

FACTUAL HISTORY

On July 6, 2012 appellant, a 50-year-old mail processing clerk, filed a traumatic injury claim alleging that she injured her right shoulder and left elbow that day pulling a tray with her right arm from the top of a bun warmer for dispatch. “Felt pain in right shoulder lost control of tray. Used left arm to catch tray and balance it, felt pain in left elbow.”

Dr. Dennis W. Aust, an emergency medicine specialist, saw appellant on July 6, 2012 and excused her from work through July 12, 2012.

Dr. Peter J. Lund, a Board-certified orthopedic surgeon, saw appellant on August 1, 2012. Appellant believed that the repetitive nature of her job over the years had gradually led to the development of pain to both arms, including her right shoulder and left elbow, before her described work injury, but on the evening of July 6, 2012, a heavy mail tray that she was trying to retrieve with her right arm fell down from a height. She stated that this caused an injury to her right shoulder and left elbow. Appellant tried to pick up the tray when it fell and thought that both arms were very weak; she simply could not do it.

Dr. Lund examined appellant and diagnosed other affections of the right shoulder regions, not elsewhere classified; bilateral shoulder joint pain; sprains and strains of the left elbow and forearm, unspecified site; and left elbow joint pain.

Dr. Lund remarked that appellant’s level of discomfort in the shoulder and elbow seemed to be out of proportion to the injury. Appellant did not feel that the injury three weeks earlier was necessarily the biggest contributing factor to her symptoms, but rather the nature of her work over time. “If that is the case, it is not clear to me why she describes such a level of pain and demonstrates such dysfunction with her right shoulder especially on clinical exam[ination].” Dr. Lund was concerned by appellant’s breakaway weakness with strength testing of the right shoulder. He noted that her “DASH” score of 77 indicated a perceived level of functional disability that also did not seem to correlate with the mechanism of injury and expected findings. Dr. Lund concluded: “It is not clear to me at this time that there could be a relationship from her work injury to the changes on x-ray but I think these need to be pursued with [magnetic resonance imaging scan] testing.” He released appellant to light duty.

In a September 4, 2012 decision, OWCP denied appellant’s claim for compensation. It accepted that the July 6, 2012 work incident occurred as alleged but found that the medical evidence did not establish that her medical condition was causally related.

OWCP received appellant’s reconsideration request on October 17, 2012. Appellant explained that bun warmers are taller than she is and when trays are stacked on top of them, she needed to be on tiptoe to pull them down. She attached patient discharge instructions and a page showing Dr. Aust’s clinical impression of sprain/strain, right shoulder, left elbow. Appellant submitted a progress note from October 9, 2012 referring in part to medial epicondylitis. She stated: “The sprain to my left elbow and the strain to right shoulder is a direct result of the events of 6 July 2012.”

In a November 14, 2012 decision, OWCP denied appellant's reconsideration request. It found that the request neither raised substantive legal questions nor included new and relevant evidence and was therefore insufficient to warrant a review of its prior decision. In particular, OWCP found that the documents she submitted were irrelevant to the underlying medical issue of causal relationship.

On appeal, appellant contends that Dr. Aust's clinical impression establishes causal relationship and the injuries she suffered as a result of the July 6, 2012 work incident.

LEGAL PRECEDENT -- ISSUE 1

FECA provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.² An employee seeking benefits under FECA has the burden of proof to establish the essential elements of her claim. When an employee claims that he or she sustained an injury in the performance of duty, he or she must submit sufficient evidence to establish that he or she experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. He or she must also establish that such event, incident or exposure caused an injury.³

Causal relationship is a medical issue⁴ and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the claimant,⁵ must be one of reasonable medical certainty⁶ and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.⁷

ANALYSIS -- ISSUE 1

Dr. Aust, the emergency medicine specialist, saw appellant on July 6, 2012 and excused her from work. He offered no medical opinion on the subject of causal relationship. Dr. Aust did not discuss, with medical rationale, how the incident that day caused any diagnosed condition.

On August 1, 2012 Dr. Lund, the Board-certified orthopedic surgeon, addressed the issue of causal relationship but did so with uncertainty. He found that appellant's level of discomfort in the shoulder and elbow seemed to be somewhat out of proportion to the injury. Dr. Lund was concerned by her breakaway weakness with strength testing of the right shoulder. Appellant's

² 5 U.S.C. § 8102(a).

³ *John J. Carlone*, 41 ECAB 354 (1989).

