United States Department of Labor
Employees' Compensation Appeals Board

C.R., Appellant	)	
and	)	**Docket No. 13-942**
	)	**Issued: September 6, 2013**
U.S. POSTAL SERVICE, POST OFFICE, Chicago, IL, 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
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 11, 2013 appellant filed a timely appeal from an October 29, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP) denying her claim for an employment-related injury and a December 5, 2012 nonmerit decision denying her request for 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 and nonmerits of this case.[2]

ISSUES

The issues are: (1) whether appellant met her burden of proof to establish that she sustained an injury in the performance of duty causally related to factors of her federal employment; and (2) whether OWCP properly refused to reopen her case for further reconsideration of the merits pursuant to 5 U.S.C. § 8128(a).

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that, following the issuance of the December 5, 2012 OWCP decision, appellant submitted new evidence. The Board is precluded from reviewing evidence which was not before OWCP at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c)(1).

On appeal, appellant contends that due to the fact that she was involuntarily reassigned to a carrier craft with no physical examination and no training, she was forced to work with a bad hip. She further contends that she could not afford to send or print out documentation in support of her claim as she had no income.

FACTUAL HISTORY

On August 14, 2012 appellant, then a 39-year-old mail carrier, filed an occupational disease claim (Form CA-2), alleging that she sustained a back strain and right hip/joint arthritis due to factors of her federal employment, including carrying mail and walking up and down stairs. She became aware of her condition on November 1, 2010 and attributed it to her federal employment on August 1, 2012 after she noticed soreness, stiffness and swelling in her right hip and back.

Appellant submitted an August 14, 2012 narrative statement and an August 16, 2012 report from Dr. Robia Byas, a Board-certified internist, who released appellant to light-duty work effective August 20, 2012 with the following restrictions: no walking for more than five minutes; sitting as tolerable; no lifting more than 10 pounds; no repetitive bending or crouching.

In a September 10, 2012 letter, OWCP notified appellant that the evidence submitted was not sufficient to support her claim and requested additional factual and medical evidence. It allotted 30 days for her to respond to its inquiries and submit additional evidence.

By decision dated October 29, 2012, OWCP denied appellant's claim finding that the medical evidence provided no diagnosis in connection with the implicated employment factors and failed to establish fact of injury.

On November 19, 2012 appellant requested reconsideration and submitted an undated narrative statement reiterating the history of her claim.

By decision dated December 5, 2012, OWCP denied appellant's request for reconsideration of the merits finding that she did not submit pertinent new and relevant evidence and did not show that it erroneously applied or interpreted a point of law not previously considered by OWCP.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim. When an employee claims that he or she sustained an injury in the performance of duty, he or she must submit sufficient evidence to establish that he or she experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. Appellant must also establish that such event, incident or exposure caused an injury.[3]

[3] *See Walter D. Morehead*, 31 ECAB 188, 194 (1979) (occupational disease or illness); *Max Haber*, 19 ECAB 243, 247 (1967) (traumatic injury). *See generally John J. Carlone*, 41 ECAB 354 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish causal relationship is generally rationalized medical opinion 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. The opinion of the physician 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 specific employment factors identified by the claimant.[4]

ANALYSIS -- ISSUE 1

In this case, appellant failed to meet her burden of proof to establish that federal employment factors caused her right hip and back conditions.[5] While she submitted a statement in which she identified the factors of employment that she believed caused her conditions, in order to establish a claim that she sustained an employment-related injury, she must also submit rationalized medical evidence which explains how her right hip and back conditions were caused or aggravated by the implicated factors.[6]

On August 16, 2012 Dr. Byas released appellant to light-duty work effective August 20, 2012 with the following restrictions: no walking for more than five minutes; sitting as tolerable; no lifting more than 10 pounds; no repetitive bending or crouching. The Board finds that his report does not contain a medical diagnosis in connection with factors of appellant's federal employment, nor does it explain how her conditions were caused or aggravated by factors such as carrying mail and walking up and downstairs. As Dr. Byas' report fails to provide a firm diagnosis and medical rationale, the Board finds that it is insufficient to establish appellant's claim.

On appeal, appellant contends that due to the fact that she was involuntarily reassigned to a carrier craft with no physical examination and no training, she was forced to work with a bad hip. The Board has held that the mere fact that her symptoms arise during a period of employment or produce symptoms revelatory of an underlying condition does not establish a causal relationship between her condition and her employment factors.[7] The Board finds that the

[4] *See Solomon Polen*, 51 ECAB 341 (2000); *J.L.*, Docket No. 11-771 (issued November 17, 2011).

[5] *See Donald W. Wenzel*, 56 ECAB 390 (2005) (where the Board found that appellant did not establish a *prima facie* claim).

[6] *See Leslie C. Moore*, 52 ECAB 132 (2000).

[7] *See Richard B. Cissel*, 32 ECAB 1910, 1917 (1981); *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

evidence of record is insufficient to establish an injury causally related to factors of appellant's federal employment and, therefore, her argument is not substantiated.

Following the December 5, 2012 decision, appellant submitted several medical reports to OWCP. On appeal, she contends that she could not afford to send or print out documentation in support of her claim as she had no income. The Board cannot consider evidence for the first time on appeal, as its review is limited to the evidence of record which was before OWCP at the time of its final merit decision.[8] 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

Section 8128(a) of FECA does not entitle a claimant to a review of an OWCP decision as a matter of right; it vests OWCP with discretionary authority to determine whether it will review an award for or against compensation.[9] OWCP, through regulations, has imposed limitations on the exercise of its discretionary authority under section 8128(a).[10]

To require OWCP to reopen a case for merit review under section 8128(a) of FECA, OWCP regulations provide that the evidence or argument submitted by a claimant must: (1) establish 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.[11] 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.[12] When a claimant fails to meet one of the above standards, OWCP will deny the application for reconsideration without reopening the case for review on the merits.[13]

ANALYSIS -- ISSUE 2

In support of her November 19, 2012 reconsideration request, appellant submitted an undated narrative statement. The Board finds that submission of this document did not require reopening her case for merit review as it was focused on the history of her claim, was not medical in nature and did not provide a medical diagnosis in connection with her injury, which was the issue before OWCP. Therefore, it does not constitute relevant and pertinent new

[8] 20 C.F.R. § 501.2(c).

[9] *Supra* note 1. Under section 8128 of FECA, the Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application. 5 U.S.C. § 8128(a).

[10] *See Annette Louise*, 54 ECAB 783, 789-90 (2003).

[11] 20 C.F.R. § 10.606(b)(3). *See A.L.*, Docket No. 08-1730 (issued March 16, 2009).

[12] *Id.* at § 10.607(a).

[13] *Id.* at § 10.608(b).

evidence and is not sufficient to require OWCP to reopen the claim for consideration of the merits.

Appellant did not submit any evidence to show that OWCP erroneously applied or interpreted a specific point of law or advanced a relevant legal argument not previously considered by OWCP, nor did she submit any pertinent new and relevant evidence not previously considered. The Board finds that she did not meet any of the necessary requirements and, thus, she is not entitled to further merit review.[14]

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that she sustained an injury in the performance of duty causally related to factors of her federal employment. The Board further finds that OWCP properly refused to reopen appellant's case for further reconsideration of the merits pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the December 5 and October 29, 2012 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: September 6, 2013
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

[14] *See L.H.*, 59 ECAB 253 (2007).