

FACTUAL HISTORY

On July 24, 2012 appellant, then a 62-year-old mail carrier, filed an occupational disease claim alleging that on July 6, 2012 she experienced pain in her stomach and upper thigh after loading her vehicle. She explained that the pain continued to progress while on her route until she became nauseated and had to ask for assistance. Appellant stopped work on July 6, 2012 and retired from federal service effective September 25, 2012.

In a July 7, 2012 computerized tomography (CT) scan report, Dr. Andrew Dyer, a Board-certified diagnostic radiologist, noted a distal small bowel obstruction with a transition point located at what was believed to represent a right femoral hernia. He also observed degenerative disc disease and facet arthropathy at L5-S1. Dr. Dyer diagnosed a distal small bowel obstruction associated with a right femoral hernia, cholelithiasis and trace free fluid in the abdomen and pelvis.

In a July 7, 2012 surgical report, Dr. Rodney A. Martin, a Board-certified surgeon, noted appellant's diagnosis of strangulated right femoral hernia with small bowel obstruction and gangrene of a loop of small bowel. He stated that she underwent a small bowel resection with primary anastomosis and mesh repair of right femoral hernia.

In July 12, 2012 hospital and discharge reports, Dr. Martin related that appellant was examined for a one-day history of a mass in the right groin associated with severe pain, nausea and vomiting. Appellant was admitted to the hospital and underwent a small bowel resection and repair of a right femoral hernia. Dr. Martin reviewed her history and noted that a CT scan of the abdomen showed a small bowel obstruction with a transition point in a right femoral hernia. Upon examination of appellant's abdomen, he observed tenderness and a nonreducible mass in the crease of the right thigh consistent with a femoral hernia. Dr. Martin diagnosed bronchitis and strangulated right femoral hernia with a small bowel obstruction and gangrene of the small bowel. He advised appellant to avoid heavy lifting or strenuous activity.

By letter dated August 9, 2012, OWCP advised appellant that the evidence received was insufficient to establish her claim. It requested additional evidence to establish that she sustained a diagnosed medical condition as a result of factors of her employment. In a separate letter, OWCP requested additional evidence from the employing establishment regarding the accuracy of appellant's statements related to her claim and a description of her duties as a mail carrier.

In a July 23, 2012 report, Dr. Martin conducted a postsurgery examination of appellant. He observed normal bowel sounds and no tenderness in her abdomen. Dr. Martin stated that the right groin incision was healing well.

In a letter dated September 13, 2012, OWCP requested additional medical evidence from appellant to establish that her hernia condition was causally related to her employment. It provided her with an additional 30 days to submit the required evidence.

In a July 7, 2012 report, Dr. Alan C. Taylor, Board-certified in emergency medicine, related appellant's complaints of abdominal pain with nausea and vomiting and the forming of a "knot" in her right groin. He noted that she lifted heavy boxes at work. On examination,

Dr. Taylor observed a soft abdomen with no tenderness or distention. He diagnosed distal small bowel obstruction associated with a right femoral hernia and cholelithiasis.

The employing establishment submitted a description of appellant's duties as a rural carrier.

In a November 9, 2012 decision, OWCP denied appellant's occupational disease claim. It accepted that she performed the duties of a rural mail carrier and that she was diagnosed with a hernia. It denied appellant's claim, finding insufficient medical evidence to establish that her hernia was causally related to the factors of her employment.

On November 26, 2012 appellant requested a telephone hearing, which was held on March 15, 2013. She described her duties as a mail carrier and stated that on July 6, 2012 she experienced stomach pain after she loaded her mail vehicle. Appellant thought that the pain would go away but it worsened and she requested assistance. When she returned home, she felt a huge knot where the pain was coming from and decided to go to the emergency room. Appellant underwent surgery and did not return to work. The hearing representative questioned why she did not file a traumatic injury claim because she described an injury that occurred during one work shift. Appellant explained that the employing establishment advised her to file an occupational disease claim. She noted that she submitted medical information to support her claim.

In an undated handwritten statement, appellant related that on July 6, 2012 she went to the emergency room after returning home from work. She was seen by an emergency physician and underwent surgery.

