United States Department of Labor
Employees' Compensation Appeals Board

J.R., Appellant	)	
and	)	**Docket No. 11-12**
	)	**Issued: August 17, 2011**
U.S. POSTAL SERVICE, SODDY DAISY MAIN POST OFFICE, Soddy Daisy, TN, 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
ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On October 1, 2010 appellant filed a timely appeal of the Office of Workers' Compensation Programs' (OWCP) July 19, 2010 merit decision and an August 16, 2010 nonmerit decision. 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 established that she sustained a back injury in the performance of duty on May 27, 2010, as alleged; and (2) whether OWCP properly denied her request for reconsideration under 5 U.S.C. § 8128(a).

On appeal, appellant contends that she sustained an employment-related back injury on May 27, 2010.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On June 2, 2010 appellant, then a 63-year-old carrier, filed a traumatic injury claim alleging that on May 27, 2010 she pulled a muscle in her left hip while lifting at work.

In a June 2, 2010 narrative statement, Kevin Rice, an officer-in-charge, related that on June 2, 2010 appellant informed him that she pulled a muscle in her hip. Appellant thought the injury occurred on her route on May 27, 2010. Mr. Rice stated that she could not tell him where or when the injury occurred. He indicated that appellant worked on May 28, 2010 and did not notify management about her claimed injury. In a June 3, 2010 letter, the employing establishment controverted appellant's claim, contending that she did not establish fact of injury based on Mr. Rice's June 2, 2010 letter.

By letter dated June 11, 2010, OWCP advised appellant that the evidence submitted was insufficient to establish her claim. It requested that she submit factual and medical evidence, including a rationalized medical opinion from an attending physician which described a history of injury and provided dates of examination and treatment, findings, test results, a diagnosis together with medical reasons on why the diagnosed condition was caused or aggravated by the May 27, 2010 incident.

In a June 17, 2010 letter, appellant described the May 27, 2010 incident, stating that her injury occurred between 8:30 a.m. and 9:15 a.m. After loading mail and parcels weighing at least 1 to 20 pounds into her car and delivering them on her route, she experienced a dull pain in her lower left back. Appellant's pain worsened over the next four days. A physician advised her that she had pulled a muscle in her lower back. Appellant then reported her claimed back injury to Mr. Rice.

In a June 4, 2010 medical report, Dr. Daniel T. Black, an attending Board-certified family practitioner, obtained a history that on May 27, 2010 appellant hurt her lower back while lifting and twisting. He diagnosed low back pain. Dr. Black advised that appellant could not return to her regular work duties, but she could work with restrictions as of June 8, 2010. In another report dated June 4, 2010, he advised that her low back pain was caused by loading mail which involved lifting and twisting. In a June 29, 2010 report, Dr. Black listed appellant's physical restrictions.

A June 4, 2010 report from a physician's assistant whose signature is illegible stated that appellant had low back pain and listed her physical restrictions.

In a July 19, 2010 decision, OWCP denied appellant's claim. It found the evidence sufficient to establish that the May 27, 2010 incident occurred at the time, place and in the manner alleged, but the medical evidence was insufficient to establish an injury causally related to the accepted employment incident.

On July 27, 2010 appellant requested reconsideration. A July 27, 2010 bill and August 3, 2010 report from Dr. Black reiterated his prior diagnosis of low back pain. In the August 3, 2010 report, he advised that appellant could return to her regular work duties with no restrictions on August 4, 2010.

In an August 16, 2010 decision, OWCP denied appellant's request for reconsideration. It found that the evidence submitted was repetitious and cumulative in nature and, thus, insufficient to warrant further merit review of appellant's claim.[2]

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA[3] has the burden of establishing 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 filed within applicable time limitation; that an injury was sustained while 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.[4] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury of an occupational disease.[5]

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.[6] In order to meet her burden of proof to establish the fact that she sustained an injury in the performance of duty, an employee must submit sufficient evidence to establish that she actually experienced the employment injury or exposure at the time, place and in the manner alleged.[7]

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.[8] The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon complete factual and medical background, showing a causal relationship between the claimed condition and the identified factors.[9] The belief of the claimant that a condition was caused or aggravated by the employment is insufficient to establish a causal relationship.[10]

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[2] On appeal, appellant has submitted new evidence. However, the Board cannot consider evidence that was not before OWCP at the time of the final decision. *See* 20 C.F.R. § 501(c)(1); *J.T.*, 59 ECAB 293 (2008); *G.G.*, 58 ECAB 389 (2007); *Donald R. Gervasi*, 57 ECAB 281 (2005); *Rosemary A. Kayes*, 54 ECAB 373 (2003).

[3] 5 U.S.C. §§ 8101-8193.

[4] *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[5] *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999); *Elaine Pendleton*, *id*.

[6] *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803(2)(a) (June 1995).

[7] *Linda S. Jackson*, 49 ECAB 486 (1998).

[8] *John J. Carlone*, 41 ECAB 354 (1989); *see* 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. §§ 10.5(ee), 10.5(q) (traumatic injury and occupational disease defined).