⁴ *Mary J. Briggs*, 37 ECAB 578 (1986).

⁵ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

⁶ *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

⁷ *See William E. Enright*, 31 ECAB 426, 430 (1980).

“DASH” score indicated a perceived level of functional disability that also did not seem to correlate with the mechanism of injury and expected findings.

Appellant stated that she experienced pain in both arms, including her right shoulder and left elbow, before the July 6, 2012 work incident. Further, she did not feel that what happened on July 6, 2012 was necessarily the biggest contributing factor to her symptoms. Rather, appellant attributed her condition to the repetitive nature of her work over several years. “If that is the case,” Dr. Lund remarked, “it is not clear to me why she describes such a level of pain and demonstrates such dysfunction with her right shoulder especially on clinical exam[ination].” He stated that it was not clear that there could be a relationship between what happened on July 6, 2012 and the changes seen on x-ray.

Dr. Lund did not adequately explain how the July 6, 2012 incident caused any injury to appellant’s right shoulder or left elbow. The clinical presentation did not seem consistent with the described mechanism of injury. Without an affirmative opinion given with a reasonable degree of medical certainty, Dr. Lund’s reports do not establish the critical element of causal relationship.

As neither Dr. Aust nor Dr. Lund offered a well-reasoned explanation, to a reasonable medical certainty, of how the July 6, 2012 incident caused a diagnosed medical condition, appellant has not met her burden of proof to establish her claim for compensation benefits. The Board will therefore affirm OWCP’s September 4, 2012 decision to deny her claim.

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

OWCP may review an award for or against payment of compensation at any time on its own motion or upon application.⁸ An employee (or representative) seeking reconsideration should send the request for reconsideration to the address as instructed by OWCP in the final decision. The request for reconsideration, including all supporting documents, must be in writing and must set forth arguments and contain evidence that either: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.⁹

A request for reconsideration must be received by OWCP within one year of the date of its decision for which review is sought.¹⁰ A timely request for reconsideration may be granted if OWCP determines that the employee has presented evidence or argument that meets at least one of these standards. If reconsideration is granted, the case is reopened and the case is reviewed on

⁸ 5 U.S.C. § 8128(a).

⁹ 20 C.F.R. § 10.606.

¹⁰ *Id.* § 10.607(a).

its merits. Where the request is timely but fails to meet at least one of these standards, OWCP will deny the request for reconsideration without reopening the case for a review on the merits.¹¹

ANALYSIS -- ISSUE 2

OWCP received appellant's reconsideration request on October 17, 2012, less than two months after it denied her claim. Appellant's request is therefore timely. The question for determination is whether her request met any of the requirements of 20 C.F.R. § 10.606(b)(3), requiring OWCP to reopen the case for a merit review of the claim.

Appellant's request did not show that OWCP erroneously applied or interpreted a specific point of law. She did not identify a specific point of law or show how OWCP erroneously applied or interpreted it.

Appellant offered more details about the duties she performed and how she had to reach for the trays on top of the bun warmer. She also offered her own opinion on the element of causal relationship. However, appellant did not advance a relevant legal argument not previously considered by OWCP.

Appellant attached patient discharge instructions and a page showing Dr. Aust's clinical impression. She also submitted a progress note that referred to medial epicondylitis, but the underlying issue is whether the July 6, 2012 incident at work caused a diagnosed medical condition, an issue that must be addressed by a well-reasoned medical opinion. The medical documentation appellant submitted did not offer such an opinion; therefore, she did not submit any relevant and pertinent new evidence not previously considered by OWCP.

Accordingly, the Board finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(3). Pursuant to 20 C.F.R. § 10.608, OWCP properly denied a merit review of her case. The Board will affirm OWCP's November 14, 2012 decision.

Appellant argues that Dr. Aust's clinical impression establishes causal relationship and the injuries she suffered as a result of the July 6, 2012 work incident, but the element of causal relationship requires more than a diagnosis. It requires a rationalized or well-reasoned medical opinion discussing how the incident caused the diagnosis. As Dr. Aust offered no such discussion, his clinical impression is not relevant and pertinent to the grounds upon which OWCP denied appellant's claim.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that her medical condition is causally related to the July 6, 2012 work incident. The Board also finds that OWCP properly denied her reconsideration request.

¹¹ *Id.* § 10.608.

ORDER

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

Issued: May 22, 2013
Washington, DC

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

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

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