

FACTUAL HISTORY

On May 5, 2006 appellant, then a 49-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that she sustained an upper back strain that day when she was picking up shipment bags and twisted her back. She filed her claim, stopped work and notified her supervisor on the same date.

In a May 6, 2006 employee status report, appellant's physician restricted appellant from lifting, carrying, pushing and pulling at work. Appellant was advised to return to work on her next scheduled shift.

The record remained dormant from May 2006 to February 2010. In an undated attending physician's report (Form CA-20), appellant's physician diagnosed lumbar disc herniation and noted a February 25, 2010 date of injury. The physician checked the box marked "yes" to indicate that the condition was caused or aggravated by an employment activity.

On April 11, 2010 and again on May 18, 2010 appellant filed duplicate claims (Form CA-2a) alleging that she sustained a recurrence of disability on February 25, 2010 causally related to her alleged May 5, 2006 employment injury. She stated that she felt pain on her left hip, leg and back when she bent, twisted, turned, lifted or walked. Appellant stopped work on February 25, 2010. On the reverse side of the form, her supervisor noted that he did not know if she was on restricted duty when the February 25, 2010 incident occurred. He further stated that appellant had sustained a job-related left shoulder injury on December 29, 2008 and was involved in a nonwork-related motor vehicle accident on December 25, 2009.

In medical reports dated March 29 to May 20, 2010, Dr. Robert Strugala, Board-certified in internal medicine, diagnosed appellant with L3-L4 disc herniation and left leg pain. He reported that the injury commenced on August 21, 2009 and that she would be unable to perform her work duties until her visit with a neurosurgeon on May 21, 2010.²

In a May 27, 2010 note, Dr. Keith Schaible, Board-certified in neurological surgery, requested that Dr. Carlos Crudup arrange appellant's pain clinic evaluation for possible epidural injections and outpatient physical therapy for two to three times a week.

Appellant submitted claim for compensation forms (Form CA-7) for leave without pay for the period of February 25 to May 21, 2010. She noted the date of injury as February 25, 2010. Appellant also submitted time analysis forms (Form CA-7a) for the same time period.

In medical reports dated June 9 and August 20, 2010, Dr. Suneela Harsoor, Board-certified in anesthesiology, reported appellant's history and noted that she was originally hurt on May 5, 2006 but then returned to full-duty work. On February 25, 2010 he noted that she injured herself and stopped work because her pain had worsened with constant lifting. Dr. Harsoor noted that appellant had not returned to work since that day. Upon physical examination and

² Appellant does not allege that an injury or aggravation or recurrence of injury connected with this claim occurred on August 21, 2009. The date is not explained or developed in the record before the Board in this appeal.

review of her magnetic resonance imaging scan, he diagnosed radiculopathy, lumbar disc herniation and myofascial pain. Dr. Harsoor also reported that appellant had significant pain and stiffness in her back, poor posture, was unable to sit or stand for a long time. He recommended a lumbosacral orthosis.

By letter dated August 4, 2010, OWCP advised appellant of the deficiencies in her claim. It requested additional factual and medical evidence concerning her May 5, 2006 injury.³

By decision dated September 15, 2010, OWCP denied appellant's claim finding that the evidence did not establish that the claimed medical condition was related to the established work-related event.

By letter, also dated September 15, 2010, OWCP informed appellant that it could not consider a recurrence of disability in a denied claim and that no further action would be taken concerning the recurrence claim. Appellant was advised to file a Form CA-1 or CA-2 for her February 25, 2010 injury.

On September 22, 2010 appellant requested reconsideration of the September 15, 2010 OWCP decision and in support of her request submitted a copy of that decision.

