

FACTUAL HISTORY

On May 20, 2013 appellant, then a 56-year-old medical instrument technician, filed an occupational disease claim alleging right de Quervain's tendinitis as a result of her federal employment. She noted that her job required repetitive twisting motions when spiking intravenous (IV) bags and changing anesthesia circuits on the anesthesia machines. Appellant noted that she was spiking a small IV bag when she felt a terrible pain. Her hand became swollen and she could not use it. Appellant did not submit any medical evidence in support of her claim.

By letter dated May 28, 2013, OWCP asked appellant to submit additional evidence in support of her claim. In response, appellant submitted a statement dated June 21, 2013, describing her work as an anesthesia technician. She reiterated that she made twisting motions by changing anesthesia circuits, making syringes, changing tubing, unlocking carts and putting oxygen annuals and "Ambo bags" on ports. Appellant noted that she filled vaporizers and twisted pop-off valves. She performed such duties over 300 times a day from 3 minutes to 15 minutes. Appellant noted that she injured her right wrist on October 10, 2011, while spiking an IV bag. She saw a doctor who diagnosed de Quervain's tenosynovitis and injected her hand, but that the swelling and pain returned. Appellant had other injections that were unsuccessful and her only choice was surgery. She stated that she had surgery and physical therapy, but that her hand still became tight with burning pain. Appellant believed that her injury came from her job and was an occupational disease.

By decision dated July 10, 2013, OWCP denied appellant's claim. It accepted the employment duties she performed, but found insufficient medical evidence to support causal relationship.

On July 24, 2013 appellant requested reconsideration by checking a line on the appeal request form.

By decision dated August 2, 2013, OWCP denied appellant's request for reconsideration without conducting further 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 timely filed within the applicable time limitation period, that an injury was sustained in the performance of duty as alleged and that any disabilities and/or specific conditions 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 upon a traumatic injury or an occupational disease.³

² *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ *Victor J. Woodhams*, 41 ECAB 345 (1989).

Whether an employee actually sustained an injury in the performance of duty begins with an analysis of whether fact of injury has been established.⁴ To establish fact of injury in an occupational disease claim, an employee must submit: (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.⁵

Causal relationship is a medical issue and the evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is evidence which includes a physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background, 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 claimant.⁶

ANALYSIS -- ISSUE 1

The Board finds that appellant did not establish that she sustained an injury in the performance of duty. OWCP accepted the work duties she performed as a medical technician, but found that she failed to submit any medical evidence in support of her claim. It informed appellant of the deficiency of her claim and the need to submit medical evidence providing a firm diagnosis and addressing causal relation. Appellant did not respond. She failed to submit a physician's report to confirm the condition claimed to her right wrist, addressing the issue of causal relationship or need for surgery.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's claimed condition became apparent during a period of employment nor her belief that the condition was caused by her employment is sufficient to establish causal relationship.⁷ As appellant failed to submit medical evidence that established a medical condition that was causally related to her employment, OWCP properly denied her claim.⁸

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.

⁴ See *S.P.*, 59 ECAB 184, 188 (2007).

⁵ See *Roy L. Humphrey*, 57 ECAB 238, 241 (2005); see also *P.W.*, Docket No. 10-2402 (issued August 5, 2011).

⁶ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, *supra* note 3.

⁷ *D.I.*, 59 ECAB 158 (2007); *Ruth R. Price*, 16 ECAB 688, 691 (1965).

⁸ *W.J.*, Docket No. 13-1440 (issued January 23, 2014).

LEGAL PRECEDENT -- ISSUE 2

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,⁹ its regulations provide that the evidence or argument submitted by 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 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.¹¹ When a claimant fails to meet one of the above standards, OWCP will deny the application for reconsideration without reopening the case for review on the merits.¹²

ANALYSIS -- ISSUE 2

Appellant's reconsideration request failed to establish that OWCP erroneously applied or interpreted a point of law, or advance a relevant legal argument not previously considered. Furthermore, she failed to submit any pertinent new and relevant evidence to OWCP that supported her request for reconsideration. The Board, therefore, finds that OWCP did not abuse its discretion in refusing to reopen her claim for a review on the merits.

CONCLUSION

The Board finds that appellant did not establish that her right de Quervain's tenosynovitis is causally related to her federal employment, as alleged. The Board further finds that OWCP properly refused to reopen her case for further review of the merits pursuant to 5 U.S.C. § 8128(a).

⁹ 5 U.S.C. § 8128(a). Under section 8128 of FECA, the Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application.

¹⁰ 20 C.F.R. § 10.606(b)(3).

¹¹ *Id.* at § 10.607(a).

¹² *Id.* at § 10.607(b).

ORDER

IT IS HEREBY ORDERED THAT the August 2 and July 10, 2013 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: June 26, 2014
Washington, DC

Patricia Howard Fitzgerald, Acting Chief Judge
Employees' Compensation Appeals Board

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

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