

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

T.C., Appellant)	
)	
and)	Docket No. 12-1668
)	Issued: March 4, 2013
DEPARTMENT OF HOMELAND SECURITY, TRANSPORTATION SECURITY ADMINISTRATION, Charlotte, NC, Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 3, 2012 appellant filed a timely appeal of the May 18, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP). He also appealed a June 21, 2012 nonmerit decision of OWCP. Pursuant to the Federal Employees' Compensation Act¹ (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 has met his burden of proof to establish that he sustained a traumatic injury in the performance of duty; and (2) whether OWCP properly denied his request for reconsideration.

¹ 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

On January 8, 2012 appellant then a 31-year-old transportation security screener, filed a Form CA-1 traumatic injury claim, alleging that he was injured when he fell while carrying a bag. He stopped work on January 9, 2012.

Appellant was initially treated on January 8, 2012 by a physician's assistant. He reported falling at work and injuring his back, neck, left upper extremity and left lower extremity. The physician's assistant diagnosed elbow sprain and returned appellant to work with restrictions. In an attending physician's report dated January 8, 2012, he noted that appellant tripped and fell on his left side and sustained a sprain of the elbow. The physician's assistant checked a box "yes" that appellant's condition was caused or aggravated by work activity and returned appellant to work with restrictions. In a January 8, 2012 duty status report, he diagnosed contusion and sprain of the left elbow and advised that appellant could resume work. A January 8, 2012 x-ray of the left elbow revealed no acute fracture. Appellant was treated by Dr. Mary K. Gentry, a Board-certified family practitioner, on January 9, 2012 who noted that he was disabled from January 9 to 14, 2012 due to medications and required bed rest. On January 17, 2012 he sought treatment from Dr. Chad Weston, a Board-certified family practitioner, who noted that appellant was disabled from January 15 to 22, 2012 and would undergo therapy.

On January 27, 2012 OWCP advised appellant of the type of evidence needed to establish his claim. It particularly requested that he submit a physician's reasoned opinion addressing the relationship of his claimed condition and specific work factors.

Appellant submitted a January 23, 2012 return to work certificate from Dr. Weston who noted that appellant was disabled on January 23, 2012 and could return to work on January 29, 2012. In a January 26, 2012 work capacity evaluation, Dr. Weston diagnosed upper back strain. He returned appellant to work with restrictions for four weeks and recommended physical therapy. Also submitted were physical therapy notes.

On March 13, 2012 OWCP denied appellant's claim on the grounds that the evidence was insufficient to establish that a medical condition was diagnosed in connection with the claimed work factor.

On March 27, 2012 appellant requested reconsideration. By decision dated April 9, 2012, OWCP denied his request for reconsideration on the grounds that the evidence submitted was insufficient to warrant a merit review.

On April 18, 2012 appellant requested reconsideration and submitted additional medical evidence. In a January 9, 2012 report, Dr. Gentry treated appellant for neck stiffness and left leg and arm soreness after a work-related fall on January 8, 2012. Appellant reported falling off a one foot platform while at work and landing on the left side of his body. Dr. Gentry noted tenderness over the right trapezius and diagnosed cervicalgia, sprain/strain of the ribs and pain in the joint, multiple sites secondary to a fall. She advised appellant was disabled for one week and then could return to full duty. A January 17, 2012 report from Dr. Weston noted appellant's treatment for neck pain, soreness and residual lower back pain. Appellant reported falling off a one foot platform at work a week earlier and later having back pain and left shoulder pain. Dr. Weston noted tenderness over the right trapezius and mild residual tenderness and spasm to

the lower paravertebrals. He diagnosed joint pain in multiple sites secondary to fall, cervicalgia and lower back pain. Dr. Weston noted that appellant was off work for one week and recommended physical therapy. On January 23, 2012 he noted appellant had persistent pain in the upper and lower back which was aggravated by prolonged standing and sitting. Dr. Weston noted tenderness over the right trapezius and mild residual tenderness and spasm to the lower paravertebrals. He diagnosed pain in the joint, multiple sites secondary to fall, cervicalgia and lower back pain.

In a decision dated May 18, 2012, OWCP denied the claim on the grounds that the medical evidence was insufficient to establish that the diagnosed condition was causally related to the work incident.

On June 1, 2012 appellant requested reconsideration and submitted additional medical evidence. He submitted a May 31, 2012 report from Dr. Weston who treated appellant for neck stiffness and generalized pain. Dr. Weston noted that appellant fell off a one foot platform and complained of soreness in the neck, left leg and left arm. He diagnosed cervicalgia and lower back pain and returned appellant to light-duty work.

By decision dated June 21, 2012, OWCP denied appellant's request for reconsideration on the grounds that the evidence submitted was insufficient to warrant a merit review.

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 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 is causally related to the employment injury. 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.²

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.³ The second component of fact of injury 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.⁴

² Gary J. Watling, 52 ECAB 357 (2001).

³ Michael E. Smith, 50 ECAB 313 (1999).

⁴ *Id.*

Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the 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.⁵ 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.⁶

ANALYSIS -- ISSUE 1

It is not disputed that appellant worked as a transportation security screener and that on January 8, 2012, he fell from a one foot platform onto his left side. However, appellant has not submitted sufficient medical evidence to establish that his diagnosed conditions are causally related to the January 8, 2012 work incident. On January 27, 2012 OWCP advised appellant of the type of medical evidence needed to establish his claim. Appellant did not submit a rationalized medical report from a physician sufficiently explaining how the January 8, 2012 incident caused or aggravated a diagnosed medical condition.

