

FACTUAL HISTORY

On November 5, 2010 appellant, then a 57-year-old mail handler, filed a traumatic injury claim alleging that on October 19, 2010 he sustained neck and bilateral shoulder conditions as a result of “repetitive prepping mail.”² The employing establishment noted that he did not describe a traumatic injury and stated that the alleged injury did not occur in the performance of duty.

In a supplemental statement, appellant explained that on October 4, 2010 he started a new position as a modified mail handler and two days later, he felt pain in both his shoulders and neck. When the pain worsened and no longer improved with medication, he sought medical treatment on October 22, 2010 and was excused from work for five days. On October 29, 2010 appellant returned to work, but after two hours he experienced severe pain and went to the emergency room. He was excused from work for another five days. Appellant described his neck and shoulder pain as excruciating at times, which interrupted his sleep, work and daily activities. On November 4, 2010 he returned to his physician who advised him to not return to work until his pain subsided.

In an October 1, 2010 note, a physician with an illegible signature stated that appellant was seen in the emergency room that day and excused him from work until October 4, 2010.

In an October 22, 2010 duty status report, an unknown provider noted that appellant worked as a mail processing clerk, which involved standing, using both hands, bending or pivoting and light lifting. Appellant was also diagnosed with neck and shoulder strain.

On October 28, 2010 Dr. Ronald Borlaza, a Board-certified internist, examined appellant and excused him from work that day. In a handwritten addendum, a nurse practitioner indicated that appellant was excused from work for shoulder and neck pain.

In an October 30, 2010 note, Dr. Borlaza examined appellant in the emergency room for complaints of shoulder and neck pain and excused him from work until November 3, 2010.

In a November 4, 2010 note, Dr. Borlaza confirmed that appellant was one of his patients and excused him from work due to upper back, neck and bilateral shoulder pain.

In a November 9, 2010 letter, the employing establishment controverted appellant’s claim alleging that the medical evidence on record failed to provide a firm, medical diagnosis for his alleged condition. It noted that the medical reports only stated that he experienced pain, which is not a compensable diagnosis. The employing establishment also pointed out that appellant alleged his conditions resulted from “repetitive prepping mail,” which does not describe a traumatic injury.³

² Appellant initially filed his claim as a recurrence claim, but subsequently refiled his claim as a traumatic injury claim.

³ The employing establishment further noted that appellant filed additional claims for the same condition under File No. xxxxxx868 and File No. xxxxxx137.

In a September 28, 2010 modified-duty assignment, appellant accepted a modified position as a mail clerk, which included prepping mail flats, standing, using both hands, bending or pivoting and light lifting for eight hours.

On November 19, 2010 OWCP advised appellant that the evidence submitted was insufficient to support his claim and requested additional information, specifically a firm medical diagnosis of his alleged conditions. It requested a medical report from his treating physician which included dates of examination and treatment, description of symptoms, results of examinations and tests, a firm medical diagnosis, description of medical history, and a physician's opinion, based on medical rationale, on the cause of appellant's condition.

In appellant's November 25, 2010 response to OWCP's development letter, he stated that he underwent left shoulder surgery in 2005 and right shoulder surgery in 2007.

In a November 9, 2010 workplace impairment report, an occupational therapist stated that she examined appellant on November 19, 2010 for his bilateral shoulder pain. Appellant complained of soreness and fatigue in both shoulders, which affected his overhead activities. The therapist noted that appellant sustained previous injuries in 2005 and 2007 and had worked for the postal service for 12 years. Appellant stated that over the past few years he worked off and on due to his shoulder problems and surgeries. Upon examination, the therapist observed active range of motion in his upper extremities within normal limit and a grip strength of 80 pounds bilaterally. She concluded that appellant had the ability to perform within the medium work category as defined by the U.S. Department of Labor's *Dictionary of Occupational Titles*. The therapist also stated that appellant was able to function at a level that would meet or exceed the full-duty work requirements of his previous position.

In a November 24, 2010 report, Dr. Borlaza confirmed that appellant was his patient and noted that he underwent surgery to repair bilateral rotator cuff tears in 2005 and right shoulder surgery in 2008, but continued to complain of chronic bilateral shoulder pain. He explained that prepping mail aggravated appellant's shoulder pain, but casing mail did not.

In a December 7, 2010 letter, the employing establishment responded to Dr. Borlaza's November 24, 2010 report and questioned how Dr. Borlaza was able to conclude that prepping mail aggravated appellant's shoulder pain but casing mail did not. It contended that Dr. Borlaza's medical opinion was merely speculative because it was based solely on information received from appellant.

