

**United States Department of Labor  
Employees' Compensation Appeals Board**

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A.D., Appellant )  
and ) Docket No. 13-913  
U.S. POSTAL SERVICE, POST OFFICE, ) Issued: August 13, 2013  
Winter Park, FL, Employer )  
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)

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
PATRICIA HOWARD FITZGERALD, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On March 7, 2013 appellant filed a timely appeal of September 4, 2012 and February 1, 2013 decisions of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

**ISSUES**

The issues are: (1) whether appellant met his burden of proof to establish that he sustained a traumatic injury while in the performance of duty on July 14, 2012; and (2) whether OWCP properly denied his request for reconsideration under 5 U.S.C. § 8128(a).

**FACTUAL HISTORY**

On July 18, 2012 appellant, then a 54-year-old letter carrier, filed a traumatic injury claim alleging that his postal vehicle was rear ended while making deliveries on July 14, 2012. He did

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

not incur any lost time from work. Appellant provided an unsigned hospital discharge summary dated July 14, 2012 that advised him to return if he experienced numbness, tingling, headache, vomiting or any worsening of his symptoms.

OWCP informed appellant in a July 27, 2012 letter that additional evidence was needed to establish his claim. It gave him 30 days to submit a report from a qualified physician explaining how the July 14, 2012 motor vehicle collision caused or contributed to a diagnosed condition. Appellant did not respond.

By decision dated September 4, 2012, OWCP denied appellant's claim, finding the medical evidence insufficient to establish that the accepted July 14, 2012 employment incident caused or contributed to a diagnosed condition.

Appellant requested reconsideration on January 14, 2013. He provided a Form CA-16 "Authorization for Examination And/Or Treatment" signed by his supervisor on July 18, 2012.

By decision dated February 1, 2013, OWCP denied appellant's request for reconsideration on the grounds that he did not present new evidence from a qualified physician.

### **LEGAL PRECEDENT -- ISSUE 1**

An employee seeking compensation under FECA has the burden of establishing the essential elements of his or her claim by the weight of reliable, probative and substantial evidence,<sup>2</sup> including that he or she is an "employee" within the meaning of FECA and that he or she filed his or her claim within the applicable time limitation.<sup>3</sup> The employee must also establish that he sustained an injury in the performance of duty as alleged and that his disability for work, if any, was causally related to the employment injury.<sup>4</sup>

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident at the time, place and in the manner alleged. Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.<sup>5</sup>

Rationalized medical opinion evidence is generally required to establish causal relationship. The opinion of the physician must be based on a complete factual and medical background, must be one of reasonable medical certainty and must be supported by medical

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<sup>2</sup> *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 57 (1968).

<sup>3</sup> *R.C.*, 59 ECAB 427 (2008).

<sup>4</sup> *Id.; Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>5</sup> *T.H.*, 59 ECAB 388 (2008).

rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>6</sup>

### **ANALYSIS -- ISSUE 1**

The Board finds that appellant did not establish that he sustained a traumatic injury while in the performance of duty on July 14, 2012. Although OWCP accepted that he was rear ended while he was making deliveries that day, the medical evidence was not adequate to establish that this employment incident caused or contributed to a diagnosed condition. Appellant provided only an unsigned hospital discharge summary dated July 14, 2012 that did not address the issue of causal relationship. Therefore, it is of diminished probative value on the matter.<sup>7</sup> In the absence of rationalized medical opinion evidence addressing how the collision on July 14, 2012 contributed to a diagnosed medical condition, appellant failed to meet his burden of proof.

### **LEGAL PRECEDENT -- ISSUE 2**

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,<sup>8</sup> OWCP's regulations provide that the evidence or argument submitted by a claimant must either: (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.<sup>9</sup> Where the request for reconsideration fails to meet at least one of these standards, OWCP will deny the application for reconsideration without reopening the case for a review on the merits.<sup>10</sup>

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

The Board finds that OWCP properly denied appellant's request for reconsideration without further merit review. His application included a Form CA-16 "Authorization for Examination And/Or Treatment" signed by his supervisor. Although this form was not previously considered by OWCP, it was immaterial because it was not a report from a qualified physician explaining how the July 14, 2012 motor vehicle collision caused or contributed to a diagnosed condition. The submission of evidence that does not address the relevant issue involved does not constitute a basis for reopening a case.<sup>11</sup> Furthermore, appellant neither showed that OWCP erroneously applied or interpreted a specific point of law nor advanced a relevant legal argument not previously considered by OWCP. Because he failed to meet one of the standards enumerated under section 8128(a) of FECA, he was not entitled to further merit review of his claim.

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<sup>6</sup> *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>7</sup> *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

<sup>8</sup> 5 U.S.C. § 8128(a).

<sup>9</sup> *E.K.*, Docket No. 09-1827 (issued April 21, 2010). See 20 C.F.R. § 10.606(b)(2).

<sup>10</sup> *L.D.*, 59 ECAB 648 (2008). See 20 C.F.R. § 10.608(b).

<sup>11</sup> *D.K.*, 59 ECAB 141 (2007).

The Board notes that appellant submitted new evidence after issuance of the February 1, 2013 decision. The Board lacks jurisdiction to review evidence for the first time on appeal.<sup>12</sup> Appellant may submit new evidence or argument as part of 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.<sup>13</sup>

### **CONCLUSION**

The Board finds that appellant did not establish that he sustained a traumatic injury while in the performance of duty on July 14, 2012. The Board also finds that OWCP properly denied his request for reconsideration.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the February 1, 2013 and September 4, 2012 decisions of the Office of Workers' Compensation Programs be affirmed.

Issued: August 13, 2013  
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

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<sup>12</sup> 20 C.F.R. § 501.2(c).

<sup>13</sup> The Board notes that OWCP has not adjudicated the issue of appellant's incurred medical expenses pursuant to the Form CA-16 issued to him on July 18, 2012. Ordinarily, the employing establishment will authorize treatment of a job-related injury by providing the employee a properly executed Form CA-16 within four hours. Under section 8103 of FECA, OWCP has broad discretionary authority to approve unauthorized medical care which it finds necessary and reasonable in cases of emergency or other unusual circumstances, to be determined on a case-by-case basis. *See Val D. Wynn*, 40 ECAB 666 (1989); 20 C.F.R. §§ 10.300; 10.304.