Appellant submitted a January 17, 2012 report from Dr. Weston who diagnosed pain in the joint, multiple sites secondary to fall, cervicgia and lower back pain. He reported falling off a one foot platform at work a week earlier and subsequently experiencing back pain and left shoulder pain. Similarly in a January 23, 2012 report, Dr. Weston noted that appellant presented with persistent pain in the upper and lower back and diagnosed pain in the joint, multiple sites secondary to fall, cervicgia and lower back pain. The Board finds that, although he supported causal relationship by noting appellant's diagnosed conditions were secondary to a fall, he did not provide medical rationale explaining the basis of his conclusory opinion regarding the causal relationship between appellant's diagnosed conditions and the employment incident.⁷ Return to work certificates from Dr. Weston dated January 17 and 23, 2012 noted that appellant was disabled from January 15 to 29, 2012 and would be undergoing physical therapy. Similarly, in a January 26, 2012 work capacity evaluation he diagnosed upper back strain and returned appellant to work with restrictions. However, these notes are insufficient to establish the claim as Dr. Weston did not provide a history of injury or specifically address whether appellant's employment activities had caused or aggravated a diagnosed medical condition.⁸

A January 9, 2012 report from Dr. Gentry noted treating appellant for neck stiffness and left leg and arm soreness after he fell from a platform at work and landed on the left side of his body on January 8, 2012. Dr. Gentry diagnosed cervicgia, sprain/strain of the ribs and joint

⁵ *Leslie C. Moore*, 52 ECAB 132 (2000).

⁶ *Franklin D. Haislah*, 52 ECAB 457 (2001); *Jimmie H. Duckett*, 52 ECAB 332 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

⁷ *Id.*

⁸ *A.D.*, 58 ECAB 149 (2006) (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).

pain in multiple sites secondary to a fall and was disabled for one week. The Board finds that, although she supported causal relationship, she did not provide medical rationale explaining the basis of her opinion regarding the causal relationship between the diagnosed conditions and the workplace fall. Dr. Gentry did not explain the process by which falling off a platform would cause or aggravate the diagnosed conditions. A January 9, 2012 return to work certificate from her, which noted appellant was disabled for a period, is insufficient as it did not address the cause of appellant's disability.

Appellant submitted reports from a physician's assistant dated January 8, 2012 and a physical therapist. However, this evidence is of no probative medical value as the Board has held that physician's assistants and physical therapists are not competent to render a medical opinion under FECA.⁹

The remainder of the medical evidence, including an x-ray of the left elbow dated January 8, 2012 fail to provide an opinion on the causal relationship between appellant's job and his diagnosed cervical condition. For this reason, this evidence is not sufficient to meet appellant's burden of proof.

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 his condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship. Causal relationships must be established by rationalized medical opinion evidence.¹⁰ Appellant failed to submit such evidence and OWCP therefore properly denied his 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 section 8128(a) of FECA,¹¹ OWCP has the discretion to reopen a case for review on the merits. OWCP must exercise this discretion in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations, which provides that a claimant may obtain review of the merits of his or her written application for reconsideration, including all supporting documents, sets forth arguments and contain evidence that:

“(1) Shows that OWCP erroneously applied or interpreted a specific point of law;
or

⁹ See *David P. Sawchuk*, 57 ECAB 316 (2006) (lay individuals such as physician's assistants, nurses and physical therapists are not competent to render a medical opinion under FECA); 5 U.S.C. § 8101(2) (this subsection defines a “physician” as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law).

¹⁰ See *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

¹¹ 5 U.S.C. § 8128(a).

“(2) Advances a relevant legal argument not previously considered by (OWCP);
or

“(3) Constitutes relevant and pertinent new evidence not previously considered by
OWCP.”¹²

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by OWCP without review of the merits of the claim.¹³

ANALYSIS -- ISSUE 2

OWCP denied appellant’s claim for a traumatic injury on the grounds that the evidence submitted was insufficient to establish that appellant sustained a back, upper torso, left leg, left shoulder and forearm injury in the performance of duty. It denied his June 1, 2012 reconsideration request, without a merit review. The issue 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 his June 1, 2012 application 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 be entitled to a merit review by submitting new and relevant evidence.

With respect to the third requirement, submitting relevant and pertinent new evidence not previously considered by OWCP, appellant submitted a May 31, 2012 report from Dr. Weston, who treated appellant for neck stiffness and generalized pain. Dr. Weston noted that appellant fell off a one foot platform at work and complained of soreness in the neck, left leg and left arm. He diagnosed cervicalgia and lower back pain. The Board notes that this report, while new, is similar to Dr. Weston’s prior report dated January 17, 2012 which was previously considered by OWCP in its decision dated May 18, 2012 and found to be insufficient. Therefore, this report is insufficient to require OWCP to reopen the claim for a merit review.¹⁴

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

¹² 20 C.F.R. § 10.606(b)(2).

¹³ *Id.* at § 10.608(b).

¹⁴ 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; *see Daniel Deparini*, 44 ECAB 657 (1993); *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984).

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that his claimed conditions were causally related to his employment. The Board further finds that OWCP properly denied appellant's request for reconsideration.¹⁵

ORDER

IT IS HEREBY ORDERED THAT the June 21 and May 18, 2012 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: March 4, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

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

¹⁵ With his request for an appeal, appellant submitted additional evidence. However, the Board may not consider new evidence on appeal; *see* 20 C.F.R. § 501.2(c).