In a decision dated December 23, 2010, OWCP denied appellant's claim finding that the evidence failed to contain a firm diagnosis of a condition that resulted from his employment. It pointed out that the evidence of record only indicated that he suffered from "pain," which is not a compensable diagnosis.

On January 7, 2011 appellant submitted a request for reconsideration. He stated that he would be submitting treatment records, a description of Dr. Borlaza's and an orthopedic doctor's findings, a magnetic resonance imaging (MRI) scan report, treatment reports, and Dr. Borlaza's opinion on the cause of his condition. No additional evidence was received.

By decision dated January 27, 2011, OWCP denied appellant's request for reconsideration because he did not submit any new evidence to support his claim and did not proffer any legal arguments not previously considered.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his claim by the weight of the reliable, probative, and substantial evidence⁴ including that he sustained an injury in the performance of duty and that any specific condition or disability for work for which he claims compensation is causally related to that employment injury.⁵ In an occupational disease claim, appellant's burden requires submission of the following: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.⁶

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.⁷ Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether a causal relationship exists between the employee's diagnosed condition and the specified employment factors or incident.⁸ 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.⁹ The mere fact that work activities may produce symptoms revelatory of an underlying condition does not raise an inference of an employment relation. Such a relationship must be shown by rationalized medical evidence of a causal relation based upon a specific and accurate history of employment conditions which are alleged to have caused or exacerbated a disabling condition.¹⁰

⁴ *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

⁵ *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989); *M.M.*, Docket No. 08-1510 (issued November 25, 2010).

⁶ *R.H.*, 59 ECAB 382 (2008); *Ernest St. Pierre*, 51 ECAB 623 (2000); *D.U.*, Docket No. 10-144, issued July 27, 2010).

⁷ *D.I.*, 59 ECAB 158 (2007); *I.R.*, Docket No. 09-1229 (issued February 24, 2010); *W.D.*, Docket No. 09-658 (issued October 22, 2009).

⁸ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁹ *B.B.*, 59 ECAB 234 (2007); *D.S.*, Docket No. 09-860 (issued November 2, 2009).

¹⁰ *Patricia J. Bolleter*, 40 ECAB 373 (1988).

ANALYSIS -- ISSUE 1

On November 5, 2010 appellant filed a traumatic injury claim alleging that on October 19, 2010 he sustained injuries to his neck and both shoulders in the performance of duty. He indicated that his condition was a traumatic injury by filing a Form CA-1, but he attributed his condition to “repetitive prepping mail.” The Board will treat this claim as an occupational disease claim because appellant attributed his condition over a period longer than a single workday or shift.¹¹

The Board finds that the medical evidence is insufficient to establish that appellant sustained neck and bilateral shoulder conditions as a result of his employment activities. The record reflects that appellant had preexisting bilateral shoulder conditions for which he had undergone surgery. OWCP accepted that appellant’s duties as a modified mail handler included repetitively prepping mail flats, standing, using both hands, bending or pivoting and light lifting. The Board finds, however, that the medical evidence of record failed to provide a diagnosed condition that resulted from the accepted activities.

Appellant submitted various medical reports from Dr. Borlaza. These reports are insufficient to support his claim as none of them provided a specific diagnosis of appellant’s condition. Dr. Borlaza merely noted appellant’s complaints of neck, upper back, and bilateral shoulder pain and excused him from work. The Board has held that pain is generally a symptom, not a compensable medical diagnosis.¹² Thus, Dr. Borlaza did not provide a diagnosed condition sufficient to meet appellant’s burden of proof. These reports also lack probative value because they do not offer an explanation of how appellant’s employment duties caused or contributed to his alleged conditions.¹³ Dr. Borlaza only stated that “prepping mail aggravated appellant’s shoulder pain, but casing mail did not.” He did not provide any medical rationale explaining how prepping mail resulted in appellant’s neck and shoulder pain or provide examination findings to support his opinion. Medical evidence 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.¹⁴ Thus, Dr. Borlaza’s report fails to establish causal relationship.

The additional medical evidence is also insufficient to establish appellant’s claim. The signatures in the October 1, 2010 medical note and October 22, 2010 duty status report are illegible. As a medical report is not considered probative if there is no indication that the person

¹¹ OWCP regulations define a traumatic injury as a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain, which is identifiable as to the time and place of occurrence and member or function of the body affected. 20 C.F.R. § 10.5(ee). An occupational disease or illness is defined as a condition produced by the work environment over a period longer than a single workday or shift. *Id.* at § 10.5(q).

