United States Department of Labor
Employees' Compensation Appeals Board

R.P., Appellant	)	
and	)	**Docket No. 11-1582**
	)	**Issued: January 17, 2012**
DEPARTMENT OF LABOR, MINE SAFETY & HEALTH ADMINISTRATION, Pineville, WV, 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
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On June 22, 2011 appellant filed a timely appeal of a January 24, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP) denying his traumatic injury claim and a March 7, 2011 nonmerit decision denying reconsideration. 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 has met his burden of proof to establish that he sustained left shoulder or cervical spine injuries in the performance of duty; and (2) whether OWCP properly denied a request for reconsideration.

On appeal, counsel contends that he sustained a traumatic injury as claimed but that his physician refused to complete the forms and reports required to establish his claim.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On August 24, 2010 appellant, then a 64-year-old coal mine safety and health inspector, filed a traumatic injury claim (Form CA-1) claiming that on August 17, 2010, he injured his left shoulder and arm when pulling himself up onto heavy equipment. He did not stop work.

On September 30, 2010 Dr. Prakash Puranik, an attending internist, diagnosed a left rotator cuff tear and prescribed physical therapy.[2] In an October 16, 2010 report, he diagnosed a degenerated cervical disc.[3] Dr. Puranik recommended a left shoulder arthroscopy.

In a December 6, 2010 letter, OWCP advised appellant of the additional evidence needed to establish his claim, including a statement from his attending physician explaining how and why work factors would cause the claimed left shoulder injury. It afforded appellant 30 days in which to submit such evidence.

Appellant submitted a December 14, 2010 statement, asserting that he injured his left shoulder and cervical spine on August 17, 2010. He noted an accepted December 2003 left shoulder injury sustained in a work-related motor vehicle accident.[4] Appellant submitted additional medical evidence.

In an October 1, 2010 report, Dr. Puranik noted that appellant sustained a left shoulder injury in a December 3, 2003 occupational motor vehicle accident, with septicemia and swelling. He underwent left shoulder arthroscopy in early 2004 and was told he had a torn rotator cuff. Dr. Puranik opined that appellant reinjured his shoulder on August 17, 2010 while pulling himself up on a loader.

In an October 19, 2010 report, Dr. Puranik attributed appellant's left shoulder pain to the December 2003 injury and cervical nerve root irritation. He diagnosed tendinitis and a possible infection or rotator cuff tear of the left shoulder. Dr. Puranik newly diagnosed C5-6 stenosis on November 3, 2010 and impingement syndrome of the left shoulder on November 16, 2010.

Appellant also submitted October and November 2010 physical therapy notes.

By decision dated January 24, 2011, OWCP denied appellant's claim on the grounds that causal relationship was not established. It accepted that the August 17, 2010 incident occurred at the time, place and in the manner alleged. OWCP further found that appellant did not provide sufficient rationalized medical evidence explaining how and why the accepted incident would cause the claimed injury. It noted that Dr. Puranik did not distinguish between the effects of the accepted December 3, 2003 injury and the August 17, 2010 injury.

[2] September 16, 2010 x-rays of both shoulders showed mild degenerative changes of the right acromioclavicular joint and humeral head. The left acromioclavicular and glenohumeral joints were normal.

[3] An October 30, 2010 magnetic resonance imaging (MRI) scan of the cervical spine showed annular disc bulges at C3-4, C4-5, C5-6 and C6-7 with protrusions indenting the dural sac.

[4] The December 2003 injury was processed and accepted under a separate file number from the present claim.

In a February 8, 2011 letter, appellant requested reconsideration. He asserted that additional medical evidence from Dr. Puranik would be sufficient to establish his claim. Appellant also submitted additional medical evidence.

In a January 28, 2011 report, Dr. Puranik opined that appellant pulling himself up onto heavy equipment on August 17, 2010 "could have caused his shoulder strain/rotator cuff injury." He posited that appellant's present symptoms were due to the August 17, 2010 incident as his left shoulder was asymptomatic after the 2003 injury. Dr. Puranik stated that appellant's cervical degenerative disc disease was preexisting and nonoccupational. Appellant also submitted October 2010 imaging studies of the cervical spine, and copies of October and November 2010 physical therapy notes previously of record.

By decision dated March 7, 2011, OWCP denied reconsideration on the grounds that the evidence submitted was cumulative or irrelevant.

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 and/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 an occupational disease.[6]

In order to determine whether an employee sustained a traumatic 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 that must be considered in conjunction with one another. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident that is alleged to have occurred.[7] Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.[8]

The medical evidence required to establish causal relationship is generally rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which 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 medial certainty and must be supported by medical rationale

[5] *Joe D. Cameron*, 41 ECAB 153 (1989).

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

[7] *Gary J. Watling*, 52 ECAB 278 (2001).

[8] *Deborah L. Beatty*, 54 ECAB 340 (2003).

explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[9]

ANALYSIS -- ISSUE 1

Appellant claimed that he sustained left shoulder and cervical spine injuries on August 17, 2010 when he pulled himself into a loader cab using his left arm. OWCP accepted the incident as factual. By decision dated January 24, 2011, it denied the claim, finding that the medical evidence submitted was insufficiently rationalized to establish the claimed causal relationship between the August 17, 2010 incident and the claimed injuries.