In a July 10, 2012 pathology report, Dr. Richard E. McLendon, Board-certified in anatomic and clinical pathology, related appellant's history of incarcerated right femoral hernia with associated small bowel obstruction. He diagnosed small bowel and hernia sac, multiple portions of small intestine, one with luminal dilation, vascular congestion and mucosal necrosis and fibromembranous tissue consistent with hernia sac.

In a November 30, 2012 note, Dr. Martin stated that on July 7, 2012 he examined appellant in the emergency room for generalized abdominal pain with nausea and vomiting and a knot in her right groin. He reported that she underwent a small bowel resection and mesh repair of the right femoral hernia. Dr. Martin opined that appellant's injury was work related.

By decision dated May 30, 2013, an OWCP hearing representative affirmed the November 9, 2012 decision. She found insufficient medical evidence to establish that appellant's hernia was causally related to factors of her employment.

On June 13, 2013 appellant submitted a handwritten request for reconsideration. She submitted a May 13, 2013 SF-50 form, which noted that her last day of pay status was July 10, 2012. On May 2, 2013 the Office of Personnel Management reported that appellant was found disabled due to the hernia surgery. Appellant noted that Dr. Martin refused to provide his detailed opinion as to how heavy lifting caused the hernia and she did not know why.

By decision dated June 28, 2013, OWCP denied appellant's request for reconsideration finding that the evidence submitted was not sufficient to warrant further merit review under 5 U.S.C. § 8128(a).

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence² including that he or she sustained an injury in the performance of duty and that any specific condition or disability for work for which he or she claims compensation is causally related to that employment injury.³ In an occupational disease claim, appellant's burden requires submission of the following: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.⁴

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.⁵ The opinion of the physician must be based on a complete factual and medical background of the employee, 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 employee.⁶

ANALYSIS -- ISSUE 1

Appellant alleged that she sustained a hernia with small bowel obstruction as a result of the duties she performed as a mail carrier. OWCP accepted that her employment duties involved lifting heavy boxes and loading her mail vehicle. On July 6, 2012 appellant was diagnosed with a right femoral hernia and small bowel obstruction. OWCP denied her claim finding insufficient medical evidence to establish that her hernia condition was causally related to factors of her employment.

Appellant submitted hospital and surgical records from Dr. Martin. She was seen in the emergency room on July 7, 2012 for complaints of a one-day history of a mass in the right groin associated with severe pain, nausea and vomiting. A CT scan of the abdomen revealed a small bowel obstruction. Dr. Martin diagnosed bronchitis and a strangulated right femoral hernia with

² *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

³ *M.M.*, Docket No. 08-1510 (issued November 25, 2010); *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁴ *R.H.*, 59 ECAB 382 (2008); *Ernest St. Pierre*, 51 ECAB 623 (2000).

⁵ *I.R.*, Docket No. 09-1229 (issued February 24, 2010); *D.I.*, 59 ECAB 158 (2007).

⁶ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

small bowel obstruction. He stated that appellant underwent a small bowel resection with mesh repair of right femoral hernia that day. In a November 30, 2012 note, Dr. Martin stated that her injury was work related. Although he provided a medical diagnosis and an opinion on causal relationship, the Board notes that he did not provide any medical explanation as to how appellant's duties as a mail carrier caused or contributed to her hernia condition or small bowel obstruction. The Board has held that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale.⁷ Although Dr. Martin generally concluded that appellant's condition was work related, he did not describe any specific employment factors or address how her duties as a mail carrier resulted in her diagnosed condition or the need for surgery. Rationalized medical opinion evidence must relate specific employment factors identified by the claimant to the claimant's condition with stated reasons by a physician.⁸ The Board finds that Dr. Martin's reports are insufficient to establish appellant's claim.

The additional medical evidence by Drs. Dyer, Taylor and McLendon is also insufficient to establish causal relationship. In July 7 and 10, 2012 reports, the physicians provided findings on examination and diagnosed small bowel obstruction associated with a right femoral hernia. Dr. Taylor noted that appellant related that she was lifting heavy boxes at work. None of the physicians, however, provided any opinion on the cause of her hernia or explained how her mail carrier duties contributed to her condition. The Board has found that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.⁹ The reports, therefore, are insufficient to establish appellant's claim.