¹² *Robert Broome*, 55 ECAB 339, 342 (2004); *C.F.*, Docket No. 08-1102 (issued October 10, 2008).

¹³ *Elizabeth H. Kramm*, 57 ECAB 117, 124 (2005); *Michael E. Smith*, 50 ECAB 313 (1999).

¹⁴ *Albert C. Brown*, 52 ECAB 152 (2000); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

completing the report is a physician as defined under section 8101(2) of FECA, these reports likewise fail to establish appellant's claim.¹⁵

In addition, the November 9, 2010 workplace capacity evaluation report fails to establish appellant's claim because occupational therapists are not considered "physicians" under FECA.¹⁶ Thus, this report lacks probative value.

On appeal, appellant stated that OWCP did not review all the relevant medical evidence because he mistakenly omitted the case number from the new evidence that was mailed to OWCP. As previously noted, however, the claimant has the burden to prove the essential elements of his claim, including whether his specific employment factors caused any diagnosed condition.¹⁷ Accordingly, despite appellant's alleged mistake, the Board finds that appellant did not meet his burden of proof to establish that he sustained neck and bilateral shoulder conditions as a result of his employment.

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 vests OWCP with discretionary authority to determine whether to review an award for or against compensation.¹⁸ OWCP's regulations provide that OWCP may review an award for or against compensation at any time on its own motion or upon application. The employee shall exercise his right through a request to OWCP.¹⁹

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or an argument that: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.²⁰

¹⁵ *R.M.*, 59 ECAB 690 (2008); *E.K.*, Docket No. 09-1827 (issued April 21, 2010).

¹⁶ 5 U.S.C. § 8101(2); *Roy L. Humphrey*, 57 ECAB 238 (2005); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

¹⁷ *E.A.*, 58 ECAB 677 (2007); *Ernest St. Pierre*, 51 ECAB 623 (2000); *Elaine Pendleton*, *supra* note 5.

¹⁸ 5 U.S.C. § 8128(a); *W.C.*, 59 ECAB 372 (2008); *see also D.L.*, Docket No. 09-1549 (issued February 23, 2010).

¹⁹ 20 C.F.R. § 10.605; *see also R.B.*, Docket No. 09-1241 (issued January 4, 2010); *A.L.*, Docket No. 08-1730 (issued March 16, 2009).

²⁰ 20 C.F.R. § 10.606(b); *see also L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

A request for reconsideration must also be submitted within one year of the date of OWCP's decision for which review is sought.²¹ A timely request for reconsideration may be granted if OWCP determines that the employee has presented evidence or provided an argument that meets at least one of the requirements for reconsideration. If OWCP chooses to grant reconsideration, it reopens and reviews the case on its merits.²² If the request is timely but fails to meet at least one of the requirements for reconsideration, OWCP will deny the request for reconsideration without reopening the case for review on the merits.²³

ANALYSIS -- ISSUE 2

OWCP issued a decision on December 23, 2010 denying appellant's occupational disease claim. On January 7, 2011 appellant requested reconsideration of the December 23, 2010 decision.

The issue on appeal is whether appellant met any of the requirements of 20 C.F.R. § 10.606(b)(2), requiring OWCP to reopen the case for review of the merits of the claim. In his January 7, 2011 application for reconsideration, appellant, did not allege that OWCP erroneously applied or interpreted a specific point of law. He also failed to advance a relevant legal argument. Appellant only alleged that he would be submitting additional medical evidence, but no evidence was received. The Board finds, therefore, that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(2). Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

CONCLUSION

The Board finds that appellant did not establish that he suffered neck and bilateral shoulder conditions causally related to factors of his employment.²⁴ The Board also finds that OWCP properly denied his request for reconsideration pursuant to 5 U.S.C. § 8128(a).

²¹ 20 C.F.R. § 10.607(a).

²² *Id.* at § 10.608(a); *see also M.S.*, 59 ECAB 231 (2007).

²³ *Id.* at § 10.608(b); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

²⁴ The Board notes that appellant submitted additional evidence following the January 27, 2011 decision. Since the Board's jurisdiction is limited to evidence that was before OWCP at the time it issued its final decision, the Board may not consider this evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c); *Sandra D. Pruitt*, 57 ECAB 126 (2005). Appellant may submit that evidence to OWCP along with a request for reconsideration.

ORDER

IT IS HEREBY ORDERED THAT the January 27, 2011 and December 23, 2010 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: October 19, 2011
Washington, DC

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

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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