

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**J.S., Appellant**

**and**

**U.S. POSTAL SERVICE, GATEWAY  
STATION, St. Petersburg, FL, Employer**

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**Docket No. 15-0855  
Issued: May 23, 2016**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

CHRISTOPHER J. GODFREY, Chief Judge  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
COLLEEN DUFFY KIKO, Judge

**JURISDICTION**

On March 10, 2015 appellant filed a timely appeal from a November 5, 2014 merit decision and a February 6, 2015 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (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 has established a traumatic injury on November 14, 2012 causally related to delivering mail; and (2) whether OWCP properly denied reconsideration under 5 U.S.C. § 8128(a).

On appeal, appellant contends that, as a result of his employment, he suffers from low back pain and aggravation of the prior injuries to his neck and head, as well as chest muscle spasms, numbness in his arm, and shoulder, thoracic, and cervical pain. He contends that the

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

medical evidence of record establishes an uncontroverted inference of causal relationship between his employment activities.

### **FACTUAL HISTORY**

On November 15, 2012 appellant, then a 44-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on November 14, 2012 he suffered an injury to his back, neck, head, chest, shoulder, and arm while delivering mail. He stopped work on November 14, 2012.

In a November 14, 2012 attending physician's report, Dr. Mai Nguyen, a physician Board-certified in emergency medicine, diagnosed cervical radiculopathy. She checked a box indicating that she believed that this condition was caused or aggravated by the November 14, 2012 employment incident. Dr. Nguyen provided emergency room treatment only.

In a November 15, 2012 prescription note, Dr. Kim R. Powers, an osteopath, held appellant off work until November 19, 2012 due to neck and back pain. In a December 10, 2012 attachment to a work capacity evaluation, Dr. Powers diagnosed cervical and thoracic herniated discs causing left upper extremity radiculopathy, chest wall pain, myofascial pain syndrome of the cervical and thoracic spine, and musculoskeletal spasms. He opined that appellant's pain on November 14, 2012 "was triggered by repetitive weight bearing and motion such as mail flats and letters in his left arm with a full hip satchel," and aggravated by bending, stooping, twisting, lifting, and walking. Dr. Powers noted appellant's treatment at the emergency department for these injuries and that on November 15, 2012 he continued to experience severe neck, shoulder, back, chest, and arm pain. He noted that appellant was taken out of work until November 19, 2012 to ease and monitor pain and inflammation. Appellant was scheduled for therapy sessions on Tuesdays for additional pain management. Dr. Powers further noted that these actions temporarily helped ease some of his complaints, but the nature of appellant's daily duties continued to aggravate his cervical, thoracic, and chest wall pain.

By decision dated December 26, 2012, OWCP determined that, although appellant had established that he was engaged in the delivery of mail as alleged on November 14, 2012 and that medical conditions had been diagnosed, he had not established that the medical conditions were causally related to the delivery of mail.

Appellant requested a telephonic hearing before OWCP's Branch of Hearings and Review on January 17, 2013.

On February 25, 2013 OWCP received a November 14, 2012 note from Dr. Nguyen in which she diagnosed musculoskeletal chest pain and prescribed anti-inflammatory medications, noting that musculoskeletal pain usually improved over several days.

In a March 5, 2013 medical evaluation, Dr. Samy F. Bishai, a physician Board-certified in emergency medicine, diagnosed herniated cervical discs at C3-4, C4-5, and C5-6 (aggravation of preexisting condition); internal derangement of the left shoulder (aggravation of preexisting conditions), thoracic degenerative disc disease (aggravation of preexisting conditions); and lumbar disc syndrome with radiculopathy. He listed the date of injury as November 14, 2012. In

an April 9, 2013 report, Dr. Bishai expanded his diagnoses to include herniated lumbar disc at L5-S1 with radiculopathy and advised appellant to continue physical therapy.

At the hearing held on May 7, 2013, appellant testified that he had mild back problems while he was in the military, that he had no injuries outside of his federal employment and the military, and that he had worked at the employing establishment 9 to 10 years. He noted that he had multiple injuries during his employment with the employing establishment, and that a prior claim had been accepted for shoulder sprain. Appellant noted that on November 14, 2012 he had an onset of pain in his back, neck and shoulder initially, and that it increased to include his entire left arm, sharp pains in his chest, throbbing headache, numbness in his fingers, and pain in entire back and leg. He noted that he had not previously had such an intense amount of pain in his lower back and leg. Appellant described his job duties and the activities of November 14, 2012.

