United States Department of Labor
Employees' Compensation Appeals Board

M.W., Appellant	)	
and	)	**Docket No. 12-119**
	)	**Issued: May 9, 2012**
DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE, Methuen, MA, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On October 12, 2011 appellant filed a timely appeal from the Office of Workers' Compensation Programs' (OWCP) August 11, 2011 merit decision denying her traumatic injury claim and the September 29, 2011 nonmerit decision denying her request for 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 met her burden of proof to establish that she sustained a traumatic injury to her abdomen or left leg in the performance of duty on June 23, 2011; and (2) whether OWCP properly refused to reopen her case for further review of the merits pursuant to 5 U.S.C. § 8128(a).

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On June 25, 2011 appellant, then a 45-year-old correspondence examiner, filed a traumatic injury claim alleging that she sustained injuries to her lower abdomen and left leg on June 23, 2011 when she stopped quickly while walking down an aisle to avoid being hit by a coworker who was waving her arms. She alleged that the incident caused pain in the area of an incision from a recent bowel surgery. The employing establishment controverted the claim.

By letter dated July 6, 2011, OWCP advised appellant that the information submitted was insufficient to establish her claim. It requested additional factual and medical evidence, including a physician's report with a diagnosis and a rationalized opinion explaining how the diagnosed condition was causally related to the claimed event.

In a July 7, 2011 report, Dr. Peter Hartman, a Board-certified surgeon, stated that appellant had subjective pain in her lower abdomen, which she reportedly developed after being bumped at work. On examination, appellant's abdomen was soft with mild bilateral lower abdominal tenderness. Dr. Hartman reassured her that he did not feel that anything significant had happened. He diagnosed diverticulitis and placed appellant on limited duty, as she requested. In attending physician's reports dated July 7 and 21, 2011, Dr. Hartman provided a history of injury as reported by appellant. Appellant stated that, while walking down a hall at work on June 22, 2011, she experienced abdominal pain when she stopped quickly to avoid running into someone who was waving her hands. Dr. Hartman diagnosed abdominal strain and indicated by placing a checkmark in the "yes" box, his belief that her condition was caused or aggravated by employment activities.

Appellant submitted an accident report dated June 23, 2011 in which she reiterated the history of injury as stated in her traumatic injury claim form.

In an August 11, 2011 decision, OWCP denied appellant's claim on the grounds that the evidence failed to establish that she sustained a diagnosed condition causally related to factors of employment.

On August 18, 2011 appellant requested reconsideration. She submitted duty status reports from Dr. Hartman dated August 4 and 16, 2011. Dr. Hartman noted appellant's belief that she was unable to perform certain employment duties, including: sitting, standing, simple grasping, walking and fine manipulation. He indicated by placing a checkmark in the "yes" box that the history of injury provided by appellant corresponded with that provided by OWCP. Appellant also submitted a position description for her job as a correspondence examination technician.

By decision dated September 29, 2011, OWCP denied appellant's request for reconsideration, finding that the evidence submitted was insufficient to warrant merit review.

On appeal, appellant contends that the evidence of record is sufficient to establish her traumatic injury claim. In the alternative, the evidence submitted on reconsideration is sufficient to warrant merit review.

LEGAL PRECEDENT -- ISSUE 1

FECA provides for payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.[2] The phrase "sustained while in the performance of duty" is regarded as the equivalent of the coverage formula commonly found in workers' compensation laws, namely, arising out of and in the course of employment.[3]

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of her claim, including the fact that she is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation period, that an injury was sustained 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.[4] When an employee claims that she sustained a traumatic injury in the performance of duty, she must establish the fact of injury, consisting of two components, which must be considered in conjunction with one another. The first is whether the employee actually experienced the incident that is alleged to have occurred at the time, place and in the manner alleged. The second is whether the employment incident caused a personal injury and generally this can be established only by medical evidence.[5]

The claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of employment.[6] An award of compensation may not be based on appellant's belief of causal relationship.[7] Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish a causal relationship.[8] Simple exposure to a workplace hazard does not constitute a work-related injury entitling an employee to medical treatment under FECA.[9]

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[2] 5 U.S.C. § 8102(a).

[3] This construction makes the statute effective in those situations generally recognized as properly within the scope of workers' compensation law. *Charles E. McAndrews*, 55 ECAB 711 (2004); *see also Bernard D. Blum*, 1 ECAB 1 (1947).

[4] *Robert Broome*, 55 ECAB 339 (2004).

[5] *Deborah L. Beatty*, 54 ECAB 340 (2003). *See also Tracey P. Spillane*, 54 ECAB 608 (2003); *Betty J. Smith*, 54 ECAB 174 (2002). The term "injury" as defined by FECA, refers to a disease proximately caused by the employment. 5 U.S.C. § 8101(5). *See* 20 C.F.R. § 10.5(q)(ee).

[6] *Katherine J. Friday*, 47 ECAB 591, 594 (1996).

[7] *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

[8] *Id.*

[9] 20 C.F.R. § 10.303(a).

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion 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 established incident or factor of employment.[10]

ANALYSIS -- ISSUE 1

OWCP accepted that appellant was a federal employee, that she timely filed her claim for compensation benefits, and that the June 23, 2011 workplace incident occurred as alleged. The issue is whether she has submitted sufficient medical evidence to establish that the employment incident caused an injury. The medical evidence presented does not contain a rationalized medical opinion from a physician establishing that the work-related incident caused or aggravated a medical condition or disability. Therefore, appellant has failed to satisfy her burden of proof.

