

FACTUAL HISTORY

On October 20, 2010 appellant, then a 55-year-old nurse, filed a traumatic injury claim, alleging that, on August 25, 2010, while transferring multiple patients from bed to an examining table, she injured her left hip. She did not stop work.

By letter dated October 26, 2010, OWCP advised appellant of the type of factual and medical evidence needed to establish her claim and requested that she submit such evidence, particularly requesting that appellant submit a comprehensive medical report from her treating physician which included a reasoned explanation as to how the specific work factors or incidents identified by appellant had contributed to her claimed injury.

Appellant was treated by a physician's assistant on October 15, 2010, who noted appellant could return to work with restrictions including no lifting patients. The physician's assistant noted that appellant's hip pathology was being investigated and her recovery required rest. In an October 18, 2010 statement, appellant asserted that her left hip began clicking and giving out since August 25, 2010. She noted transferring patients from bed to examining tables and experiencing pain which progressed. Further, appellant indicated that she sought treatment from an orthopedist on October 15, 2010 who suspected a torn labrum and recommended a magnetic resonance imaging (MRI) scan. She informed her supervisors of her condition and they could not accommodate her restrictions.

In a December 7, 2010 decision, OWCP denied appellant's claim on the grounds that she failed to establish fact of injury noting that the medical evidence failed to contain a medical diagnoses in connection with the injury or events.

In a December 24, 2010 appeal form, appellant requested reconsideration. In a statement dated December 24, 2010, appellant asserted that she attempted to get an MRI scan but she had scheduling problems. She indicated that she did not realize that being treated by a physician's assistant was inadequate to establish her claim and advised that she had an appointment with a physician on January 10, 2011 and would send a report.

In a January 6, 2011 decision, OWCP denied appellant's reconsideration request finding that the request was insufficient to warrant review of the prior decision.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA has the burden of establishing the essential elements of 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 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 is causally related to the employment injury. These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.²

² Gary J. Watling, 52 ECAB 357 (2001).

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.³ 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.⁴

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 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.⁶

ANALYSIS

Appellant alleged that she sustained a left hip injury after transferring multiple patients from bed to an examining table. The Board notes that the evidence supports that the incident, transferring patients, occurred on August 25, 2010 as alleged. The Board finds, however, that the medical evidence is insufficient to establish that appellant sustained a left hip injury causally related to the August 25, 2010 work incident. On October 26, 2010 OWCP advised appellant of the type of medical evidence needed to establish her claim. Appellant did not submit a rationalized medical report from an attending physician in which the physician explains why the August 25, 2010 work incident caused or aggravated her claimed condition.

Appellant submitted an October 15, 2010 report from a physician's assistant who treated her for a hip condition and noted that she could return to work with restrictions including no lifting patients. However, such reports are not considered medical evidence as a physician's

³ *Michael E. Smith*, 50 ECAB 313 (1999).

⁴ *Id.*

⁵ *Leslie C. Moore*, 52 ECAB 132 (2000).

⁶ *Jimmie H. Duckett*, 52 ECAB 332 (2001); *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

assistant is not considered a physician under FECA.⁷ Consequently these reports were of no probative value and do not establish appellant's occupational illness claim.

As noted, part of appellant's burden of proof includes the submission of rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship between the employment and the diagnosed condition. Therefore, these notes are insufficient to meet appellant's burden of proof. Appellant submitted a statement which included a timeline and narrative of her injury. She indicated that she had an "Ortho consult" but did not provide a name nor report.

The record contains no other medical evidence. Because appellant has not submitted reasoned medical evidence explaining how and why her hip condition is employment related, she has not met her burden of proof.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that her condition was caused, precipitated or aggravated by her employment is sufficient to establish causal relationship. Causal relationships must be established by rationalized medical opinion evidence.⁸ Appellant failed to submit such evidence, and OWCP therefore properly denied appellant's claim for compensation.

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

Under section 8128(a) of FECA,⁹ OWCP has the discretion to reopen a case for review on the merits. OWCP must exercise this discretion in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations, which provide that a claimant may obtain review of the merits of his or her written application for reconsideration, including all supporting documents, sets forth arguments and contain evidence that:

“(i) Shows that OWCP erroneously applied or interpreted a specific point of law;
or

“(ii) Advances a relevant legal argument not previously considered by OWCP; or

⁷ See *David P. Sawchuk*, 57 ECAB 316 (2006) (lay individuals such as physician's assistants, nurses and physical therapists are not competent to render a medical opinion under FECA); see also *Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (where the Board has held that a medical opinion, in general, can only be given by a qualified physician). 5 U.S.C. § 8101(2) (this subsection defines a "physician" as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law).

⁸ See *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

⁹ 5 U.S.C. § 8128(a).

“(iii) Constitutes relevant and pertinent new evidence not previously considered by OWCP.”¹⁰

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by OWCP without review of the merits of the claim.¹¹

The Board has found that evidence that repeats or duplicates evidence already in the case record has no evidentiary value.¹²

ANALYSIS -- ISSUE 2

OWCP denied appellant’s claim for a traumatic injury on the grounds that the evidence submitted was insufficient to establish that appellant sustained a hip injury in the performance of duty. It denied her December 24, 2010 reconsideration request, without a merit review, and she appealed this decision to the Board. 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 her December 24, 2010 application for reconsideration, appellant did not show that OWCP erroneously applied or interpreted a specific point of law. She did not identify a specific point of law or show that it was erroneously applied or interpreted. Appellant did not advance a new and relevant legal argument. She did not submit any additional evidence with her reconsideration request only a narrative statement which asserted that she was unable to get an MRI scan due to scheduling issues. Appellant indicated that she did not realize that being treated by a physician’s assistant was inadequate to establish her claim and advised that she had an appointment with a physician on January 10, 2011 and would send a report thereafter. However, her general statements and assertions do not show that OWCP erroneously applied or interpreted a point of law nor do they advance a point of law or fact not previously considered by OWCP. Consequently, appellant is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(2).

With respect to the third requirement, submitting relevant and pertinent new evidence not previously considered by OWCP, appellant, as noted above, did not submit any new evidence with her reconsideration request. OWCP’s December 7, 2010 merit decision denied the claim because there was no medical evidence supporting that employment factors caused her claimed condition. Thus, the underlying issue is medical in nature but appellant did not submit any new and relevant medical evidence with her reconsideration request.

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

¹⁰ 20 C.F.R. § 10.606(b)(2).

¹¹ *Id.* at § 10.608(b).

¹² *See Daniel Deparini*, 44 ECAB 657 (1993).

specific point of law, advance a relevant legal argument not previously considered by OWCP, or constitute relevant and pertinent evidence not previously considered. Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

On appeal appellant submitted various medical reports and asserted that she previously submitted this evidence to OWCP for consideration with her claim and was informed that the evidence was lost due to an office move by OWCP. The Board notes that its jurisdiction is limited to the evidence that was before OWCP at the time it issued its final decision; therefore, the Board is unable to review evidence submitted by appellant on appeal.¹³ However, this does not preclude appellant from requesting reconsideration before OWCP and submitting additional evidence.

CONCLUSION

The Board finds that appellant failed to meet her burden of proof to establish that she sustained a hip injury causally related to her August 25, 2010 employment incident. The Board finds that OWCP properly denied appellant's request for reconsideration.

ORDER

IT IS HEREBY ORDERED THAT the January 6, 2011 and December 7, 2010 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: March 7, 2012
Washington, DC

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

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

¹³ 5 U.S.C. § 501.2(c).