



## **ISSUES**

The issues are: (1) whether appellant met his burden of proof to establish that he sustained an injury causally related to factors of his federal employment, and (2) whether OWCP properly refused to reopen appellant's claim for merit review under 5 U.S.C. § 8128(a).

## **FACTUAL HISTORY**

On May 21, 2010 appellant, then a 56-year-old city carrier, filed an occupational disease claim alleging that he sustained a swollen right hand as a result of his employment. He explained that he could no longer hold or grip mail in both hands. Appellant first became aware of this condition on March 22, 2010.

Along with the claim, appellant submitted a work release note dated April 29, 2010 from MacNeal Physicians Group, signed by Dr. Robert Passovoy, Board-certified in internal medicine. The note diagnosed appellant's condition as "repetitive stress injuries of wrists, tendin[i]tis and bilateral bursitis dorsal tendons." Dr. Passovoy stated that appellant had been off work due to the condition since April 20, 2010 and could return to work on May 3, 2010 with restrictions of no gripping, lifting, sorting or throwing of mail.

On May 28, 2010 OWCP requested that appellant submit additional evidence including a medical report containing a diagnosis of his condition and medical rationale explaining how the condition was causally related to his employment activities. No further evidence was received by OWCP.

By decision dated August 20, 2010, OWCP denied appellant's claim on the grounds that the medical evidence was not sufficient to establish that a medical condition was diagnosed in connection with the claimed event and work factors.

Appellant disagreed with the decision and requested reconsideration on December 6, 2010. He did not submit any evidence with the reconsideration request. In a December 16, 2010 decision, OWCP denied appellant's request to reopen his case for merit review.

## **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 evidence,<sup>3</sup> 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.<sup>4</sup> As part of his burden, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background showing causal relationship.<sup>5</sup> The weight of medical evidence is determined

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<sup>3</sup> *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

<sup>4</sup> *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>5</sup> *Id.*; *Nancy G. O'Meara*, 12 ECAB 67, 71 (1960).

by its reliability, its probative value, its convincing quality, the care of the analysis manifested and the medical rationale expressed in support of the physician's opinion.<sup>6</sup>

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. 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. 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.<sup>7</sup> In addition, the Board has long held that medical conclusions unsupported by rationale are of diminished probative value and insufficient to establish causal relationship.<sup>8</sup>

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

OWCP has accepted that appellant was required to grip mail in the performance of his employment duties as a city carrier. The Board finds that he has submitted insufficient medical evidence to establish that his medical condition was caused by his federal employment.

The only medical evidence appellant submitted to the record in support of his claim was the work release note signed by Dr. Passovoy, who diagnosed appellant with repetitive stress injuries of wrists, tendinitis and bilateral bursitis dorsal tendons. Dr. Passovoy offered no opinion regarding the cause of the diagnosed conditions.

OWCP advised appellant that it was his responsibility to provide a physician's opinion which included a medical explanation as to how work activities caused, contributed to, or aggravated his medical condition. However, appellant failed to submit any medical documentation in response to the OWCP's request. As there is no probative, rationalized medical report containing a diagnosis of his condition and rationale addressing how his claimed injuries were caused by his employment, he has not met his burden of proof in establishing that he sustained an occupational disease in the performance of duty causally related to factors of employment.

### **LEGAL PRECEDENT -- ISSUE 2**

Under 20 C.F.R. § 10.606(b), a claimant may obtain review of the merits of his or her claim by showing that OWCP erroneously applied or interpreted a point of law, by advancing a relevant legal argument not previously considered by OWCP, or by constituting relevant and pertinent evidence not previously considered by OWCP. Section 10.608(b) provides that when an application for review of the merits of a claim does not meet at least one of these three

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<sup>6</sup> *Jennifer Atkerson*, 55 ECAB 317, 319 (2004); *Naomi A. Lilly*, 10 ECAB 560, 573 (1959).

<sup>7</sup> *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

<sup>8</sup> *See Albert C. Brown*, 52 ECAB 152 (2000).

requirements OWCP will deny the application for review without reviewing the merits of the claim.

**ANALYSIS -- ISSUE 2**

In this case, appellant failed to show that OWCP erroneously applied or interpreted a point of law, to submit any new evidence or to advance any legal argument between the date of initial denial, August 20, 2010, and the date of the reconsideration decision, December 16, 2010. Therefore, he did not meet the requirements of 20 C.F.R. § 10.606(b), and accordingly his request to reopen his case for further reconsideration on its merits was properly denied in accordance with 20 C.F.R. § 10.608(b).

**CONCLUSION**

The Board finds that appellant failed to meet his burden of proof to establish that he sustained the diagnosed conditions in the performance of duty causally related to factors of his federal employment, and that the refusal of OWCP to reopen his case for a further review on its merits pursuant to 5 U.S.C. § 8128(a) did not constitute an abuse of discretion.

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 16 and August 20, 2010 decisions of Office of Workers' Compensation Programs are affirmed.

Issued: October 20, 2011  
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