On appeal, appellant contends that she submitted sufficient medical evidence to establish her claim. As noted, however, the Board finds that the medical evidence of record does not provided a rationalized medical opinion addressing how her work duties as a mail carrier caused or contributed to her hernia condition. Appellant did not meet her burden of proof.

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

Section 8128(a) of FECA vests OWCP with discretionary authority to determine whether to review an award for or against compensation.¹⁰ OWCP's regulations provide that OWCP may

⁷ *S.E.*, Docket No. 08-2214 (issued May 6, 2009); *T.M.*, Docket No. 08-975 (issued February 6, 2009).

⁸ *L.F.*, Docket No. 10-2287 (issued July 6, 2011); *Solomon Polen*, 51 ECAB 341 (2000).

⁹ *R.E.*, Docket No. 10-679 (issued November 16, 2010); *K.W.*, 59 ECAB 271 (2007).

¹⁰ 5 U.S.C. § 8128(a); *see also D.L.*, Docket No. 09-1549 (issued February 23, 2010); *W.C.*, 59 ECAB 372 (2008).

review an award for or against compensation at any time on its own motion or upon application. The employee shall exercise her right through a request to the district Office.¹¹

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or an argument that: (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.¹²

A request for reconsideration must also be submitted within one year of the date of OWCP's decision for which review is sought.¹³ A timely request for reconsideration may be granted if OWCP determines that the employee has presented evidence or provided an argument that meets at least one of the requirements for reconsideration. If OWCP chooses to grant reconsideration, it reopens and reviews the case on its merits.¹⁴ If the request is timely but fails to meet at least one of the requirements for reconsideration, OWCP will deny the request for reconsideration without reopening the case for review on the merits.¹⁵

ANALYSIS -- ISSUE 2

The Board finds that appellant has not shown that OWCP erroneously applied or interpreted a specific point of law; she has not advanced a relevant legal argument nor previously considered by OWCP; and she has not submitted relevant and pertinent new evidence not previously considered by OWCP.

By decision dated May 30, 2013, an OWCP hearing representative affirmed the November 9, 2012 decision finding insufficient medical evidence to establish that appellant's hernia was causally related to factors of her employment. In a handwritten statement dated June 13, 2013, appellant requested reconsideration. She submitted personnel documents addressing her heavy rural route, that she stopped work on July 10, 2012 and was subsequently retired due to disability arising from her hernia. The Board notes that these documents are not relevant to appellant's occupational disease claim. The underlying issue in this case was whether her hernia condition was causally related to her employment duties. That is a medical issue which must be addressed by probative medical evidence.¹⁶ Appellant's statement and the personnel records are not medical evidence. Accordingly, they are not relevant or pertinent to

¹¹ 20 C.F.R. § 10.605; *see also R.B.*, Docket No. 09-1241 (issued January 4, 2010); *A.L.*, Docket No. 08-1730 (issued March 16, 2009).

¹² *Id.* at § 10.606(b); *see also L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

¹³ *Id.* at § 10.607(a).

¹⁴ *Id.* at § 10.608(a); *see also M.S.*, 59 ECAB 231 (2007).

¹⁵ *Id.* at § 10.608(b); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

¹⁶ *See Bobbie F. Cowart*, 55 ECAB 746 (2004).

the underlying issue in this case and are not sufficient to require OWCP to reopen her claim for consideration of the merits.¹⁷

Appellant did not submit any evidence along with her request for reconsideration to show that OWCP erroneously applied or interpreted a specific point of law or advances a relevant legal argument not previously considered by OWCP. Because she did not meet any of the necessary requirements, she is not entitled to further merit review. The Board finds, therefore, that OWCP properly refused to reopen appellant's case for further consideration of the merits of her claim under 5 U.S.C. § 8128.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that her stomach condition was causally related to factors of her employment. The Board also finds that OWCP properly denied her request for reconsideration under 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the June 28 and May 30, 2013 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: January 27, 2014
Washington, DC

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

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

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

¹⁷ See *James W. Scott*, 55 ECAB 606 (2004).