



## **FACTUAL HISTORY**

On July 25, 2013 appellant, then a 50-year-old city carrier, filed a claim (Form CA-1) for a work-related injury that reportedly occurred on May 22, 2013. She claimed to have fallen on concrete porch steps injuring her left hand and right arm and elbow. The employing establishment was reportedly unaware of the May 22, 2013 incident until two months later when she filed her Form CA-1.

Dr. Richard C. Lehman, a Board-certified orthopedic surgeon, examined appellant on July 25, 2013 for complaints of right elbow pain and bilateral shoulder pain. He noted that she was injured on May 22, 2013 when she fell on her route landing directly on her right elbow. Appellant reported consistent pain since the May 22, 2013 fall. Dr. Lehman believed she fractured her elbow. He recommended an x-ray and reevaluation of the elbow. In an August 6, 2013 attending physician's report (Form CA-20), Dr. Lehman reiterated his provisional diagnosis of acute or sub-acute right elbow fracture.

Dr. Lehman examined appellant again on August 13, 2013. Appellant's complaints pertained to her right elbow and right shoulder. Dr. Lehman identified December 15, 2012 as the date of injury. With respect to appellant's elbow, he recommended a magnetic resonance imaging (MRI) scan. Dr. Lehman noted that appellant still had some weakness and continued to have significant right elbow pain. On physical examination, he indicated that the right elbow was extremely painful, with tenderness over the medial and lateral epicondyle insertions. Dr. Lehman also noted the absence of varus and valgus laxity. He released appellant to resume full duty.

A September 7, 2013 right elbow MRI scan revealed tendinopathy with partial tears at the humeral attachments of both the common flexor tendon wad and common extensor tendon wad. There was no evidence of a fracture.<sup>3</sup>

On October 1, 2013 Dr. Lehman reexamined appellant. His report noted a prior injury and referenced OWCP claim file number xxxxxx104; her bilateral shoulder and wrist occupational disease claim.<sup>4</sup> Dr. Lehman indicated that he saw appellant on October 1, 2013 for complaints referable to the medial and lateral aspects of her elbow. He stated that her "left" elbow continued to be symptomatic. On physical examination, Dr. Lehman reported ongoing tenderness and pain referable to appellant's medial elbow. He also reported continued weakness and discomfort with lifting, pressing and pulling. Dr. Lehman reviewed an unidentified MRI scan, which reportedly showed a tear of the medial epicondyle, a flexor pronator mass, and a tendon tear on the lateral epicondylar insertion site at appellant's extensor mass. He described the MRI scan findings as "problematic" and indicated that they were a "direct result of her job activities." Dr. Lehman recommended surgery to repair appellant's extensor and flexor tendons on the medial and lateral aspects of her elbow.

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<sup>3</sup> Dr. Paul W. Frohnert, a Board-certified diagnostic radiologist, reviewed the September 7, 2013 right elbow MRI scan.

<sup>4</sup> The record in claim file number xxxxxx104 has not been associated with the current claim, and thus, it is unavailable for review by the Board.

On November 22, 2013 OWCP advised appellant that the information received thus far was insufficient to support her claim. It requested additional factual information regarding the alleged May 22, 2013 fall. Additionally, appellant was advised to submit additional medical evidence explaining how the reported partial tears of the flexor and extensor tendons were caused or aggravated by the work injury. OWCP specifically noted that Dr. Lehman needed to explain how the blunt trauma from a fall caused appellant's tendon tears and elbow tendinopathy. Appellant's physician was also asked to explain whether there was any relationship between the current right elbow complaints and appellant's prior right arm and shoulder injuries under claim file numbers xxxxxx104 and xxxxxx481.<sup>5</sup>

Appellant provided a December 9, 2013 statement, but did not submit any additional medical evidence.

In a December 31, 2013 decision, OWCP denied appellant's claim because she failed to establish a causal relationship between her diagnosed right elbow condition and the accepted May 22, 2013 employment incident.

On January 6, 2014 appellant requested reconsideration utilizing the appeal request form that accompanied OWCP's December 31, 2013 decision. However, she did not submit any new evidence or present any argument.

By decision dated January 23, 2014, OWCP denied appellant's request for reconsideration.

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

A claimant seeking benefits under FECA has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence, including that an injury was sustained in the performance of duty as alleged and that any specific condition or disability claimed is causally related to the employment injury.<sup>6</sup>

To determine if 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. The first component is whether the employee actually experienced the employment incident that allegedly occurred.<sup>7</sup> The second component is whether the employment incident caused a

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<sup>5</sup> This latter claim was for a March 31, 2011 traumatic injury. The record in claim file number xxxxxx481 is similarly unavailable for review by the Board.