On May 28, 2013 OWCP received a December 17, 2012 report from Dr. Garcia J. DeSousa, a Board-certified neurologist. Dr. DeSousa listed his impressions as cervical radiculopathy of the left upper extremity, herniated cervical disc, left shoulder pain from partial tear of the tendons, and history of hypertension.

Appellant submitted additional medical evidence, including a January 10, 2013 report wherein Dr. Bishai noted that it would be extremely difficult for appellant to continue as a mail carrier eight hours a day. Dr. Bishai noted that there was causal relationship between appellant's work duties and his herniated discs at C3-4, C4-5, C5-6, and T7-8, as well as left upper extremity and left anterior chest wall pain, and left-sided headaches. He opined that this causal relationship was exacerbated with his mail carrying in which he had to use the left side of his body, left upper extremity in handling the mail, which caused his muscles to become tighter and tighter in the cervical and thoracic spine, and resulted in more nerve impingement at C3-4, C4-5, C5-6, and T7-8, exacerbating his condition. Dr. Bishai indicated that appellant could try a period of working four hours a day, but if appellant was unable to work four hours a day because of his multiple symptoms, he would have to work in a light-duty capacity. He noted in his February 1, 2013 report that appellant suffered injuries to multiple parts of his body on November 14, 2012 while working for the USPS as a letter carrier. Dr. Bishai opined that appellant had suffered injury to his neck, back, and extremities on November 14, 2012, which produced permanent aggravation of preexisting conditions of the neck, upper extremities, left shoulder, thoracic spine, and lumbosacral spine with radiculopathy. He ordered tests including a magnetic resonance imaging (MRI) scan and nerve conduction velocity (NCV) studies.

In a July 23, 2013 decision, the hearing representative affirmed the December 26, 2012 decision. She noted that there was no evidence of record establishing that the claimant's cervical spine condition was caused by traumatic events on November 14, 2014, but the evidence would be more supportive of an occupational disease.<sup>2</sup>

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<sup>2</sup> On December 30, 2013 appellant filed a claim for an occupational disease (Form CA-2), and OWCP assigned this claim file number xxxxxx389. He alleged that the medical reports supporting his claim were already in the record, and that pursuant to OWCP he had filed an incorrect form. Appellant listed his date of awareness of the disease or illness as December 5, 1995, and indicated that the date that he first became aware that this disease was caused or aggravated by his employment was November 14, 2012. By decision dated February 18, 2014, OWCP denied appellant's occupational disease claim.

Appellant continued to submit reports from Dr. Bishai and his associates. Dr. Bishai noted that appellant continued to complain of pain in the neck and the upper extremities as well as pain in the lower back with radicular pain down both legs. In an August 1, 2013 report, Dr. Claude Barosy, a general practitioner and an associate of Dr. Bishai, diagnosed cervical disc syndrome, cervical disc disease with radiculopathy, internal derangement of the left shoulder, lumbar disc disease with radiculopathy, lumbar disc syndrome, and herniated lumbar disc at L5-S1. In reports dated from April 9 through October 9, 2013, Dr. Bishai reiterated diagnoses of herniated cervical discs at C3-4, C4-5, and C5-6 (aggravation of preexisting condition); internal derangement of the left shoulder (permanent aggravation of preexisting condition); thoracic degenerative disc disease (permanent aggravation of preexisting condition); herniated lumbar disc at L5-S1 with radiculopathy; and lumbar disc syndrome with radiculopathy bilaterally. He noted that appellant was improving with physical therapy. In an October 9, 2013 note, Dr. Bishai set forth appellant's work restrictions.

In October 22, November 19, and December 3, 2013 reports, Dr. Erick Corps, a chiropractor, performed specific spinal adjustments to the following regions: C2, C3, C6, T4, T5, T6, L4, and L5. His treatment consisted of specific osseous adjustment coupled with electrical stimulation therapy, myofascial release, cryo therapy, cervical/lumbar traction, ultrasound, massage therapy, and home exercises.

