

the top shelf of an eight foot storage rack and felt pain radiating down his shoulder to his right hand.

In a May 28, 2010 attending physician's report (Form CA-20), Dr. Jon Seibert, Board-certified in emergency medicine, reported that appellant was lifting overhead on May 19, 2010 and experienced numbness and pain in his arm since that date. Pending the results of a magnetic resonance imaging (MRI) scan, he opined that appellant could have a cervical disc injury. Dr. Seibert checked the box marked "yes" that inquired if the condition found was caused or aggravated by the employment activity described.

In a June 2, 2010 MRI scan report, Dr. Kipp A. Van Camp, Board-certified in family medicine, reported that appellant's cervical spine showed a small right to central disc protrusion at the C5-6 level causing mild effacement of the anterior thecal sac along the right side and the central aspect. He further noted a small central disc protrusion at the C6-7 level along with mild straightening of the normal lordotic curve of the cervical spine.

By letter dated July 1, 2010, OWCP informed appellant that the evidence of record was insufficient to support his claim. Appellant was advised of the medical and factual evidence needed and was directed to submit it within 30 days.

In a June 28, 2010 medical report, Dr. John Olson, Board-certified in neurological surgery, stated that appellant was complaining of neck pain. He reported that his symptoms began at work with an episode that resulted in sudden right arm pain which was associated with reaching above his head. Dr. Olson noted that appellant had a history of lumbar cyst ependymoma which had been resected almost a year ago. He diagnosed mild cervical spondylosis with a small disc abnormality at C5-6 and the central canal widely patent at all levels. Dr. Olson further diagnosed herniated nuclear pulposus, cervical intervertebral disc, nontraumatic, without myelopathy.

By decision dated August 11, 2010, OWCP denied appellant's claim finding that the medical evidence did not establish that his cervical condition was related to the May 19, 2010 employment incident.

On September 6, 2010 appellant requested reconsideration stating that he sustained temporary paralysis when trying to lift a file box on the top shelf which caused pain to radiate down his shoulder to his right hand. He noted that his MRI scan showed disc protrusions of C5-7 and recommended medical assistance to prevent further damage. Appellant stated that four additional doctors reported an impression of disc C7-T1 from a June 30, 2006 claim, File No. xxxxxx814, which clearly showed the connection of these two injuries.¹

¹ Appellant's prior claim File No. xxxxxx814 is not explained or developed in the record before the Board in this appeal. Further, he did not allege that a recurrence of injury connected with any other claim occurred on May 19, 2010.

By decision dated September 30, 2010, OWCP denied appellant's request for reconsideration finding that he did not raised any substantive legal questions or include new and relevant evidence on whether the May 19, 2010 employment incident caused his injury.²

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 is causally related to the employment injury.³ 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.⁴

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.⁵ 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, and 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.⁶ 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,

² The Board notes that appellant submitted additional evidence after OWCP rendered its September 30, 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).

³ *Gary J. Watling*, 52 ECAB 278 (2001); *Elaine Pendleton*, 40 ECAB 1143, 1154 (1989).

⁴ *Michael E. Smith*, 50 ECAB 313 (1999).

⁵ *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁶ *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.⁷

ANALYSIS -- ISSUE 1

OWCP accepted that the May 19, 2010 incident occurred as alleged. The issue is whether appellant established that the incident caused a cervical injury. The Board finds that he did not submit sufficient medical evidence to support that his neck injury is causally related to the May 19, 2010 employment incident.⁸

In a May 28, 2010 attending physician's report, Dr. Seibert reported that appellant was lifting overhead on May 19, 2010 when he experienced numbness and pain in his arm. He opined that appellant could have a cervical disc injury, pending the results of an MRI scan. Dr. Seibert checked the box marked "yes" as to whether he believed the condition found was caused or aggravated by the employment activity described. The Board finds that the opinion of Dr. Seibert is not well rationalized. Dr. Seibert's history of the May 19, 2010 employment incident repeated appellant's factual assertions. He failed to address appellant's prior medical history and did not describe, explain or diagnose appellant's medical condition. Dr. Seibert concluded that a causal connection existed between appellant's injury and his job duties, the report provides no support for that conclusion. Medical reports without adequate rationale on causal relationship are of diminished probative value and do not meet an employee's burden of proof.⁹ The opinion of a physician supporting causal relationship must rest on a complete factual and medical background supported by affirmative evidence, address the specific factual and medical evidence of record and provide medical rationale explaining the relationship between the diagnosed condition and the established incident or factor of employment.¹⁰ The Board has held that an opinion that consists of checking "yes" to a form question is of diminished probative value.¹¹ This report does not meet that standard and is insufficient to meet appellant's burden of proof.

