



## **FACTUAL HISTORY**

On December 21, 2010 appellant, then a 48-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that she developed bilateral joint disease of the hips and lower back pain as a result of the excessive weight bearing when walking, stooping, lifting and loading. She first became aware of her illness on August 31, 2004 and of its relationship to her employment on December 7, 2010. Appellant first received medical care on August 31, 2004 and notified her supervisor on December 12, 2010.

In a December 27, 2010 narrative statement, appellant reported that in August 2004 she was diagnosed with degenerative joint disease of the hips, right hip being worse. She stated that her condition had progressively worsened and noted that her job duties entailed numerous repetitive motions including lifting, pulling, pushing and loading mail. Appellant stated that she had been a city carrier since August 3, 1998, worked five days a week for eight and a half hours a day and that the weight from carrying mail door to door bothered her. She noted that her current route consisted of approximately 3.5 miles of walking and that her entire body had been affected from her shoulders to her feet. Appellant further stated that, prior to August 2004, she led a very active lifestyle which became difficult to maintain as a result of her condition.

By letter dated January 6, 2011, OWCP informed appellant that the evidence of record was insufficient to support her claim. Appellant was advised of the medical and factual evidence needed and was directed to submit it within 30 days. In another letter that same date, OWCP requested additional factual information from the employing establishment. No other evidence was submitted by either party.

By decision dated March 25, 2011, OWCP denied appellant's claim on the grounds that the evidence was insufficient to establish that she sustained an injury. It found that the occupational exposure occurred as alleged; however, that the evidence failed to provide a firm medical diagnosis which could be reasonably attributed to the accepted employment factors.

On April 19, 2011 appellant requested reconsideration of OWCP's decision. She stated that she did not send in any medical documentation because her physician informed her not to submit documentation until a case number was received for the claim. Appellant stated that she was submitting supporting documentation with her reconsideration request. Only a copy of OWCP's March 25, 2011 decision was received.

By decision dated May 27, 2011, OWCP denied appellant's request for reconsideration finding that she neither raised substantive legal questions nor included new and relevant evidence. It specifically noted that no medical evidence was received.<sup>2</sup>

---

<sup>2</sup> The Board notes that appellant submitted additional evidence after OWCP rendered its May 27, 2011 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).

## 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.<sup>3</sup> These are the essential elements of every compensation claim regardless of whether the claim is predicated on a traumatic injury or occupational disease.<sup>4</sup>

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.<sup>5</sup> 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.<sup>6</sup> The rationalized opinion of a 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.<sup>7</sup>

## ANALYSIS -- ISSUE 1

OWCP accepted that the occupational exposure occurred as alleged. The issue, therefore, is whether appellant submitted sufficient medical evidence to establish that the employment exposure caused bilateral joint disease of the hips and lower back pain. The Board finds that she did not submit sufficient medical evidence to support that she developed bilateral joint disease of the hips and lower back pain causally related to factors of her employment as a letter carrier.<sup>8</sup>

---

<sup>3</sup> Gary J. Watling, 52 ECAB 278 (2001); Elaine Pendleton, 40 ECAB 1143, 1154 (1989).

<sup>4</sup> Michael E. Smith, 50 ECAB 313 (1999).

<sup>5</sup> Elaine Pendleton, *supra* note 3 at 1143 (1989).

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

<sup>7</sup> James Mack, 43 ECAB 321 (1991).

<sup>8</sup> See Robert Broome, 55 ECAB 339 (2004).

The evidence is deficient on two grounds: (1) it fails to provide a firm diagnosis; and (2) there is no narrative opinion on causal relationship between a diagnosed condition and factors of her employment as a letter carrier.

Appellant must establish all of the elements of her claim for her injury to be compensable. She must prove her employment, the time, place and manner of injury, a resulting personal injury and that her injury arose in the performance of duty. In her December 27, 2010 narrative statement, appellant provided a description of her duties as a letter carrier. She noted that she was diagnosed with degenerative joint disease of the hips, the right hip being worse. By letter dated January 6, 2011, OWCP informed appellant of detailed medical and factual evidence needed to support her claim; however, the record before the Board contains no additional evidence.