Appellant continued to pursue his claim for traumatic injury of November 14, 2012. On December 30, 2013 he filed a request for reconsideration of the July 23, 2013 hearing representative's decision which denied his traumatic injury case.<sup>3</sup>

In a January 16, 2014 report, Dr. Eduardo L. Gonzalez, a physician Board-certified in family medicine, listed the following diagnoses: internal derangement of left shoulder; tendinopathy of supraspinatus and infraspinatus tendons left shoulder tendons; impingement syndrome of left shoulder; C3-4 disc herniation with cord deformity; C4-5, C5-6, and C6-7 disc bulging and bilateral neural foramina narrowing; bilateral upper extremities radiculopathy; lumbar facet arthropathy; T12-L1 spondylosis; L4-5 bulging disc; L5-S1 disc herniation; and lumbar stenosis. He noted that appellant had an acute exacerbation of his chronic shoulder condition (arthritis with degeneration and impingement). In a March 21, 2014 report, Dr. Gonzalez noted that appellant continued to have symptoms on his left shoulder that had been increasing. He asked that the claims examiner accept appellant's claim so he could receive proper medical treatment. Appellant also received treatment from the following associates of Dr. Gonzalez: Dr. Sara Vizcay, a family practitioner, on December 12, 2013; Dr. Robert R. Reppy, an osteopath on March 6, 2014; and Dr. Richard M. Blecha, a Board-certified orthopedic surgeon, on April 1, 2014. All of these physicians reiterated the diagnoses as set forth by Dr. Gonzalez and noted treatment for these conditions. Appellant also continued chiropractic treatment with Dr. Corps on December 17, 2013 and January 14, 17, and 21, 2014.

In a May 15, 2014 decision, OWCP denied modification of the July 23, 2013 decision as the evidence of record did not establish causal relationship between his delivering of mail and his diagnosed conditions.

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<sup>3</sup> Although appellant initially appealed this decision to this Board, the Board issued an Order Dismissing Appeal pursuant to appellant's request. Docket No. 14-0129 (issued February 11, 2014).

Appellant subsequently submitted an August 1, 2014 report by Dr. Harvey Bishow, a Board-certified orthopedic surgeon, opining within a reasonable degree of medical certainty that the injury of November 14, 2012 was the direct and proximate cause of appellant's diagnoses, *i.e.*, herniated cervical discs with radiculopathy; herniated lumbar disc with radiculopathy; acromioclavicular joint arthritis with impingement and tendinopathy, left shoulder; and thoracic degenerative disc disease with calcified herniation.

On September 9, 2014 appellant requested reconsideration of the May 15, 2014 decision. He continued to submit medical evidence, including an August 12, 2014 report from Dr. Gonzalez. In this report, Dr. Gonzalez noted that appellant continued with neck, shoulder, and lower back symptoms. He reviewed appellant's medical record and opined, within a reasonable degree of certainty, that there was a causal relationship between appellant's well-described job duties of continuous standing, repetitive twisting, turning, bending, lifting, stooping, and reaching over his shoulder. Dr. Gonzalez opined that appellant's job duties caused a permanent aggravation of his previous condition that had been described in his medical history since December 5, 1995, while he was with the United States Army. He noted that appellant's multiple medical encounters since he started to work with the employing establishment in November 2003 definitely showed that his condition had been slowly and consistently progressing. Dr. Gonzalez noted that there was no history of lumbar issues until his employment with the employing establishment. He discussed the results of the MRI scan done on March 7, 2013 which showed L4-5 disc bulge with bilateral neural foramina narrowing and L5-S1 disc herniation displacing L5-S1 nerve root and bilateral stenotic neural foramina. Dr. Gonzalez also noted that a nerve conduction study of March 8, 2013 showed L4-5, L5-S1 radiculopathy and sensory motor polyneuropathy that correlated with the physical examination showing that the heavy lifting, twisting, walking, and climbing stairs in repetitive motions caused lumbar disc herniation with the lumbar radiculopathy. He opined that this was the cause of the lumbar symptomatology and was completely related to his employment because it was not present previously. Dr. Gonzalez opined within a reasonable degree of medical certainty that the medical evidence, including factual and medical components, established that the diagnosed conditions were causally related to the event that happened during the course of employment on November 14, 2012 and within the scope of compensable work factors.

In a November 5, 2014 decision, OWCP reviewed the merits of appellant's case, but denied modification of the May 15, 2014 decision.

