

FACTUAL HISTORY

On April 17, 2012 appellant, a 36-year-old mail handler, filed a claim for benefits, alleging that she sustained a mid and lower back strain while throwing sacks of mail on April 13, 2012.

By letter to appellant dated May 1, 2012, OWCP advised that it required additional factual and medical evidence to determine whether she was eligible for compensation benefits. It asked her to submit a comprehensive medical report from her treating physician describing her symptoms and a medical opinion explaining the cause of any diagnosed condition.

In a report dated May 2, 2012, Dr. Laurence D. Haber, Board-certified in family practice, stated that appellant had complaints of continuous low back pain which began on April 11, 2012. Appellant rated her pain at a level of 10 on a scale of 1 to 10; the pain radiated into her posterior thigh. Dr. Haber advised that her symptoms were precipitated by lifting and by her work duties. He stated that appellant had no significant history of low back pain and radicular pain and that her examination was unremarkable. Dr. Haber diagnosed lumbosacral radiculopathy and thoracic sprain. He recommended that appellant undergo a magnetic resonance imaging scan.

Dr. Haber submitted several form reports in 2011 and 2012, in which he described the history of injury and checked a box indicating that appellant's condition was caused by employment activities.

By decision dated June 14, 2012, OWCP denied appellant's claim, finding that she failed to submit sufficient medical evidence in support of her claim that she sustained a back injury in the performance of duty on April 13, 2012.

In a reports dated June 4 and 21, 2012, Dr. Haber essentially reiterated his previous findings and conclusions. He stated that, given the fact that appellant felt pain while lifting/throwing mail sacks, her symptoms were apparently caused by this activity. Dr. Haber diagnosed thoracic sprain and lumbosacral neuritis.

On June 29, 2012 appellant requested reconsideration.

In a July 18, 2012 report, Dr. Haber again restated his previous findings and conclusions. He reiterated that appellant was experiencing low back and leg pain, which began on April 11, 2012.

By decision dated October 4, 2012, OWCP denied appellant's application for review on the grounds that it neither raised substantive legal questions nor included new and relevant evidence sufficient to require OWCP to review its prior decision.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA² has the burden of establishing that 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 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 and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a “fact of injury” has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.⁵ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.⁶

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.⁷

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.⁸ Causal relationship must be established by rationalized medical opinion evidence and appellant failed to submit such evidence.

ANALYSIS -- ISSUE 1

It is uncontested that appellant experienced back pain while throwing mail sacks on April 13, 2012. The question of whether an employment incident caused a personal injury can only be established by probative medical evidence.⁹ Appellant has not submitted rationalized, probative medical evidence to establish that the April 13, 2012 employment incident caused the claimed injury.

² 5 U.S.C. §§ 8101-8193.

³ *Elaine Pendleton*, 40 ECAB 1143 (1989); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁴ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁵ *John J. Carlone*, 41 ECAB 354 (1989).

⁶ *Id.* For a definition of the term “injury,” see 20 C.F.R. §10.5(e).

⁷ See *Joe T. Williams*, 44 ECAB 518, 521 (1993).

⁸ *Id.*

⁹ *Carlone*, *supra* note 5.

Appellant submitted reports from Dr. Haber, who advised that she had been off work since April 11, 2012 due to low back and leg pain and diagnosed thoracic sprain, lumbosacral radiculopathy and lumbosacral neuritis. Dr. Haber noted that she was in constant pain, which was radiating down her left thigh. He also noted numbness in appellant's right foot. Dr. Haber, however, did not provide a probative, rationalized opinion regarding whether the April 13, 2012 work incident caused a personal injury.

The weight of medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of physician's knowledge of the facts of the case, the medical history provided, the care of analysis manifested and the medical rationale expressed in support of stated conclusions.¹⁰ Appellant did not provide a report from a physician which presented a diagnosis of her condition and sufficiently address how this condition was causally related to the April 13, 2012 work incident. The medical reports from Dr. Haber did not explain how medically she would have sustained a back injury while throwing mail sacks on April 13, 2012; in fact, he repeatedly stated that her work-related back pain began on April 11, 2012, which casts doubt on whether he had an accurate history of her alleged work injury. The form reports from him which indicate causal relationship with a checkmark offer no medical explanation of their opinions.¹¹ Thus Dr. Haber's opinion regarding causal relationship is of limited probative value in that he did not provide adequate medical rationale in support of the conclusions.¹² He did not adequately describe appellant's accident or how the accident would have been competent to cause the claimed condition. There is, therefore, no rationalized evidence in the record that her low back injury was work related. Therefore, appellant failed to provide a medical report from a physician that explains how the work incident of April 13, 2012 caused or contributed to the claimed lower back injury.

OWCP advised appellant of the evidence required to establish her claim; however, she failed to submit such evidence. Appellant did not provide a medical opinion which describes or explains the medical process through which the April 13, 2012 work accident would have caused the claimed injury. Accordingly, she did not establish that she sustained a lower back injury in the performance of duty. OWCP 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 20 C.F.R. § 10.606(b), a claimant may obtain review of the merits of his or her claim by showing that OWCP erroneously applied or interpreted a specific point of law; by advancing a relevant legal argument not previously considered by OWCP; or by submitting

¹⁰ See *Anna C. Leanza*, 48 ECAB 115 (1996).

¹¹ See *Calvin E. King*, 51 ECAB 394, 400 (2000) (numerous form reports from a physician who checked a "yes" box indicating a causal relationship between appellant's spinal stenosis and his employment had little probative value absent supporting rationale and were insufficient to establish causation).

¹² *William C. Thomas*, 45 ECAB 591 (1994).

relevant and pertinent evidence not previously considered by OWCP.¹³ Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.¹⁴

ANALYSIS -- ISSUE 2

In the present case, appellant has not shown that OWCP erroneously applied or interpreted a specific point of law; nor has she advanced a relevant legal argument not previously considered by OWCP. The evidence she submitted is not pertinent to the issue on appeal. The Board has held that the submission of evidence which does not address the particular issue involved in the case does not constitute a basis for reopening the claim.¹⁵ Appellant submitted the July 18, 2012 report from Dr. Haber, which reiterated his previously stated findings and conclusions. This evidence is, therefore, cumulative and duplicative.¹⁶ Appellant's reconsideration request failed to show that OWCP erroneously applied or interpreted a point of law nor did it advance a point of law or fact not previously considered by OWCP, who did not abuse its discretion in refusing to reopen her claim for a review on the merits.

CONCLUSION

The Board finds that appellant has failed to establish that she sustained a back injury in the performance of duty on April 13, 2012. The Board finds that OWCP properly refused to reopen her case for reconsideration on the merits of her claim under 5 U.S.C. § 8128(a).

¹³ 20 C.F.R. § 10.606(b). *See generally* 5 U.S.C. § 8128(a).

¹⁴ *Howard A. Williams*, 45 ECAB 853 (1994).

¹⁵ *See David J. McDonald*, 50 ECAB 185 (1998).

¹⁶ *See Patricia G. Aiken*, 57 ECAB 441 (2006).

ORDER

IT IS HEREBY ORDERED THAT the October 4 and June 14, 2012 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: April 23, 2013
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