In support of his claim, appellant submitted reports from Dr. Puranik, an attending internist. In reports from October 1 to November 16, 2010, Dr. Puranik noted an accepted December 2003 left shoulder injury with subsequent surgery, and the August 17, 2010 incident. He diagnosed a left rotator cuff tear with tendinitis and impingement syndrome, a possible infection of the acromioclavicular joint and nonoccupational cervical degenerative disc disease. Dr. Puranik thus negated a causal relationship between the claimed neck injury and the accepted incident. Although his October 1, 2010 report stated that appellant reinjured his shoulder on August 17, 2010 while pulling himself onto a loader, he did not explain how and why this workplace incident would cause or aggravate any of the claimed conditions. Therefore, Dr. Puranik's opinion is insufficiently rationalized to meet appellant's burden of proof in establishing his claim.[10] Appellant also submitted physical therapy notes. As these reports were not signed by individuals that qualify as physicians under FECA, the Board finds that they do not constitute probative medical evidence.[11]

The Board notes that in a December 6, 2010 letter, OWCP advised appellant of the additional evidence needed to establish his claim, including a rationalized statement from his attending physician supporting causal relationship. As appellant did not submit sufficient rationalized medical evidence explaining how and why the accepted incident would cause the claimed neck and left shoulder injuries, OWCP properly denied his claim.

On appeal, appellant contends that he sustained a traumatic injury as claimed but that he could not meet his burden of proof because his physician refused to complete reports and forms. As set forth above, the burden is on the claimant to submit the evidence necessary to establish his claim.

[9] *Solomon Polen*, 51 ECAB 341 (2000).

[10] *See Frank D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value); *Jimmie H. Duckett*, 52 ECAB 332 (2001).

[11] A report may not be considered as probative medical evidence if there is no indication that the person completing the report qualifies as physician as defined in 5 U.S.C. § 8101(2). Section 8101(2) of FECA provides as follows: (2) physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. *See Merton J. Sills*, 39 ECAB 572, 575 (1988).

Appellant may submit new evidence or argument as part of a formal 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

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,[12] section 10.606(b)(2) of Title 20 of the Code of Federal 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.[13] Section 10.608(b) provides that when an application for review of the merits of a claim 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.[14]

In support of a request for reconsideration, appellant is not required to submit all evidence which may be necessary to discharge his or her burden of proof.[15] He need only submit relevant, pertinent evidence not previously considered by OWCP.[16] When reviewing an OWCP decision denying a merit review, the function of the Board is to determine whether OWCP properly applied the standards set forth at section 10.606(b)(2) to the claimant's application for reconsideration and any evidence submitted in support thereof.[17]

ANALYSIS -- ISSUE 2

OWCP issued a January 24, 2011 decision finding that appellant did not establish that he sustained neck and left shoulder injuries causally related to an accepted August 17, 2010 work incident in which he pulled himself into a loader cab using his left arm. Appellant requested reconsideration on February 8, 2011, asserting that additional evidence from Dr. Puranik was sufficient to establish causal relationship. In a March 7, 2011 decision, OWCP denied reconsideration as the evidence submitted was cumulative or irrelevant.

To be considered relevant evidence, the documents submitted on reconsideration must address the issue of whether the accepted August 17, 2010 incident caused the claimed neck and left shoulder injuries. In his February 8, 2011 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. Instead, appellant asserted that additional medical evidence met his burden of proof.

[12] 5 U.S.C. § 8128(a).

[13] 20 C.F.R. § 10.606(b)(2).

[14] *Id*. at § 10.608(b). *See also D.E.*, 59 ECAB 438 (2008).

[15] *Helen E. Tschantz*, 39 ECAB 1382 (1988).

[16] *See* 20 C.F.R. § 10.606(b)(3). *See also Mark H. Dever*, 53 ECAB 710 (2002).

[17] *Annette Louise*, 54 ECAB 783 (2003).

In a January 28, 2011 report, Dr. Puranik stated that the August 17, 2010 incident "could have caused his shoulder strain/rotator cuff injury" but that the degenerative cervical disc disease was not work related. The Board finds that this report is repetitive of Dr. Puranik's reports of record. Dr. Puranik generally supported a causal relationship between a left shoulder injury and the accepted incident but negated a causal connection between work factors and degenerated cervical discs. Similarly, appellant submitted copies of physical therapy notes previously of record. Evidence or argument which is duplicative or cumulative in nature is insufficient to warrant reopening a claim for merit review.[18]

Appellant also submitted October 2010 imaging studies of the cervical spine. These documents are irrelevant as they do not address causal relationship. They do not require reopening the record for further merit review.[19]

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.

CONCLUSION

The Board finds that appellant did not establish that he sustained neck and left shoulder injuries in the performance of duty. The Board further finds that OWCP properly denied appellant's February 8, 2011 request for reconsideration.

[18] *Denis M. Dupor*, 51 ECAB 482 (2000).

[19] *Joseph A. Brown, Jr.*, 55 ECAB 542 (2004); *Mark H. Dever, supra* note 16.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated March 7 and January 24, 2011 are affirmed.

Issued: January 17, 2012
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