On January 20, 2015 appellant requested reconsideration of the November 5, 2014 decision. In support of his request, appellant submitted argument that his claim should be accepted.<sup>4</sup>

In a November 13, 2014 report, Dr. Barosy noted diagnoses of herniated cervical disc at C3-4, C4-5, C5-6 (aggravation of preexisting condition); internal derangement of the left shoulder (permanent aggravation of preexisting condition); thoracic degenerative disc disease (permanent aggravation of preexisting condition); herniated lumbar disc at L5-S1 with radiculopathy; and lumbar disc syndrome with radiculopathy bilateral. He opined that these

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<sup>4</sup> Appellant also filed a new claim for an occupational disease (Form CA-2) that he alleged he became aware of the connection between his employment duties and his injury on November 14, 2012.

injuries were directly linked to appellant's labor intensive occupation as a city letter carrier. Dr. Barosy indicated that appellant could case mail and perform other office duties and curbside and cluster box deliveries, but could not perform park and loop deliveries.

OWCP also received a December 16, 2014 report in which Dr. Blecha noted that he had reviewed appellant's statement as well as extensive medical records. Dr. Blecha related that he took an extremely detailed history from appellant beginning with his experiences in the Army until the present time. He concluded that appellant erred when he filed a traumatic injury claim and noted that he should have filed an occupational disease claim. Dr. Blecha concluded that relative to appellant's employment, he had preexisting pathology in the cervical and thoracic spine although accurate diagnoses were never made until the late 1990s. He opined that the preexisting problems in the cervical spine were aggravated by the repetitive activities he had to perform as a mail carrier. Dr. Blecha also concluded that appellant developed problems in two other areas as a result of the same repetitive activities, namely the left shoulder and his lumbar spine. He listed appellant's diagnoses as herniated nucleus pulposus and foraminal stenosis C3-4, C4-5, C5-6; herniated thoracic discs most significant at T7-8, herniated nucleus pulposus L5-S1, shoulder pathology including type II acromion with acromioclavicular osteoarthritis, shoulder impingement syndrome, and biceps tendinitis. Dr. Blecha opined that based on the history and the concomitant medical record review as well as the specific diagnostic MRI scan studies along with appellant's statement, he opined that appellant most likely had herniations of the discs in the cervical spine at the time he was in the Army. He noted that in the years 2000 to 2003 when he was simply doing office work, he did not have occasion to seek any medical treatment involving the cervical or thoracic spine. Dr. Blecha noted that, after working for the employing establishment for two years, appellant experienced a severe exacerbation of shooting pain from his neck to his left shoulder and arm, as well as sharp pain radiating from the back of the chest to the front of the chest. He noted that, from that point forward, appellant's level of symptomatology became chronic and progressively increased as he did the repetitive tasks outlined in his statement. Dr. Blecha also opined that the pain in appellant's left shoulder developed from the repetitive work as well as the slight radiation down the posterior right thigh. He noted that both the shoulder and low back problems were not present prior to working for the employing establishment. Dr. Blecha concluded that appellant's employment activities would constitute a direct and proximate cause of aggravation of the cervical and thoracic disc herniation and were the direct and proximate cause of his left shoulder and lumbar spine problems.

By letter received by OWCP on January 27, 2015, appellant requested reconsideration.

In a February 6, 2015 decision, OWCP denied appellant's reconsideration request without conducting a merit review.

### **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, 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 injury was sustained 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. These are the essential elements of each and every

compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>5</sup>

In order to determine whether an employee actually sustained an injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components, which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident or exposure, which is alleged to have occurred.<sup>6</sup> In order to meet his or her burden of proof to establish the fact that he or she sustained an injury in the performance of duty, an employee must submit sufficient evidence to establish that he or she actually experienced the employment injury or exposure at the time, place, and in the manner alleged.<sup>7</sup>

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.<sup>8</sup> The medical evidence required to establish causal relationship is usually rationalized medical 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.<sup>9</sup>

### **ANALYSIS -- ISSUE 1**

OWCP has accepted that appellant was engaged in the delivery of mail on November 14, 2012. Appellant has also submitted medical diagnoses of multiple medical conditions, including cervical radiculopathy, cervical and thoracic herniated lumbar discs, internal derangement of the left shoulder, thoracic degenerative disc disease, and lumbar disc syndrome with radiculopathy. However, OWCP denied appellant's claim as it found that he had failed to establish that these medical conditions were caused by appellant's delivery of mail on November 14, 2012.

Several physicians who examined appellant provided no opinion with regard to the cause of his injury. Dr. DeSousa, who examined appellant approximately one month after the employment incident of November 14, 2012, did not mention appellant's employment incident,

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<sup>5</sup> *Jussara L. Arcanjo*, 55 ECAB 281, 283 (2004).

