

FACTUAL HISTORY

On February 21, 2012 appellant, then a 67-year-old postmaster, filed an occupational disease claim alleging that she developed bilateral carpal tunnel syndrome on or about October 8, 2008 due to over 25 years of repetitive work on electronic equipment, such as computers, repetitive lifting and manually throwing parcels and mail. She stopped work on May 15, 2011 and claimed that the employing establishment could not accommodate her restrictions. With her claim appellant submitted a letter to a physician, a Dr. David Webber, outlining her medical history over the past three years.

In a November 7, 2011 letter, Dr. Thomas O. Bailey, a Board-certified family physician, advised that appellant was under treatment for peripheral neuropathy, elevated hypertension and other diagnoses. He indicated that she was responding to treatment but that medication side effects impaired her judgment and would affect her work performance and daily routine. In a November 21, 2011 return to work letter, Dr. Bailey indicated that appellant was able to return to work on December 5, 2011 with limited standing and no lifting. He noted that appellant also had severe limitations of use of the right hand.

In a March 9, 2012 letter, OWCP advised appellant that it required additional factual and medical evidence in support of her claim. It requested that she respond to a questionnaire to substantiate the factual elements of her claim and submit a comprehensive medical report from a physician providing a well-reasoned opinion as to how her condition was caused by employment factors.

Appellant submitted a March 17, 2012 authorization for release of information; a December 27, 2011 accommodation decision from the employing establishment; a March 17, 2012 response to the questionnaire and a March 21, 2012 challenge from the employing establishment.

In a December 3, 2008 report, Dr. Willis Courtney, a Board-certified neurologist, provided an impression of intractable right-side headaches; right-sided neck pain; bilateral hand weakness; swelling and numbness for greater than six months with possible nerve entrapment; hypertension and arthritis. A December 3, 2008 nerve conduction study and electromyogram (EMG) signed by Dr. Courtney provided an impression of bilateral carpal tunnel syndrome. Also submitted was an April 20, 2011 nerve conduction velocity and EMG study.

By decision dated April 18, 2012, OWCP denied appellant's claim on the grounds that the medical evidence was insufficient to establish a diagnosed condition due to the identified employment factors.

On April 25, 2012 appellant requested a review of the written record before an OWCP hearing representative. No additional evidence was submitted.

By decision dated July 16, 2012, an OWCP hearing representative affirmed the April 18, 2012 decision finding insufficient medical evidence to establish fact of injury.

In a July 25, 2012 letter, appellant requested reconsideration. In her July 25, 2012 letter, she related the factual circumstances of her claim: job history, history of medical appointments and treatment; her belief that the hearing representative was biased in favor of the employer; her belief that a physician should not have to provide an opinion on causal relationship; and her disagreement with the employing establishment's decision not to provide her work within her restrictions. Appellant also submitted articles regarding carpal tunnel syndrome; pictures of her hands and fingers; a statement written on a November 21, 2011 work excuse and copies of her occupational disease claim form.

By decision dated August 15, 2012, OWCP denied appellant's request for reconsideration as the evidence submitted in support of the request 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; 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.³ 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.⁴

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;⁵ (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;⁶ 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.⁷

The medical evidence required to establish causal relationship generally is rationalized medical opinion evidence. 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.⁸ The opinion of the physician must be based on a complete factual and medical background of the

³ *Tracey P. Spillane*, 54 ECAB 608 (2003); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ *See Ellen L. Noble*, 55 ECAB 530 (2004).

⁵ *Michael R. Shaffer*, 55 ECAB 386 (2004).

⁶ *Marlon Vera*, 54 ECAB 834 (2003); *Roger Williams*, 52 ECAB 468 (2001).

⁷ *Beverly A. Spencer*, 55 ECAB 501 (2004).

⁸ *Conard Hightower*, 54 ECAB 796 (2003); *Leslie C. Moore*, 52 ECAB 132 (2000).

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 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.¹²

ANALYSIS -- ISSUE 1

Appellant filed an occupational disease claim alleging that factors of her employment caused or contributed to her bilateral carpal tunnel conditions. The evidence supports that she performed various repetitive duties over a number of years as part of her job. However, the Board finds that appellant did not submit sufficient medical evidence to establish her bilateral carpal tunnel condition was causally related to employment factors. The medical evidence is deficient on two grounds: first, it fails to provide a diagnosis connected to work factors; and second, there is no well-rationalized opinion on causal relationship from a physician.

