. The weight of the tubs varied between 2 and 50 pounds. Appellant reported that she pulled a groin muscle in February. She indicated that she had a previous diagnosis of hip osteoarthritis. Findings on physical examination included negative straight leg raising, almost full range of motion of the hip and tenderness over the greater trochanter area of the hip. An x-ray of the pelvis revealed degenerative arthritic changes, particularly in the left hip. Dr. Seni gave appellant an injection in the greater trochanter bursa. He indicated that the injection should relieve much of her pain if the cause was trochanteric bursitis. Dr. Seni indicated that further tests would be required for a diagnosis if trochanteric bursitis was not the cause of appellant's pain.

By decision dated June 2, 2008, the Office denied appellant's claim on the grounds that the evidence did not establish that she sustained a left hip and groin injury on April 12, 2008 causally related to factors of her employment.

In a June 4, 2008 report, Dr. Seni indicated that the trochanteric bursa injection had provided minimal left hip pain relief. On physical examination, appellant had limited painful range of motion of the hip and trochanter pain. Dr. Seni gave her another hip injection and stated that, if she did not experience substantial relief, she might need a total joint replacement. On June 25, 2008 he reported that the June 4, 2008 left hip injection provided minimal relief from her groin pain. Appellant provided x-rays from her primary care physician who had diagnosed mild osteoarthritis of both hips. Dr. Seni noted that the x-rays revealed some arthritic changes of both hips. He recommended further testing, including a bone scan and possible magnetic resonance imaging (MRI) scan.

On October 20, 2008 appellant requested reconsideration. She stated that Dr. Seni did not have a complete history when he examined her. Appellant indicated that the diagnosis of mild hip arthritis was not made until she had worked at the employing establishment for one year. She asserted that her job, which included eight hours of walking, twisting and turning

while lifting heavy tubs of mail and pushing and pulling heavy equipment, aggravated her underlying osteoarthritis.

By decision dated November 14, 2008, the Office denied appellant's request for reconsideration on the grounds that the evidence was not sufficient to warrant further merit review.¹

LEGAL PRECEDENT

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the fact of injury has been established. There are two components involved in establishing the fact of injury. 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.² Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.³ An employee may establish that the employment incident occurred as alleged but fail to show that his or her disability or condition relates to the employment incident.

To establish a causal relationship between an employee's condition and any disability claimed and the employment event or incident, he or she must submit rationalized medical opinion evidence based on a complete factual and medical background supporting such a causal relationship. Rationalized medical opinion evidence is medical evidence which includes a physician's opinion on the issue of whether there is a causal relationship between the employee's diagnosed condition and the compensable employment factors. 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 claimant.⁴

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that an employee's claimed condition became apparent during a period of employment nor her belief that her condition was aggravated by her employment is sufficient to establish causal relationship.⁵

¹ Subsequent to the November 14, 2008 Office decision, additional evidence was associated with the file. The Board's jurisdiction is limited to the evidence that was before the Office at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c). The Board may not consider this evidence for the first time on appeal.

² *Bonnie A. Contreras*, 57 ECAB 364, 367 (2006); *Edward C. Lawrence*, 19 ECAB 442, 445 (1968).

³ *T.H.*, 59 ECAB ____ (Docket No. 07-2300, issued March 7, 2008); *John J. Carlone*, 41 ECAB 354, 356-57 (1989).

⁴ *I.J.*, 59 ECAB ____ (Docket No. 07-2362, issued March 11, 2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁵ *D.I.*, 59 ECAB ____ (Docket No. 07-1534, issued November 6, 2007); *Ruth R. Price*, 16 ECAB 688, 691 (1965).

ANALYSIS

The Board finds that the evidence is insufficient to establish that appellant sustained a left hip and groin injury on April 12, 2008 while in the performance of duty.

Appellant alleged that she sustained a work-related injury on April 12, 2008 when she felt sharp pains in her left hip and groin while sweeping out a flat sorting machine. An emergency room discharge form contained a diagnosis of left hip strain with no history provided.