By decision dated October 6, 2010, OWCP denied appellant's request for reconsideration finding that she neither raised substantive legal questions nor included new and relevant evidence.⁴

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA 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 the applicable time limitation; that an injury was sustained while in the performance of duty as alleged and that any disability or specific condition for which compensation is claimed are causally related to the employment injury.⁵ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or occupational disease.⁶

³ OWCP also advised appellant that her April 11 and May 18, 2010 submissions for notice of recurrence described a new incident which occurred on February 25, 2010, that no further action would be taken on the Form CA-2a and that she should file a new Form CA-1 claim for that injury.

⁴ The Board notes that appellant submitted additional evidence after OWCP rendered its October 6, 2010 decision. The Board's jurisdiction is limited to reviewing the evidence that was before OWCP at the time of its final decision. Therefore, this additional evidence cannot be considered by the Board. 20 C.F.R. § 510.2(c)(1); *Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35, 36 n.2 (1952). Appellant may submit this evidence to OWCP, together with a formal request for reconsideration, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606(b)(2).

⁵ *Gary J. Watling*, 52 ECAB 278 (2001); *Elaine Pendleton*, 40 ECAB 1143, 1154 (1989).

⁶ *Michael E. Smith*, 50 ECAB 313 (1999).

A traumatic injury means 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.⁷ An occupational disease is defined as a condition produced by the work environment over a period longer than a single workday or shift.⁸ A recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.⁹ A recurrence of a disability does not include a condition which results from a new injury, even if it involves the same part of the body previously injured or by renewed exposure to the causative agent of a previously suffered occupational disease.¹⁰

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 which is alleged to have occurred.¹¹ The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.

To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background, supporting such a causal relationship.¹² Rationalized medical opinion evidence 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. This medical opinion must include an accurate history of the employee's employment injury and must explain how the condition is related to the injury. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.¹³

⁷ 20 C.F.R. § 10.5(ee).

⁸ *Id.* at § 10.5(q).

⁹ *Id.* at § 10.5(x).

¹⁰ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3(b)(2) (May 1997).

¹¹ *Elaine Pendleton*, 40 ECAB 1143 (1989).

¹² See 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

¹³ *James Mack*, 43 ECAB 321 (1991).

ANALYSIS -- ISSUE 1

OWCP accepted that the May 5, 2006 incident occurred as alleged. The issue is whether appellant established that the incident caused a back injury. The Board finds that she did not submit sufficient medical evidence to support that her back injury was causally related to the May 5, 2006 employment incident.¹⁴

In an undated attending physician's report (Form CA-20), appellant's physician diagnosed lumbar disc herniation, noting the date of injury as February 25, 2010. The physician checked the box marked "yes" when asked if he believed the condition was caused or aggravated by an employment activity. A physician's opinion on causal relationship that consists only of checking "yes" to a question is of diminished probative value.¹⁵ Moreover, the physician did not report a history of the May 5, 2006 incident. Thus, this report is insufficient to meet appellant's burden of proof.

In medical reports dated March 29 to May 20, 2010, Dr. Strugala diagnosed appellant with L3-L4 disc herniation and left leg pain which began on August 21, 2009. He failed to provide any opinion on the cause of appellant's injury. Dr. Strugala reported that her injury commenced on August 21, 2009, over three years after the May 5, 2006 employment incident. The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.¹⁶ Dr. Struggle's report is insufficient to meet appellant's burden of proof.

In medical reports dated June 9 and August 20, 2010, Dr. Harsoor diagnosed appellant with radiculopathy, lumbar disc herniation and myofascial pain. She noted appellant's history and reported that appellant was originally hurt on May 5, 2006 and injured herself again on February 25, 2010. Dr. Harsoor reported the history related by appellant but did not discuss that history in light of independent, clinical findings. She did not explain how appellant's condition was due to the May 5, 2006 employment incident and did not first evaluate appellant until some three years after the employment incident. The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.¹⁷ Without medical reasoning explaining how appellant's employment factors caused her back injury, Dr. Harsoor's report is insufficient to meet appellant's burden of proof.¹⁸

The remaining medical evidence of record is also insufficient to establish a causal relationship between appellant's back condition and the May 5, 2006 employment incident. The May 5, 2006 employee status report restricted appellant from lifting, carrying, pushing and

¹⁴ See *Robert Broome*, 55 ECAB 339 (2004).

