

FACTUAL HISTORY

On September 2, 2011 appellant, then a 34-year-old city letter carrier, filed an occupational disease claim alleging that he sustained right lateral epicondylitis due to performing repetitive work duties in the course of his federal employment. He stopped work on August 31, 2011 and returned to work on September 2, 2011.

On September 1, 2011 Dr. Steven T. Joyce, a Board-certified orthopedic surgeon, discussed appellant's complaints of right elbow pain at the lateral epicondyle which increased with activity. He noted that appellant had no history of elbow trauma. Dr. Joyce diagnosed right elbow lateral epicondylitis. In a disability certificate dated September 1, 2011, a physician's assistant found that appellant was unable to work on August 30, 2011 as a result of lateral epicondylitis of the right elbow.

By letter dated September 15, 2011, OWCP requested that appellant submit additional factual and medical information in support of his claim. It asked for a detailed medical report from his attending physician addressing the relationship between the identified work factors and a diagnosed condition.

On September 20, 2011 Dr. Joyce stated, "[Appellant] clinically has lateral epicondylitis which appears to be an overuse syndrome secondary to his work. [His] limitations consist of very limited lifting and gripping with [the] left upper extremity."²

In response to OWCP's request for information, on September 28, 2011, appellant described in detail his work activities, including repetitively casing and separating mail with a bent arm.

On October 12, 2011 Dr. Joyce diagnosed lateral epicondylitis and again indicated that it appeared "to be an overuse syndrome secondary to his work." He provided work restrictions for the right upper extremity.

By decision dated December 6, 2011, OWCP denied appellant's claim finding that the evidence was insufficient to establish that he sustained a medical condition causally related to the accepted work factors. It found that Dr. Joyce's reports did not provide medical rationale explaining how work duties caused or aggravated his lateral epicondylitis and were insufficient to establish causal relationship.

On February 17, 2012 appellant requested reconsideration. In support of his request, he submitted a February 7, 2012 report from Dr. Joyce, who stated, "[Appellant] clinically has lateral epicondylitis which is an overuse syndrome secondary to his work. [His] limitations consist of very limited lifting and gripping with [the] right upper extremity."

By decision dated February 29, 2012, OWCP denied appellant's request for reconsideration after finding that he had not raised a legal argument or submitted new and

² Dr. Joyce's finding that appellant had limitations of the left upper extremity appears to be a typographical error as he previously attributed such limitations to the right upper extremity.

relevant evidence sufficient to warrant reopening his case for further merit review under section 8128.

On appeal, appellant asserted that he had no history of a prior right arm injury and that his physician advised that his lateral epicondylitis was due to his employment.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA³ 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.⁴ 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.⁵

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;⁶ (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;⁷ and (3) medical evidence establishing 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.⁸

The medical evidence required to establish causal relationship generally is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the claimant,⁹ must be one of reasonable medical certainty¹⁰ explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹¹

³ *Supra* note 1.

⁴ *Tracey P. Spillane*, 54 ECAB 608 (2003); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁵ *See Ellen L. Noble*, 55 ECAB 530 (2004).

⁶ *Michael R. Shaffer*, 55 ECAB 386 (2004).

⁷ *Marlon Vera*, 54 ECAB 834 (2003); *Roger Williams*, 52 ECAB 468 (2001).

⁸ *Beverly A. Spencer*, 55 ECAB 501 (2004).

⁹ *Tomas Martinez*, 54 ECAB 623 (2003); *Gary J. Watling*, 52 ECAB 278 (2001).

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

¹¹ *I.J.*, 59 ECAB 408 (2008); *Judy C. Rogers*, 54 ECAB 693 (2003).

ANALYSIS -- ISSUE 1

Appellant attributed his right lateral epicondylitis to performing repetitive work in the course of his federal employment. OWCP accepted the occurrence of the claimed employment factors. The issue is whether the medical evidence establishes a causal relationship between the claimed conditions and the identified employment factors.