In a June 2, 2010 MRI scan report, Dr. Van Camp reported that appellant's cervical spine showed a small right to central disc protrusion at C5-6 level causing mild effacement of the anterior thecal sac along the right side and the central aspect. There was also a small central disc protrusion at the C6-7 level along with mild straightening of the normal lordotic curve of the cervical spine. While Dr. Van Camp diagnosed appellant's injury, he did not address whether or how the accepted May 19, 2010 incident caused or contributed to the neck condition. The Board has held that medical evidence that does not offer any opinion regarding the cause of an

⁷ *James Mack*, 43 ECAB 321 (1991).

⁸ *See Robert Broome*, 55 ECAB 339 (2004).

⁹ *Ceferino L. Gonzales*, 32 ECAB 1591 (1981).

¹⁰ *See Lee R. Haywood*, 48 ECAB 145 (1996).

¹¹ *See Cecelia M. Corley*, 56 ECAB 662 (2005).

employee's condition is of limited probative value on the issue of causal relationship.¹² Thus, Dr. Van Camp's report is insufficient to meet appellant's burden of proof.

In a June 28, 2010 medical report, Dr. Olson stated that appellant complained of neck pain and that his symptoms began with an episode at work which resulted in sudden right arm pain and was associated with reaching above his head. He reported that appellant had a history of lumbar cyst ependymoma which had been resected almost a year prior. Dr. Olson diagnosed mild cervical spondylosis with a small disc abnormality at C5-6 with the central canal widely patent at all levels; he indicated that the cervical intervertebral disc was nontraumatic, without myelopathy. He reported the May 19, 2010 employment incident as related by appellant but did not address whether his cervical disc condition was due to the May 19, 2010 employment incident or his prior history. 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.¹³ Without medical reasoning supported by facts, Dr. Olson's report is insufficient to meet appellant's burden of proof.¹⁴

On appeal, appellant contends that he has established that his injury is causally related to the May 19, 2010 employment incident. While he has established a firm medical diagnosis, he has not established that his diagnosed cervical condition is causally related to the accepted May 19, 2010 employment incident. Appellant failed to establish that there was an aggravation of his condition from either a prior claim or a previous condition. His belief that his work caused his medical problem is not in question, but that belief, however, sincerely held, does not constitute the medical evidence necessary to establish causal relationship. The record is without a fully rationalized medical evidence establishing that the diagnosed cervical condition is causally related to the accepted May 19, 2010 employment incident.

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.¹⁵ 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.

LEGAL PRECEDENT -- ISSUE 2

To require OWCP to reopen a case for merit review under FECA section 8128(a), its 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 it; or (3) constitute relevant and pertinent new evidence not previously considered by OWCP.¹⁶ Section 10.608(b) of OWCP regulations provide that

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

¹³ *Id.*

¹⁴ *C.B.*, Docket No. 08-1583 (issued December 9, 2008).

¹⁵ 20 C.F.R. § 501.2(c)(1).

¹⁶ *D.K.*, 59 ECAB 141 (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.¹⁷

ANALYSIS -- ISSUE 2

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

The issue presented 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 September 6, 2010 application for reconsideration, appellant did not show that OWCP erroneously applied or interpreted a specific point of law. He did not advance a new and relevant legal argument. Appellant's argument was that his injury was employment related and he referenced a prior claim File No. xxxxxx814 from June 30, 2006 which he stated showed an impression of disc C7-T1 which would clearly show the connection of his two injuries.¹⁸ The underlying issue in this case was whether appellant's injury was causally related to the accepted May 19, 2010 employment incident. That is a medical issue which must be addressed by relevant medical evidence.¹⁹ A claimant may obtain a merit review of OWCP decision by submitting new and relevant evidence. In this case, appellant failed to submit any new and relevant evidence addressing causal relationship.

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

¹⁷ *K.H.*, 59 ECAB 495 (2008).

¹⁸ As noted in footnote 1, appellant's prior claim File No. xxxxxx814 is not explained or developed in the record before the Board in this appeal. In this instance, he has filed a traumatic injury claim and has not alleged a recurrence of a prior injury. If appellant is claiming a recurrence, then he should pursue his claim under his prior CA-2a claim File No. xxxxxx814.

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. 20 C.F.R. § 10.5(q).

An occupational disease is defined as a condition produced by the work environment over a period longer than a single workday or shift. 20 C.F.R. § 10.5(x). 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.

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

¹⁹ See *Bobbie F. Cowart*, 55 ECAB 746 (2004).

submit relevant and pertinent evidence not previously considered. Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he sustained a traumatic injury on May 19, 2010 in the performance of duty, as alleged. OWCP properly denied his request for reconsideration without a merit review.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs decisions dated September 30 and August 11, 2010 are affirmed.

Issued: September 12, 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