

On appeal, appellant asserted that medical evidence established that he sustained a thoracic strain in an occupational motor vehicle accident.

FACTUAL HISTORY

On February 1, 2013 appellant, then a 34-year-old special agent, filed a traumatic injury claim (Form CA-1) alleging that on January 31, 2013, he sustained head, neck and back injury in a motor vehicle collision while in the performance of duty. He stated that while driving down a highway, another motor vehicle made an improper u-turn into his lane, resulting in a collision at approximately 50 miles per hour. Appellant stopped work on January 31, 2013 and returned to work on February 2, 2013.

In a February 6, 2013 letter, OWCP advised appellant of the evidence needed to establish his claim, including factual evidence regarding the automobile accident and a medical narrative from an attending physician explaining how and why the accident caused the claimed injuries. Appellant was afforded 30 days to submit such evidence.

In response, appellant submitted a January 31, 2013 hospital emergency room report from Dr. Joshua L. Wallbrecht, an attending physician specializing in emergency medicine. He diagnosed “muscle strain” without acute injury due to a motor vehicle accident earlier that day. Dr. Wallbrecht released appellant to work as of February 1, 2013.

By decision dated March 20, 2013, OWCP denied appellant’s claim on the grounds that fact of injury was not established. It found that he did not submit sufficient medical evidence to establish that the motor vehicle accident caused any injury or condition.

In a March 26, 2013 letter, appellant requested reconsideration. He explained that he experienced neck and back pain immediately after the crash. Appellant submitted employing establishment and law enforcement accident reports regarding the January 31, 2013 collision.

By decision dated March 27, 2013, OWCP denied modification of its March 20, 2013 decision. While Dr. Wallbrecht diagnosed a “muscle strain” he did not identify the muscle involved or provide medical rationale supporting causal relationship.

In a letter received on April 4, 2013, appellant requested reconsideration. He noted that he stayed home from work on February 1, 2013 due to neck and back pain. Appellant resubmitted evidence previously of record, including accident reports, Dr. Wallbrecht’s report, OWCP decisions and correspondence to and from OWCP.

By decision dated April 12, 2013, OWCP denied reconsideration on the grounds that appellant’s April 4, 2013 request did not provide new, relevant evidence or legal argument.

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.² 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.³

In order to determine whether an employee sustained a traumatic 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 that must be considered in conjunction with one another. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident that is alleged to have occurred.⁴ 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.⁵

ANALYSIS -- ISSUE 1

Appellant claimed that on January 31, 2013 he sustained neck and back injuries when his government vehicle was struck by another automobile that made a u-turn in front of him. OWCP accepted that the incident occurred at the time, place and in the manner alleged. Appellant has established a compensable work factor. He must also submit sufficient medical evidence to establish that the January 31, 2013 motor vehicle accident caused or aggravated an injury. The Board finds that appellant did not submit such evidence.

Appellant submitted a January 31, 2013 emergency room report from Dr. Wallbrecht, an attending physician specializing in emergency medicine, who diagnosed a “muscle strain.” Dr. Wallbrecht did not specify which muscle or muscles were strained. The lack of a definite diagnosis diminishes the probative value of Dr. Wallbrecht’s opinion.⁶ Further, he did not explain how or why the motor vehicle accident caused the diagnosed muscle strain. Without such medical rationale, Dr. Wallbrecht’s report is insufficient to establish causal relationship.⁷

OWCP advised appellant by February 6, 2013 letter to submit a medical report from an attending physician explaining how and why work factors caused the claimed neck and back injuries. The Board finds that appellant did not submit such evidence. Therefore, he failed to meet his burden of proof.⁸

On appeal, appellant asserts that the medical evidence established that he sustained a thoracic strain in the January 31, 2013 motor vehicle accident. As noted, he submitted

² *Joe D. Cameron*, 41 ECAB 153 (1989).

³ *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

⁴ *Gary J. Watling*, 52 ECAB 278 (2001).

⁵ *Deborah L. Beatty*, 54 ECAB 340 (2003).

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

insufficient medical evidence to establish that the accepted car accident caused or aggravated any medical condition.

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(a) of FECA,⁹ section 10.606(b)(2) of Title 20 of the Code of Federal 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.¹⁰ Section 10.608(b) provides that when an application for review of the merits of a claim does not meet at least one of the three requirements enumerated under section 10.606(b)(2), OWCP will deny the application for reconsideration without reopening the case for a review on the merits.¹¹

When reviewing an OWCP decision denying a merit review, the function of the Board is to determine whether OWCP properly applied the standards set forth at section 10.606(b)(2) to the claimant's application for reconsideration and any evidence submitted in support thereof.¹²

ANALYSIS -- ISSUE 2

OWCP denied appellant's traumatic injury claim by decision dated March 20 and 27, 2013. It accepted that a claimed January 31, 2013 motor vehicle accident occurred as alleged, but denied the claim as the medical evidence was insufficient to establish causal relationship.

In his April 4, 2013 application for reconsideration, appellant did not contend 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. He noted that he stayed home from work for the remainder of January 31, 2013 and on February 1, 2013 due to neck and back pain. Appellant submitted duplicate copies of evidence previously of record. The Board has held that the submission of evidence which is duplicative or cumulative in nature is insufficient to warrant reopening a claim for merit review.¹³

⁹ 5 U.S.C. § 8128(a).

¹⁰ 20 C.F.R. § 10.606(b)(2).

¹¹ *Id.* at § 10.608(b). *See also D.E.*, 59 ECAB 438 (2008).

¹² *Annette Louise*, 54 ECAB 783 (2003).

¹³ *Denis M. Dupor*, 51 ECAB 482 (2000).

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 constitute 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 has not established that he sustained an injury in the performance of duty. The Board further finds that OWCP properly denied appellant's request for reconsideration.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated April 12, March 27 and 20, 2013 are affirmed.

Issued: October 29, 2013
Washington, DC

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

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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