¹⁵ See *Gary J. Watling*, 52 ECAB 278 (2001).

¹⁶ *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

¹⁷ *C.B.*, *id.*; *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

¹⁸ *Id.* at Docket No. 08-1583 (issued December 9, 2008).

pulling at work. Dr. Stabile's May 27, 2010 facsimile note requested that Dr. Crudup arrange appellant's pain clinic evaluation for possible epidural injections and outpatient physical therapy for two to three times a week. While the above medical records addressed appellant's treatment and injury, the physicians failed to state any causal relationship between her back condition and the May 5, 2006 employment incident. Without medical reasoning explaining how her employment caused her back condition, the reports are not sufficient to meet appellant's burden of proof.¹⁹

LEGAL PRECEDENT -- ISSUE 2

To reopen a case for merit review under section 8128(a), 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.²⁰ Section 10.608(b) of OWCP regulations provide that 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.²¹

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied to reopen appellant's case for further consideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a), did not constitute an abuse of discretion.

On appeal, appellant argues that she sent her September 22, 2010 reconsideration request accompanied with a four page letter from Dr. Harsoor by certified mail. She states that she received the certified mail return receipt on September 24, 2010 which was signed by Philip Schuler. Appellant did not submit the certified mail return receipt or additional evidence to establish that a copy of Dr. Harsoor's letter was sent to OWCP with the reconsideration request. Even if she had sent in copies of the certified mail return receipt, the issue is not whether her reconsideration request was delivered, but rather whether the request was accompanied by additional evidence. Appellant has not otherwise provided argument or evidence of sufficient probative value to show that Dr. Harsoor's medical report was sent and received by OWCP. The record before the Board contains no such report.

The issue presented is whether appellant met any of the requirements of 20 C.F.R. § 10.606(b)(2) to reopen her case for review of the merits of the claim. In her September 22, 2010 application for reconsideration, she did not show that OWCP erroneously applied or interpreted a specific point of law. Appellant did not identify a specific point of law or show that it was erroneously applied or interpreted. She did not advance a new and relevant legal

¹⁹ *Id.*

²⁰ *D.K.*, 59 ECAB 141 (2007).

²¹ *K.H.*, 59 ECAB 495 (2008).

argument. Appellant apparently failed to submit any medical evidence addressing causal relationship. There is no indication that a medical report concerning causal connection was received by OWCP. The underlying issue in this case was whether appellant's current back injury was causally related to the May 5, 2006 employment incident. That is a medical issue which must be addressed by relevant medical evidence.²² A claimant may obtain a merit review of an OWCP's decision by submitting new and relevant evidence. In this case, appellant did not submit any new and relevant medical evidence.

Evidence submitted by appellant after the final decision cannot be considered by the Board. As previously noted, the Board's jurisdiction is limited to reviewing the evidence that was before OWCP at the time of its decision.²³ Appellant may submit additional evidence, together with a written request for reconsideration, to OWCP within one year of the Board's merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.606 and 10.607.

The Board accordingly finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(2). Appellant did not show that OWCP erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by OWCP or submit relevant and pertinent evidence not previously considered. Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review in the October 6, 2010 decision.²⁴

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she sustained a traumatic injury on May 5, 2006 in the performance of duty, as alleged. OWCP properly denied her request for reconsideration without a merit review.

²² See *Bobbie F. Cowart*, 55 ECAB 746 (2004).

²³ 20 C.F.R. § 501.2(c)(1).

²⁴ *Sherry A. Hunt*, 49 ECAB 467 (1998).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs decisions dated October 6 and September 15, 2010 are affirmed.

Issued: September 13, 2011
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board