On May 14, 2008 Dr. Seni stated that appellant had pain in her left hip and groin that began two weeks earlier while she was sweeping a mail sorting machine. This task required a twisting movement getting the mail tubs, pulling them off the conveyor belt and into other equipment. Appellant reported that she pulled a groin muscle in February. Dr. Seni provided findings on physical examination included negative straight leg raising, almost full range of motion of the hip and tenderness over the greater trochanter area of the hip. An x-ray of the pelvis revealed degenerative arthritic changes, particularly in the left hip. Dr. Seni gave appellant an injection in the greater trochanter bursa and indicated that further tests would be required for a diagnosis if trochanteric bursitis was not the cause of appellant's pain. He did not provide a medical opinion as to the cause of appellant's left hip and groin pain. Dr. Seni made a tentative diagnosis of trochanteric bursitis. He did not provide a final diagnosis or explain how appellant's left hip and groin pain were caused or aggravated by her job duties on April 12, 2008 or any other employment factor. Lacking a specific diagnosis and medical rationale explaining causal relationship, Dr. Seni's report is not sufficient to establish that appellant sustained a work-related injury on April 12, 2008.

The Office advised appellant of the medical evidence needed to establish that her hip condition was causally related to her employment. Appellant did not provide such medical evidence. There is no medical evidence of record containing a complete and accurate factual and medical background, physical findings on examination and medical rationale explaining how appellant's left hip and groin conditions were causally related to the April 12, 2008 incident at work or other factors of her employment. Therefore, the Office properly denied her claim.

On appeal, appellant asserts that the diagnosis of hip arthritis was not made until she had worked at the employing establishment for one year. She asserted that her job, which included eight hours of walking, twisting and turning while lifting heavy tubs of mail and pushing and pulling heavy equipment, aggravated her underlying osteoarthritis. However, there is no medical evidence establishing that appellant's hip osteoarthritis was aggravated by her employment.

LEGAL PRECEDENT -- ISSUE 2

Section 8128(a) of the Federal Employees' Compensation Act⁶ does not entitle a claimant to a review of an Office decision as a matter of right. This section vests the Office with discretionary authority to determine whether it will review an award for or against

⁶ 5 U.S.C. §§ 8101-8193.

compensation.⁷ The Office, through regulations, has imposed limitations on the exercise of its discretionary authority under section 8128(a).⁸

To require the Office to reopen a case for merit review under section 8128(a) of the Act,⁹ the Office's regulations provide that the evidence or argument submitted by a claimant must (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) constitute relevant and pertinent new evidence not previously considered by the Office.¹⁰ To be entitled to a merit review of an Office 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.¹¹ When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review on the merits.¹²

ANALYSIS -- ISSUE 2

In her request for reconsideration, appellant alleged that her underlying hip osteoarthritis was aggravated by her physical job requirements performed during her one-year employment. In a June 4, 2008 report, Dr. Seni indicated that he gave appellant another hip injection and opined that, if she did not experience substantial relief, she might need a total joint replacement. On June 25, 2008 Dr. Seni reviewed x-rays which revealed arthritic changes of both hips. He recommended further testing, including a bone scan and possible MRI scan. Dr. Seni did not provide a rationalized medical opinion addressing the issue of causal relationship. The June 2, 2008 decision denied appellant's claim because she failed to provide medical evidence establishing causal relationship. Because appellant did not submit evidence or argument that showed that the Office erroneously applied or interpreted a specific point of law, advanced a relevant legal argument not previously considered or constituted relevant and pertinent new evidence not previously considered by the Office, it properly denied his request for reconsideration.

CONCLUSION

The Board finds that appellant failed to establish that she sustained an injury on April 12, 2008 while in the performance of duty. The Board further finds that the Office did not abuse its discretion in denying appellant's request for reconsideration.

⁷ 5 U.S.C. § 8128(a).

⁸ *Annette Louise*, 54 ECAB 783, 789-90 (2003).

⁹ Under section 8128(a) of the Act, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on [his or her] own motion or on application." 5 U.S.C. § 8128(a).

¹⁰ 20 C.F.R. § 10.606(b)(2).

¹¹ *Id.* at § 10.607(a).

¹² *Id.* at § 10.608(b).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated November 14 and June 2, 2008 are affirmed.

Issued: October 19, 2009
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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