

FACTUAL HISTORY

On April 30, 2010 appellant, then a 63-year-old letter carrier, filed an occupational disease claim alleging that on March 3, 2010 he first became aware of swelling and pain in his right hand. On April 24, 2010 he first realized that his condition was caused by his federal employment. Appellant stopped work on April 30, 2010. In an April 30, 2010 statement, he related that his right hand pain was caused by sorting flats to mailboxes up to 1,000 times and approximately four hours a day.

An April 29, 2010 disability certificate signed by several physicians, including Dr. Jonathan R. Perryman, an attending Board-certified orthopedic surgeon, advised that appellant was unable to work from April 29 through May 10, 2010. Appellant had right thumb swelling and tendinitis. He was released to return to his regular work duties on May 10, 2010 with no restrictions. In narrative reports dated April 29, May 6 and 11, 2010, Dr. Perryman noted appellant's complaint of right thumb and hand pain with swelling as a result of his work duties. He obtained a history of appellant's medical, family and social background. Dr. Perryman reported essentially normal findings on physical and mental examination with the exception of swelling of the right thumb at the metacarpophalangeal (MCP) joint and tenderness to palpation about this joint. He advised that appellant had osteoarthritis not otherwise specified of the right hand. Dr. Perryman initially released appellant to return to work on May 7, 2010 and subsequently placed him off work for two weeks beginning May 11, 2010. In form reports dated April 29 and May 6, 2010, he advised that appellant had right thumb strain due to sorting mail. Dr. Perryman instructed appellant to wear a brace when he returned to his regular work duties on May 6, 2010. On May 25, 2010 he stated that the cause of the diagnosed condition was unknown.

In a May 26, 2010 report, Dr. Douglas O. Halsted, a Board-certified orthopedic surgeon, noted appellant's two-week complaint of pain in the MCP joint of his index finger and near the MCP joint of his thumb. Appellant speculated that his conditions were due to his work requirements which involved key punch tasks 1,000 times a day. Dr. Halsted noted that appellant had psoriasis. He provided appellant's medical, family and social background. Dr. Halsted listed findings on physical examination and reviewed previously taken x-rays. He advised that appellant had inflammatory arthritis that was quite possibly related to psoriasis and affected his index MCP joint and secondarily his thumb MCP joint, right dominant side. Appellant could return to work in an unrestricted capacity and try to use his left hand. Dr. Halsted stated that appellant's work requirements aggravated his inflammatory arthritis. In a May 26, 2010 form report, he advised that the cause of appellant's arthritis was unknown.

By letter dated May 4, 2010, Postmaster Joan Inglis controverted appellant's claim. She contended that he was off work commencing April 24, 2010 due to a death in his family. Appellant did not seek medical treatment from a physician for his swollen right hand until April 29, 2010, the day he was scheduled to return to work. His hand was not swollen at work on April 24, 2010. Appellant was off work the entire week of April 12, 2010 to engage in outside activities. He mentioned working on his boat and home. Appellant never reported his right hand injury to anyone, including his supervisors, until April 29, 2010.

In a June 29, 2010 decision, OWCP denied appellant's claim. It found that there was insufficient medical evidence to support that his condition was causally related to his accepted work duties.

On July 23, 2010 appellant requested a review of the written record by an OWCP hearing representative.

In a September 27, 2010 decision, an OWCP hearing representative set aside the June 29, 2010 decision. The hearing representative remanded the case to OWCP to determine whether appellant sustained the claimed right hand injury at the time, place and in the manner alleged. She directed OWCP to obtain appellant's response to the statements made by Postmaster Inglis in her May 4, 2010 letter.

By letter dated October 7, 2010, OWCP requested that appellant explain why he did not report his right hand problems in early March 2010. Appellant was also asked to address the activities he performed at home during the week of April 12, 2010 and whether he sustained any injuries to his right hand during this period. He was asked to respond to Postmaster Inglis' statement that his right hand was not swollen when he left work on April 24, 2010. Appellant was asked to provide whether he had sustained any other injuries to his right hand or obtained medical treatment for his right hand prior to the claimed work injury.

In an October 20, 2010 letter, appellant stated that his pain was gradual and he rubbed Icy Hot on his hand which seemed to help the pain. He was off work during the week of April 12, 2010 to accompany his wife to her medical appointments. Appellant did not sustain any injuries or work on his house or boat during this period. In May 2010, he hired someone to detail his boat. Appellant contended that, in March 2010, two custodians, Arthur Jalbert and Bill Trachia, observed him using Icy Hot on his hand. He did not make any statement that his right hand was not swollen on April 24, 2010. Appellant claimed that Postmaster Inglis did not work on Saturdays. He further stated that the night of Saturday, April 24, 2010 was the first time he was awakened by pain. On April 25, 2010 appellant learned about his mother's death and the funeral was held on April 28, 2010. He delayed seeking medical attention until April 29, 2010. Appellant stated that he had not sought medical treatment for any right hand injuries prior to the claimed work injury.

On January 19, 2011 Postmaster Inglis advised OWCP that she was not at work on April 24, 2010. She had no opportunity to view appellant's hand on that date.

In a decision dated January 19, 2011, OWCP denied appellant's claim on the grounds that causal relationship was not established. It accepted the employment factors he deemed responsible for his condition, but found the medical evidence did not establish that his employment caused the diagnosed right hand conditions.

