

FACTUAL HISTORY

This case has previously been before the Board.³ The law and facts of the case as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On February 13, 2012 appellant, then a 46-year-old city letter carrier, filed an occupational disease claim (Form CA-2) alleging an injury to her right hip on February 5, 2011 when she slipped on ice and snow. By initial decision dated May 17, 2012, OWCP denied appellant's claim for right hip injury.

Appellant requested a hearing before an OWCP hearing representative on June 4, 2012.

By decision dated January 7, 2013, the hearing representative affirmed the denial of the claim. OWCP's hearing representative found that appellant had not submitted sufficient medical evidence to establish a causal relationship between her alleged right hip condition and the employment incident of February 5, 2011.⁴ On September 26, 2013 appellant requested reconsideration. OWCP denied modification of the prior decision on October 4, 2013, again finding that causal relationship had not been established.

On November 18, 2013 appellant, through counsel, filed a timely appeal from the October 4, 2013 merit decision of OWCP. In an April 15, 2014 decision, the Board found that appellant had not submitted sufficient evidence of causal relationship to meet her burden of proof to establish a right hip injury in the performance of duty on February 5, 2011.

By letter dated June 3, 2014, received by OWCP on June 5, 2014, appellant's counsel again requested that OWCP reconsider the claim. With the request, counsel submitted a pleading dated February 20, 2014, which was identical to the pleading submitted to the Board along with the prior appeal of November 18, 2013.

On October 30, 2015 counsel requested an update on the status of the request for reconsideration, as more than one year had passed without any action taken on the request.

By decision dated January 26, 2016, OWCP exercised its discretion and reviewed the merits of appellant's case, but denied modification. It noted that the original request for reconsideration was received within one year of the Board's decision, and that in order to protect appellant's rights of appeal, OWCP conducted a merit review. OWCP found that appellant had not submitted any new and relevant medical evidence addressing the issue of causal relationship since the Board's April 15, 2014 decision, noting that the only evidence not previously reviewed by OWCP was counsel's February 20, 2014 pleading.

³ Docket No. 14-0098 (issued April 15, 2014).

⁴ The hearing representative noted that, based on appellant's statements, her injury claim was administratively converted to a claim for a traumatic injury occurring on February 5, 2011, rather than an occupational injury as originally filed.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁵ has the burden proof of 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 of FECA, that an injury⁶ was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.⁷

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. A fact of injury determination is based on two elements. 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. 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. An employee may establish that the employment incident occurred as alleged but fail to show that his or her condition relates to the employment incident.⁸

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.⁹ Rationalized medical opinion evidence is medical evidence which includes a physician’s rationalized opinion on whether there is a causal relationship between the employee’s diagnosed condition and the compensable employment factors.¹⁰ 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.¹¹

⁵ *Supra* note 1.

⁶ OWCP’s regulations define a traumatic injury as a condition of the body caused by a specific event or incident, or series of events of incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected. 20 C.F.R. § 10.5(ee).

⁷ *T.H.*, 59 ECAB 388, 393 (2008); *see Steven S. Saleh*, 55 ECAB 169, 171-72 (2003); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁸ *Id.* *See Shirley A. Temple*, 48 ECAB 404, 407 (1997); *John J. Carlone* 41 ECAB 354, 356-57 (1989).

⁹ *Y.J.*, Docket No. 08-1167 (issued October 7, 2008); *A.D.*, 58 ECAB 149, 156 (2006); *D’Wayne Avila*, 57 ECAB 642, 649 (2006).

¹⁰ *J.J.*, Docket No. 09-27 (issued February 10, 2009); *Michael S. Mina*, 57 ECAB 379, 384 (2006).

¹¹ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish causal relationship between the incident of February 5, 2011 and her right hip condition. Initially, it is noted that the Board's review of the previous evidence of record is res judicata.¹²

Between the time of the Board's April 15, 2014 decision and the present appeal, appellant did not submit any additional medical evidence to the record. The only evidence of record not previously considered by OWCP is counsel's February 20, 2014 pleading, which is identical to the pleading submitted on prior appeal to the Board. As such, the Board has already considered and responded to counsel's arguments.

As there was no additional evidence submitted to the record, which has not been reviewed by the Board, it finds that appellant has not submitted sufficient medical evidence to establish her claim.

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.

CONCLUSION

The Board finds that appellant has not established a right hip condition causally related to the accepted February 5, 2011 employment incident.

¹² See *R.T.*, Docket No. 16-0543 (issued May 20, 2016); see *R.L.*, Docket No. 15-1010 (issued July 21, 2015). See also *A.P.*, Docket No. 14-1228 (issued October 15, 2014).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 26, 2016 is affirmed.

Issued: July 19, 2016
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board