[9] *Lourdes Harris*, 45 ECAB 545 (1994); *see Walter D. Morehead*, 31 ECAB 188 (1979).

[10] *Charles E. Evans*, 48 ECAB 692 (1997).

ANALYSIS -- ISSUE 1

OWCP accepted that appellant loaded mail and parcels into her car and delivered them on her route on May 27, 2010 while working as a carrier. The Board finds that the medical evidence of record is insufficient to establish that her back condition was caused or aggravated by the May 27, 2010 employment incident.

Dr. Black's June 4, 2010 reports found that appellant had low back pain caused by the May 27, 2010 employment incident and addressed her work capability. The Board has consistently held that pain is a symptom, not a compensable medical diagnosis[11] and a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale.[12] Dr. Black did not explain how loading mail and parcels into a car and delivering them would cause or contribute to the claimed low back condition. Lacking this medical explanation, the Board finds that Dr. Black's reports are insufficient to establish appellant's claim.[13]

Dr. Black's June 29, 2010 report listed appellant's physical restrictions. He did not provide any medical opinion addressing whether she sustained a medical condition causally related to the accepted employment incident[14] or whether the physical restrictions resulted therefrom. The Board finds, therefore, that Dr. Black's report is insufficient to establish appellant's claim.

The June 4, 2010 report signed by a physician's assistant does not constitute competent medical evidence as a physician's assistant is not a "physician" as defined under FECA.[15]

The Board finds that there is insufficient rationalized medical evidence of record to establish that appellant sustained a back injury causally related to the accepted May 27, 2010 employment incident. Appellant did not meet her burden of proof.

On appeal, appellant contended that she sustained a back injury causally related to the May 27, 2010 employment incident. For the reasons stated, the Board finds that she did not submit sufficiently rationalized medical evidence to establish her claim.

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[11] *Robert Broome*, 55 ECAB 339 (2004); *C.F.*, Docket No. 08-1102 (issued October 10, 2008).

[12] *T.M.*, Docket No. 08-0975 (issued February 6, 2009).

[13] *S.S.*, 59 ECAB 315, 322 (2008); *George Randolph Taylor*, 6 ECAB 986, 988 (1954).

[14] *A.D.*, 58 ECAB 149 (2006); *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Michael E. Smith*, 50 ECAB 313 (1999).

[15] *See also Allen C. Hundley,* 53 ECAB 551 (2002); *see S.A.,* Docket No. 10-1894 (issued June 6, 2011).

LEGAL PRECEDENT -- ISSUE 2

To require OWCP to reopen a case for merit review under section 8128 of FECA,[16] OWCP's regulations provide that 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.[17] To be entitled to a merit review of OWCP's 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.[18] When a claimant fails to meet one of the above standards, OWCP will deny the application for reconsideration without reopening the case for review of the merits.

ANALYSIS -- ISSUE 2

Appellant's July 27, 2010 request for reconsideration neither alleged nor demonstrated that OWCP erroneously applied or interpreted a specific point of law. Additionally, she did not advance a relevant legal argument not previously considered by OWCP. The Board finds that appellant is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(2).

Appellant also failed to submit relevant and pertinent new evidence not previously considered by OWCP. Dr. Black's July 27, 2010 bill and August 3, 2010 report reiterated his prior diagnosis. He stated that she had low back pain. Dr. Black's diagnosis was cumulative and repetitive of that stated in his prior reports which OWCP considered in its previous decision. The submission of evidence which repeats or duplicates evidence that is already in the case record does not constitute a basis for reopening a case for merit review.[19]

Dr. Black's August 3, 2010 report stated that appellant could return to her regular work duties with no restrictions on August 4, 2010. However, this evidence is not relevant to the underlying issue of whether appellant sustained a back injury causally related to the May 27, 2010 employment incident. Dr. Black did not provide an opinion addressing whether her claimed back injury was due to the accepted employment incident. The Board has held that the submission of evidence which does not address the particular issue involved in the case does not constitute a basis for reopening the claim.[20]

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[16] 5 U.S.C. §§ 8101-8193. Under section 8128 of the 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).

[17] 20 C.F.R. § 10.606(b)(1)-(2).

[18] *Id.* at § 10.607(a).

[19] *See L.H.*, 59 ECAB 253 (2007); *James E. Norris*, 52 ECAB 93 (2000).

[20] *D. Wayne Avila*, 57 ECAB 642 (2006).

The Board finds that OWCP properly determined that appellant was not entitled to further review of the merits of her claim pursuant to any of the three requirements under section 10.606(b)(2) and properly denied her July 27, 2010 request for reconsideration.[21]

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. § 8182(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has failed to establish that she sustained a back injury in the performance of duty on May 27, 2010, as alleged. The Board further finds that OWCP properly denied appellant's request for reconsideration under 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the August 16 and July 19, 2010 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: August 17, 2011
Washington, DC

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

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

[21] *M.E.*, 58 ECAB 694 (2007) (when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), OWCP will deny the application for reconsideration without reopening the case for a review on the merits).