<sup>6</sup> See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803(2)(a) (August 2012).

<sup>7</sup> *Linda S. Jackson*, 49 ECAB 486 (1998).

<sup>8</sup> *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

<sup>9</sup> *Judith A. Peot*, 46 ECAB 1036 (1995); *Ruby I. Fish*, 46 ECAB 276 (1994).

but did mention that appellant had served in the army for 11½ years and was currently working as a letter carrier. Dr. Reppy listed multiple diagnoses including herniated discs at L5-S1, C3-4, C4-5, and C5-6, but never discussed the employment incident. In his April 1, 2014 report, Dr. Blecha noted multiple diagnoses including herniated nucleus pulposus C3-4, C4-5, and C5-6, and internal derangement of the left shoulder, but never discussed the employment incident. Dr. Barosy also failed to discuss causal relationship in his August 1, 2013 report. As none of these opinions provide an explanation on causal relationship, these opinions are insufficient to establish a causal relationship between the accepted employment incident and the listed diagnoses.<sup>10</sup>

Dr. Corps, a chiropractor, never mentioned the employment incident of November 14, 2012 in his reports. Furthermore, the Board notes that section 8101(2) of FECA provides that the term physician includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist.<sup>11</sup> If a diagnosis of a subluxation as demonstrated by x-ray is not established, the chiropractor is not considered a physician as defined under FECA and his or her report is of no probative value to the medical issue presented.<sup>12</sup> Because Dr. Corps has not provided a diagnosis of subluxation diagnosed by x-ray evidence, he is not considered a physician as defined under FECA. Accordingly his report lacks probative value for this additional reason.

Several medical reports note the November 14, 2012 work factors, but these reports are likewise insufficient to establish causal relationship. Dr. Nguyen, who treated appellant on November 14, 2012 in the emergency room, diagnosed cervical radiculopathy and checked a box indicating that the condition was caused or aggravated by the November 14, 2012 employment incident, but did not otherwise explain her answer. It is well-established that checking of a box marked “yes” in a form report, without additional explanation or rationale, is insufficient to establish causal relationship.<sup>13</sup>

Similarly Dr. Bishai noted the circumstances of the November 14, 2012 employment incident and indicated within a reasonable degree of medical certainty that the injury of November 14, 2012 was the direct and proximate cause of appellant’s diagnoses including herniated cervical and lumbar discs with radiculopathy, left shoulder acromioclavicular joint arthritis with impingement and tendinopathy, and thoracic degenerative disc disease with calcified herniation. However, he provided no medical explanation as to how appellant’s diagnoses were causally related to the activities of November 14, 2012. A mere conclusion without the necessary rationale is insufficient to meet appellant’s burden of proof.<sup>14</sup>

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<sup>10</sup> *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

<sup>11</sup> 5 U.S.C. § 8101(2).

<sup>12</sup> *See Jack B. Wood*, 40 ECAB 95, 109 (1988); *see also F.W.*, Docket No. 15-1435 (issued September 15, 2015).

<sup>13</sup> *F.C.*, Docket No. 15-1787 (issued December 10, 2015); *see also Barbara J. Williams*, 40 ECAB 649, 656 (1989).

<sup>14</sup> *G.M.*, Docket No. 14-2057 (issued May 12, 2015).

Dr. Bishai diagnosed herniated cervical discs at C3-4, C4-5, and C5-6, internal derangement of the left shoulder, and thoracic degenerative disc disease. He concluded that all of these conditions were an aggravation of preexisting conditions. Dr. Bishai also diagnosed lumbar disc syndrome with radiculopathy. He concluded that appellant suffered injuries to his neck, back, and extremities in an injury of November 14, 2012, and that the injuries produced a permanent aggravation of preexisting conditions in the neck and upper extremities, the left shoulder, and the thoracic spine as well as an injury to the lumbosacral region of his spine with radiculopathy. Although Dr. Bishai described the circumstances of delivering mail on November 14, 2012, he failed to provide sufficient rationale explaining how those activities performed on that day medically resulted in the multitude of diagnosed conditions. As previously noted, a physician must provide necessary rationale explaining how and why accepted work activities resulted in the diagnosed condition.<sup>15</sup>

A traumatic injury means a condition caused by a specific event or incident, or series of events or incidents, within a single workday or shift.<sup>16</sup> Dr. Powers and Dr. Gonzalez attribute appellant's diagnoses to appellant's employment duties over a period of time. Dr. Powers attributed appellant's condition to repetitive weight bearing, bending, stooping, twisting, lifting, and walking. He discusses appellant's employment over a period of time, not a single workday or shift. Dr. Gonzalez noted in his August 12, 2014 report that appellant's condition had been slowly and consistently progressing over his period of employment with the employing establishment. This does not support the traumatic injury claim. Dr. Gonzalez does conclude that appellant's injuries occurred during the course of employment on November 14, 2012, but he does not adequately explain this conclusion, especially in light of his prior statement in the same report that appellant's conditions had been slowly and consistently progressing.