<sup>6</sup> 20 C.F.R. § 10.115(e), (f); see *Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

<sup>7</sup> *Elaine Pendleton*, 40 ECAB 1143 (1989).

personal injury.<sup>8</sup> An employee may establish that an injury occurred in the performance of duty as alleged, but fail to establish that the disability or specific condition for which compensation is being claimed is causally related to the injury.<sup>9</sup>

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

The Board finds that appellant failed to establish that her claimed right elbow condition is causally related to the fall she sustained while in the performance of duty on May 22, 2013. Dr. Lehman initially thought she may have fractured her elbow as a result of the May 22, 2013 work-related fall. He recommended additional diagnostic studies. A September 7, 2013 MRI scan revealed right elbow tendinopathy with partial tears at the humeral attachments of both the common flexor tendon wad and common extensor tendon wad, but there was no evidence of a fracture, contrary to what Dr. Lehman initially suspected.

In his latest report dated October 1, 2013, Dr. Lehman referenced a December 15, 2010 injury under claim file number xxxxxxx104. He did not specifically mention appellant's May 22, 2013 work-related fall. Moreover, Dr. Lehman's narrative report referenced her "left" elbow rather than her right, which is the subject of the current claim.

Dr. Lehman's various reports do not address how appellant's May 22, 2013 work-related fall either caused or contributed to the diagnosed right elbow tendinopathy and partial tears of the common flexor and extensor tendons. OWCP properly advised appellant of the deficiencies in the medical evidence she previously submitted, and provided her an opportunity to supplement the record. However, appellant did not comply with its November 22, 2013 request for additional information. Accordingly, the Board finds that the medical evidence of record does not demonstrate a causal relationship between the diagnosed right elbow conditions and the May 22, 2013 accepted employment incident. For this reason, OWCP properly denied appellant's traumatic injury claim.

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

Section 8128(a) of FECA does not entitle a claimant to review of an OWCP decision as a matter of right.<sup>10</sup> OWCP has discretionary authority in this regard and has imposed certain limitations in exercising its authority.<sup>11</sup> One such limitation is that the application for

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<sup>8</sup> *John J. Carlone*, 41 ECAB 354 (1989). Causal relationship is a medical question which generally requires rationalized medical opinion evidence to resolve the issue. *See Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factor(s). *Id.*

<sup>9</sup> *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

<sup>10</sup> This section provides in pertinent part: "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application." 5 U.S.C. § 8128(a).

<sup>11</sup> 20 C.F.R. § 10.607.

reconsideration must be sent within one year of the date of the merit decision for which review is sought.<sup>12</sup>

A timely application for reconsideration, including all supporting documents, 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.<sup>13</sup> When a timely application for reconsideration does not meet at least one of the above-noted requirements, OWCP will deny the request for reconsideration without reopening the case for a review on the merits.<sup>14</sup>

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

Appellant's January 6, 2014 request for reconsideration neither alleged nor demonstrated that OWCP erroneously applied or interpreted a specific point of law. She also did not advance a relevant legal argument not previously considered by OWCP. The issue on reconsideration was whether there was a specific medical diagnosis attributable to the May 22, 2013 employment incident. On reconsideration, appellant merely submitted the appeal request form and did not elaborate on the relevant issue. Therefore, she is not entitled to a review of the merits based on the first and second requirements under section 10.606(b)(2).<sup>15</sup>

Appellant also failed to submit any "relevant and pertinent new evidence" with her January 6, 2014 request for reconsideration. As noted, her request did not include any additional medical evidence. Because she did not provide any new evidence, appellant is not entitled to a review of the merits based on the third requirement under section 10.606(b)(2).<sup>16</sup> Accordingly, OWCP properly declined to reopen her case under 5 U.S.C. § 8128(a).

### **CONCLUSION**

Appellant failed to establish that she sustained an injury in the performance of duty on May 22, 2013. The Board further finds that OWCP properly denied her January 6, 2014 request for reconsideration.

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<sup>12</sup> *Id.* at § 10.607(a).

<sup>13</sup> *Id.* at § 10.606(b)(2).

<sup>14</sup> *Id.* at §§ 10.607(b), 10.608(b).

<sup>15</sup> *Id.* at § 10.606(b)(2)(1) and (2).

<sup>16</sup> *Id.* at § 10.606(b)(2)(3).

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 23, 2014 and December 31, 2013 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: December 12, 2014  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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