On September 1, 2011 Dr. Joyce evaluated appellant for elbow pain. He diagnosed lateral epicondylitis of the right elbow. Dr. Joyce, however, did not address the cause of the diagnosed epicondylitis. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship.¹²

On September 20 and October 12, 2011 Dr. Joyce opined that appellant had "lateral epicondylitis which appears to be an overuse syndrome secondary to his work." He provided work restrictions. Dr. Joyce's opinion that appellant's epicondylitis "appears" to be related to his employment is couched in speculative terms and is of diminished probative value.¹³ Further, he did not provide any rationale for his causation statement. A mere conclusion without the necessary rationale explaining how and why the physician believes that a claimant's accepted exposure could result in a diagnosed condition is not sufficient to meet a claimant's burden of proof.¹⁴

On appeal, appellant argues that his physician attributed his lateral epicondylitis to his work duties. As discussed, however, Dr. Joyce failed to provide a report in which he reviewed the factors identified by appellant as causing his condition and, taking these factors into consideration as well as findings upon examination and the medical history, explained how employment factors caused or aggravated any diagnosed condition and present medical rationale in support of his or her opinion.¹⁵ Consequently, appellant failed to discharge his burden of proof.

LEGAL PRECEDENT -- ISSUE 2

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,¹⁶ its 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.¹⁷ To be entitled to a merit review of an OWCP decision denying or

¹² *S.E.*, Docket No. 08-2214 (issued May 6, 2009); *Conrad Hightower*, 54 ECAB 796 (2003).

¹³ *See D.D.*, 57 ECAB 734 (2006); *Vaheh Mokhtarians*, 51 ECAB 190 (1999).

¹⁴ *See supra* note 8.

¹⁵ *D.D.*, *supra* note 13; *Robert Broome*, 55 ECAB 339 (2004).

¹⁶ 5 U.S.C. § 8101 *et seq.* Section 8128(a) of FECA provides that "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application."

¹⁷ 20 C.F.R. § 10.606(b)(2).

terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.¹⁸ When a claimant fails to meet one of the above standards, OWCP will deny the application for reconsideration without reopening the case for review on the merits.¹⁹ OWCP's decision shall contain findings of fact and a statement of reasons.²⁰

The Board has held that the submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.²¹ The Board also has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.²²

ANALYSIS -- ISSUE 2

With his February 17, 2012 request for reconsideration, appellant did not show that OWCP erroneously applied or interpreted a specific point of law. He 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. A claimant may also be entitled to a merit review by submitting pertinent new and relevant evidence, but appellant did not submit any pertinent new and relevant medical evidence in this case. In a February 7, 2012 report, Dr. Joyce diagnosed lateral epicondylitis due to appellant's work duties. However, his February 7, 2012 report is substantially similar to his prior reports of record, which OWCP considered and found insufficient to establish causal relationship as they were devoid of medical rationale. As Dr. Joyce's report is cumulative in nature, it is insufficient to warrant reopening the case for merit review.²³

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 new evidence not previously considered. Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

CONCLUSION

The Board finds that appellant has not established that he sustained lateral epicondylitis of the right elbow causally related to factors of his federal employment. The Board further finds that OWCP properly denied his request to reopen his case for further review of the merits under section 8128.

¹⁸ *Id.* at § 10.607(a).

¹⁹ *Id.* at § 10.608(b).

²⁰ *Id.* at § 10.126.

²¹ *F.R.*, 58 ECAB 607 (2007); *Arlesa Gibbs*, 53 ECAB 204 (2001).

²² *P.C.*, 58 ECAB 405 (2007); *Ronald A. Eldridge*, 53 ECAB 218 (2001); *Alan G. Williams*, 52 ECAB 180 (2000).

²³ *F.R.*, *supra* note 21; *Patricia Aiken*, 57 ECAB 441 (2006).

ORDER

IT IS HEREBY ORDERED THAT the February 29, 2012 and December 6, 2011 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: September 26, 2012
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

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