On March 28, 2011 appellant requested reconsideration and submitted a March 2, 2011 report by Dr. Halsted who advised that appellant had a thumb strain. Dr. Halsted further advised that the cause of the diagnosed condition was unknown. He stated that appellant could perform his regular work duties on a full-time basis with no restrictions.

In a July 28, 2011 decision, OWCP denied modification of the January 19, 2011 decision. It found that the medical evidence failed to establish that appellant sustained an injury causally related to the established work duties.

On October 16, 2011 appellant requested reconsideration by placing a checkmark alongside the reconsideration option on an appeal request form.

In a November 10, 2011 decision, OWCP denied appellant's request for reconsideration, finding that he neither raised substantive legal questions, nor included new and relevant evidence.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA² has the burden of establishing the essential elements of his claim including the fact that the individual is an "employee of the United States" within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA, that an injury was sustained 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.³ These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish a causal relationship is 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 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.⁵ Neither the fact that appellant's condition became apparent during a

² 5 U.S.C. §§ 8101-8193.

³ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁴ *See Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

⁵ *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

period of employment nor his belief that the condition was caused by his employment is sufficient to establish a causal relationship.⁶

ANALYSIS -- ISSUE 1

OWCP accepted that appellant performed the work duties of a letter carrier as alleged. The Board finds that the medical evidence is insufficient to establish that his diagnosed right hand conditions were caused or aggravated by his work-related duties.⁷

Dr. Perryman's April 29, 2010 disability certificate and April 29 and May 6 and 11, 2010 narrative reports found that appellant had swelling, tendinitis and strain of the right thumb and osteoarthritis not otherwise specified of the right hand. Appellant informed Dr. Perryman of his belief that his work duties caused his right thumb and hand pain. Dr. Perryman failed to provide an opinion addressing the causal relationship between appellant's diagnosed right thumb and hand conditions and the established work duties. Medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value.⁸ Dr. Perryman's April 29 and May 6, 2010 form reports noted that generally right thumb strain was caused by sorting mail. However, he failed to explain how the diagnosed condition was causally related to the established work-related duties.⁹ In a May 25, 2010 report, however, Dr. Perryman stated that the cause of appellant's right thumb strain was "unknown."¹⁰ The Board finds that his reports are insufficient to establish appellant's claim.

In a May 26, 2010 report, Dr. Halsted found that appellant had inflammatory arthritis that was quite possibly related to psoriasis and affected his right index MCP joint and secondarily his right thumb MCP joint. He opined that appellant's work duties aggravated his inflammatory arthritis. Dr. Halsted did not explain how the diagnosed condition was aggravated by the established work-related duties.¹¹ In another May 26, 2010 report and a March 2, 2011 report, he stated that the cause of appellant's arthritis and strain of the thumb were unknown. Dr. Halsted did not provide a rationalized opinion explaining how appellant's diagnosed conditions were caused by the established work duties.¹² For the stated reasons, the Board finds that his reports are insufficient to establish appellant's claim.

⁶ *Kathryn Haggerty*, 45 ECAB 383, 389 (1994).

⁷ *See Richard A. Weiss*, 47 ECAB 182 (1995).

⁸ *A.D.*, 58 ECAB 149 (2006); *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Michael E. Smith*, 50 ECAB 313 (1999).

⁹ *See Gloria J. McPherson*, 51 ECAB 441 (2000) (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).

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

The Board finds that the medical evidence of record does not provide a fully rationalized medical opinion, based on a full or accurate history explaining the reasons why the established work-related duties caused or aggravated the claimed medical conditions. Appellant did not meet his burden of proof.

On appeal, appellant contended that he sustained an employment-related right hand injury. As discussed above, he did not submit sufficiently rationalized medical evidence to establish his claim.

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

To require OWCP to reopen a case for merit review under section 8128 of FECA,¹³ OWCP's regulation's 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.¹⁴ To be entitled to a merit review of an OWCP decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.¹⁵ When a claimant fails to meet one of the above standards, OWCP will deny the application for reconsideration without reopening the case for review of the merits.

ANALYSIS -- ISSUE 2

On July 28, 2011 OWCP denied appellant's occupational disease claim on the grounds that he failed to submit sufficient medical evidence establishing that he sustained an injury causally related to the established work duties. Appellant requested reconsideration on October 16, 2011 by selecting the option of reconsideration on the appeal request form. He did not submit any additional evidence or argument in support of his request. The Board finds, therefore, that 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 pertinent new and relevant evidence not previously considered. As appellant did not meet any of the necessary regulatory requirements, he is not entitled to further merit review.¹⁶

¹³ 5 U.S.C. §§ 8101-8193. Under section 8128 of FECA, the Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application. 5 U.S.C. § 8128(a).

¹⁴ 20 C.F.R. § 10.606(b)(1)-(2).

¹⁵ *Id.* at § 10.607(a).

¹⁶ *M.E.*, 58 ECAB 694 (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).

CONCLUSION

The Board finds that appellant has failed to establish that he sustained a right hand injury in the performance of duty causally related to his federal employment. The Board further finds that OWCP properly denied his request for further merit review of his claim pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the November 10 and July 28, 2011 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: July 18, 2012
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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