An award of compensation may not be based on surmise, conjecture or speculation.<sup>17</sup> As appellant failed to establish that his medical condition was causally related to the work duties on November 14, 2012, OWCP properly denied his traumatic injury claim in its decision of November 14, 2012. If appellant's wishes to pursue his claim for an occupational disease in file number xxxxxx389, he should pursue his appeal options for that separate 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.

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<sup>15</sup> *Id.*

<sup>16</sup> 20 C.F.R. § 10.5(ee).

<sup>17</sup> *D.I.*, 59 ECAB 158 (2007); *Ruth R. Price*, 16 ECAB 688, 691 (1965).

## LEGAL PRECEDENT -- ISSUE 2

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,<sup>18</sup> OWCP's regulations provide that the evidence or argument submitted by 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.<sup>19</sup> To be entitled to a merit review of an OWCP decision denying or terminating a benefit, a claimant must also file his or her application for review within one year of the date of that decision.<sup>20</sup> 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.<sup>21</sup>

## ANALYSIS -- ISSUE 2

As previously set forth in this decision, OWCP denied appellant's claim as he failed to establish a causal relationship between the accepted employment incident delivering mail on November 14, 2012 and his medical diagnoses. The Board finds that appellant has not submitted evidence in furtherance of his reconsideration request that is sufficient to warrant merit review.

In support of his request for reconsideration, appellant submitted a December 16, 2014 report wherein Dr. Blecha noted that appellant should have filed an occupational disease claim but had instead filed a traumatic injury claim. Dr. Blecha explained how appellant's multiple medical diagnoses were caused by his repetitive work over a period of time with the employing establishment. Therefore, his report does not provide any support for appellant's contention that he suffered a traumatic injury on November 14, 2012. Rather, it supports that he did not suffer a traumatic injury on that date.

Appellant also submitted a November 13, 2014 wherein Dr. Barosy opined that appellant's medical diagnoses were directly linked to appellant's labor intensive occupation as a city letter carrier. Dr. Barosy made no statement in this report indicating that appellant's diagnoses were related to the November 14, 2012 employment incident.

The Board has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.<sup>22</sup> Neither the report of Dr. Blecha nor the report of Dr. Barosy are supportive of appellant's claim for a traumatic injury.

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<sup>18</sup> 5 U.S.C. § 8101 *et seq.* Under section 8128 of FECA, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application." 5 U.S.C. § 8128(a).

<sup>19</sup> 20 C.F.R. § 10.606(b)(3).

<sup>20</sup> *Id.* at § 10.607(a).

<sup>21</sup> *Id.* at § 10.608(b).

<sup>22</sup> *P.C.*, 58 ECAB 405, 412 (2007); *Ronald A. Eldridge*, 53 ECAB 218, 222 (2001); *Alan G. Williams*, 52 ECAB 180, 187 (2000).

Furthermore, the Board finds that appellant has not shown that OWCP erroneously applied or interpreted a specific point of law and has not advanced a relevant legal argument not previously considered by OWCP. Accordingly, the Board finds that he did not meet any of the necessary requirements and is not entitled to further merit review.<sup>23</sup>

On appeal, appellant contends that OWCP failed to address the December 16, 2014 report of Dr. Blecha in its February 6, 2015 decision. As discussed above, OWCP discussed Dr. Blecha's report and found it substantially similar to earlier reports.

### **CONCLUSION**

The Board finds that appellant has not met his burden of proof to establish a traumatic injury on November 14, 2012 causally related to his delivery of mail on November 14, 2012. The Board further finds that OWCP properly denied reconsideration under 5 U.S.C. § 8128(a).

### **ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated February 6, 2015 and November 5, 2014 are affirmed.

Issued: May 23, 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

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<sup>23</sup> See *L.H.*, 59 ECAB 253 (2007).