Appellant did not submit medical evidence with her occupational exposure claim. Because no medical evidence containing a physician's opinion was received prior to OWCP's March 25, 2011 decision, she failed to establish a firm medical diagnosis of her injury.<sup>9</sup>

An award of compensation may not be based on surmise, conjecture or speculation.<sup>10</sup> To establish a firm medical diagnosis and causal relationship, appellant must submit a physician's report in which the physician reviews those factors of employment alleged to have caused her condition and, taking these factors into consideration, as well as findings upon examination and her medical history, explain how these employment factors caused or aggravated any diagnosed condition and present medical rationale in support of his opinion.<sup>11</sup> Appellant's recitation of the facts does not support her allegation that her employment factors as a letter carrier caused her injury.<sup>12</sup> Where an appellant fails to submit any medical evidence, he or she has not established that the injury occurred as alleged.<sup>13</sup>

### **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 new evidence not previously considered by OWCP.<sup>14</sup> Section 10.608(b) of OWCP regulations provide that when an application for reconsideration does not meet at least

---

<sup>9</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>10</sup> *D.D.*, 57 ECAB 734 (2006).

<sup>11</sup> *Supra* note 6.

<sup>12</sup> *Paul Foster*, 56 ECAB 1943 (2004); *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

<sup>13</sup> *Tracey P. Spillane*, 54 ECAB 608 (2003); 5 U.S.C. § 8101(5).

<sup>14</sup> *D.K.*, 59 ECAB 141 (2007).

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.<sup>15</sup>

### **ANALYSIS -- ISSUE 2**

The Board finds that the refusal of OWCP 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.<sup>16</sup>

In her April 19, 2011 reconsideration request, appellant argued that her physician informed her not to send medical documentation until she was provided with a claim number for the case. She stated that she was requesting reconsideration with supporting documentation. As appellant's reconsideration request was received, the issue is not whether her reconsideration request was delivered, but rather whether the request was accompanied by additional evidence. She has not otherwise provided argument or evidence of sufficient probative value to show that supporting documentation was ever received by OWCP. The record before the Board contains no such documents.

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 April 19, 2011 application for reconsideration, appellant did not show that OWCP erroneously applied or interpreted a specific point of law. She did not advance a new and relevant legal argument. Appellant's argument was that she was waiting to submit medical documentation when she received a claim number for the case. She also failed to submit any medical evidence addressing a firm medical diagnosis and causal relationship. The decisive issue in this case was whether appellant sustained an injury causally related to factors of her employment. That is a medical issue which must be addressed by relevant medical evidence.<sup>17</sup> 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.<sup>18</sup> 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. She did not advance a relevant legal argument not previously considered

---

<sup>15</sup> *K.H.*, 59 ECAB 495 (2008).

<sup>16</sup> *Glen E. Shiner*, 53 ECAB 165 (2001). Abuse of discretion is generally shown through proof of manifest error clearly unreasonable exercise of judgment or actions taken that are contrary to both logic and probable deduction from established facts.

<sup>17</sup> *Supra* note 10.

<sup>18</sup> 20 C.F.R. § 501.2(c)(1).

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 May 27, 2011 decision.<sup>19</sup>

**CONCLUSION**

The Board finds that appellant did not meet her burden of proof to establish that she sustained a bilateral hip and back injury in the performance of duty, as alleged. OWCP properly denied her request for reconsideration without a merit review.

**ORDER**

**IT IS HEREBY ORDERED THAT** the Office of Workers' Compensation Programs' decisions dated May 27 and March 25, 2011 are affirmed.

Issued: March 12, 2012  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

---

<sup>19</sup> *Sherry A. Hunt*, 49 ECAB 467 (1998).