The medical evidence of record includes reports from appellant's treating physician, Dr. Hartman. On July 7, 2011 appellant complained of pain in her lower abdomen, which she attributed to being bumped at work. Dr. Hartman provided examination findings and diagnosed diverticulitis. He did not, however, provide any opinion as to the cause of appellant's condition. Medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[11]

In attending physician's reports dated July 7 and 21, 2011, Dr. Hartman listed a history of injury as reported by appellant. He diagnosed abdominal strain and indicated by placing a checkmark in the "yes" box, his belief that appellant's condition was caused or aggravated by employment activities. A checkmark or affirmative notation in response to a form question on causal relationship is not sufficient to establish a claim.[12] The Board has held that a report that addresses causal relationship with a checkmark, without a medical rationale explaining how the work conditions caused the alleged injury, is of diminished probative value and is insufficient to establish causal relationship.[13] In this case, Dr. Hartman failed to explain how the events of June 23, 2011 were competent to cause appellant's diagnosed condition. Such an explanation is particularly important in light of appellant's recent abdominal surgery.

The record does not contain an opinion by a physician supporting appellant's contention that her abdominal or leg condition was causally related to the June 23, 2011 incident. Appellant

[10] *John W. Montoya*, 54 ECAB 306 (2003).

[11] *Michael E. Smith*, 50 ECAB 313 (1999).

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

[13] *See Calvin E. King, Jr*., 51 ECAB 394 (2000); *see also Frederick E. Howard, Jr*., 41 ECAB 843 (1990).

expressed her belief that these conditions resulted from the accepted employment incident.[14] The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.[15] Neither the fact that the condition became apparent during a period of employment, nor the belief that the condition was caused or aggravated by employment factors or incidents, is sufficient to establish causal relationship.[16] Causal relationship must be substantiated by reasoned medical opinion evidence, which it is appellant's responsibility to submit. Therefore, appellant's belief that her condition was caused by the work-related incident is not determinative.

OWCP advised appellant that it was her responsibility to provide a comprehensive medical report which described his symptoms, test results, diagnosis, treatment and the doctor's opinion, with medical reasons, on the cause of her condition. Appellant failed to submit appropriate medical documentation in response to OWCP's request. As there is no probative, rationalized medical evidence addressing how her claimed condition was caused or aggravated by her employment, appellant has not met her burden of proof to establish that she sustained an injury in the performance of duty causally related to factors of her federal employment.

On appeal, appellant contends that the evidence of record is sufficient to establish her traumatic injury claim. For reasons stated, the Board finds that appellant has failed to meet her burden of proof in this case.

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(a) of FECA,[17] OWCP 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 OWCP; or (3) constitute relevant and pertinent new evidence not previously considered by OWCP.[18] 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.[19] When a claimant fails to meet one of the above standards, OWCP will deny the application for reconsideration without

[14] The Board notes that there is no medical evidence of record that contains a diagnosis relating to appellant's claimed left leg injury.

[15] *See Joe T. Williams*, 44 ECAB 518, 521 (1993).

[16] *Id.*

[17] 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).

[18] 20 C.F.R. § 10.606(b)(2).

[19] *Id*. at § 10.607(a).

reopening the case for review on the merits.[20] The Board has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.

ANALYSIS -- ISSUE 2

By decision dated August 11, 2011, OWCP denied appellant's traumatic injury claim on the grounds that the medical evidence of record failed to establish a causal relationship between the June 23, 2011 incident and a diagnosed condition. The issue is whether the evidence and argument submitted in support of appellant's August 18, 2011 request for reconsideration is sufficient to warrant further merit review pursuant to 20 C.F.R. § 10.606(b)(2).

In her application for reconsideration, appellant did not identify a specific point of law or show that it was erroneously applied or interpreted. She did not advance a new and relevant legal argument.[21] A claimant may be entitled to a merit review by submitting new and relevant evidence. Appellant did not, however, submit new and relevant medical evidence in this case. The Board finds that OWCP properly determined that appellant was not entitled to further review of the merits.

The evidence received in support of the reconsideration request included duty status reports from Dr. Hartman dated August 4 and 16, 2011 and a position description for appellant's job with the employing establishment. The position description submitted by appellant is irrelevant to the issue in this case, which is medical in nature. As noted, the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.[22] Dr. Hartman's duty status reports do not address the relevant issue in this case, namely whether the diagnosed condition is causally related to the June 23, 2011 incident. Rather, they merely repeat information contained in reports previously received into evidence and are thus cumulative and duplicative in nature.[23] The Board finds that the evidence submitted by appellant does not constitute relevant and pertinent new evidence not previously considered by OWCP.[24] Therefore, OWCP properly determined that this evidence did not constitute a basis for reopening the case for a merit review.

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

[20] *Id*. at § 10.608(b).

[21] The Board notes that no specific allegations were made and no evidence was submitted to support claims of bias on the part of OWCP's referral physicians.

[22] *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

[23] Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a claim for merit review. *Denis M. Dupor*, 51 ECAB 482 (2000).

[24] *See Susan A. Filkins*, 57 ECAB 630 (2006).

On appeal, appellant contends that the evidence submitted on reconsideration is sufficient to warrant merit review. For reasons stated, the Board finds that the evidence submitted in support of appellant's request for reconsideration is insufficient to warrant further merit review.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that she sustained an abdominal or leg injury in the performance of duty. The Board further finds that OWCP properly refused to reopen appellant's case for further review of the merits pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the September 29 and August 11, 2011 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: May 9, 2012
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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