In a November 7, 2011 report, Dr. Bailey indicated that appellant was under treatment for peripheral neuropathy, elevated hypertension and other diagnoses. He advised that medication side effects would impair her judgment and affect her work performance and daily routine. Dr. Bailey also advised, in a November 21, 2011 return to work letter, that appellant was able to return to work on December 5, 2011 with no lifting, limited standing and severe limitations of use of the right hand. In a December 3, 2008 report, Dr. Courtney provided an impression of intractable right-side headaches, right-sided neck pain; bilateral hand weakness, swelling and numbness for greater than six months, assess for nerve entrapment; hypertension and arthritis. However neither physician provides any work history, discusses any work factors or relates appellant's diagnosed conditions to factors of her employment. Thus these reports have little probative value in establishing appellant's claim as they do not address how employment factors caused or contributed to a diagnosed medical condition.

Appellant submitted nerve conduction and EMG testing of December 3, 2008 and April 20, 2011 which showed bilateral carpal tunnel syndrome. However these nerve conduction and EMG testing studies do not provide a history of injury or address the cause of the diagnosed condition. Thus, these reports are insufficient to establish appellant's claim.

Consequently, the medical evidence is insufficient to establish a causal relationship between specific factors or conditions of employment and the diagnosed medical conditions.

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

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

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

¹¹ *Judy C. Rogers*, 54 ECAB 693 (2003).

¹² *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value); *Jimmie H. Duckett*, 52 ECAB 332 (2001).

the belief that her conditions were caused, precipitated or aggravated by her employment is sufficient to establish causal relationship.¹³ Causal relationship must be established by rationalized medical opinion evidence and appellant failed to submit such evidence.

OWCP advised appellant of the evidence required to establish her claim; however, she failed to submit such evidence. Consequently, appellant has not met her burden of proof to establish that her employment factors caused or aggravated a diagnosed medical condition.

On appeal, appellant argued that the medical and factual evidence supports that she sustained an injury in the performance of duty. As noted while the record supports the factual component of fact of injury, the medical component has not been established as she has not submitted a medical report addressing how work factors caused or aggravated a diagnosed medical condition. Furthermore, appellant has submitted no evidence supporting her assertion of bias on the part of the hearing representative.

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 of FECA,¹⁴ OWCP's 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.¹⁵ 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.¹⁶ When a claimant fails to meet one of the above standards, OWCP will deny the application for reconsideration without reopening the case for review of the merits.

ANALYSIS -- ISSUE 2

The Board finds that the refusal of OWCP to reopen appellant's case for further consideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a), did not constitute an abuse of discretion.

The issue presented on appeal 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 her July 25, 2012 application for reconsideration, appellant did not show that OWCP

¹³ *Id.*

¹⁴ 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).

¹⁵ 20 C.F.R. § 10.606(b)(1)-(2).

¹⁶ *Id.* at § 10.607(a).

erroneously applied or interpreted a specific point of law. She did not advance a new and relevant legal argument. Appellant's arguments proffered relate to the factual circumstances of her claim, her beliefs regarding physician opinions and her disagreement with the employing establishment's refusal to provide work within her restrictions. The underlying issue in this case is whether appellant established an injury causally related to her employment factors. That is a medical issue which must be addressed by relevant medical evidence.¹⁷ Therefore, appellant's statements and opinions do not constitute a basis for reopening the claim.

While appellant submitted articles regarding carpal tunnel syndrome and pictures of her hands and fingers as new evidence, they are not relevant to the issue for which OWCP denied appellant's claim. As noted, the underlying issue is medical in nature. The evidence does not include a physician's opinion on the issue of causal relationship between appellant's diagnosed conditions and employment factors.¹⁸ The articles regarding carpal tunnel syndrome are also not relevant as excerpts from publications are of general application and have no evidentiary value in establishing the necessary causal relationship as they are of general application and are not determinative of whether the specific condition claimed was causally related to the particular employment injury involved.¹⁹ As the evidence submitted does not address the issue on which OWCP's decision was based, namely, medical evidence that establishes a diagnosis causally related to the employment factors, it is not relevant. A claimant may be entitled to a merit review by submitting new and relevant evidence, but appellant did not submit any relevant medical evidence in this case.

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.

CONCLUSION

The Board finds that appellant failed to meet her burden of proof to establish that she sustained a medical condition causally related to factors of her federal employment. OWCP properly denied appellant's request for reconsideration without a merit review.

¹⁷ See *Bobbie F. Cowart*, 55 ECAB 746 (2004).

¹⁸ See *Darletha Coleman*, 55 ECAB 143 (2003) (evidence that does not address the particular issue involved does not constitute a basis for reopening a case).

¹⁹ *K.T.*, Docket No. 11-1570 (issued February 2, 2012).

ORDER

IT IS HEREBY ORDERED THAT the August 15 and July 16, 2012 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: March 21, 2013
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

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

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