

FACTUAL HISTORY

On October 10, 2013 appellant, a 50-year-old contact service representative, filed a Form CA-1 claim for benefits alleging that he experienced pain in his low back on October 9, 2013 while removing his rain pants.

By letter dated October 15, 2013, OWCP advised appellant that he needed to submit additional factual and medical evidence in support of his claim. It stated that he had 30 days to submit the requested information.

Appellant submitted form reports from the employing establishment's occupational health unit dated October 10, 16 and 29, and November 14, 2013, signed by Dr. Tod McCune, Board-certified in occupational medicine. The reports documented work excuses for appellant being off work until October 16, 2013; outlined work restrictions for no lifting, pulling or carrying more than 10 pounds; set forth work restrictions of no running, no lifting, pulling, or carrying more than 30 pounds; and authorized him to return to work on November 14, 2013.

By decision dated November 20, 2013, OWCP denied appellant's claim. It found that he failed to submit sufficient medical evidence to establish that he sustained a low back injury due to the October 9, 2013 incident.

On November 27, 2013 appellant requested reconsideration. He did not submit any additional evidence in support of his request.

By decision dated December 12, 2013, OWCP denied appellant's application for review. It found that he did not raise a substantive legal question or included new and relevant evidence sufficient to require it to review its prior decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ has the burden of establishing that 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 of FECA, that an injury was sustained 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.⁴ 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.⁵

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "fact of injury" has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced

³ *Id.*

⁴ *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁵ *Victor J. Woodhams*, 41 ECAB 345 (1989).

the employment incident at the time, place and in the manner alleged.⁶ 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.⁷

The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.⁸

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that his condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship.⁹ Causal relationship must be established by rationalized medical opinion evidence and appellant failed to submit such evidence.

ANALYSIS

OWCP accepted the incident of appellant removing rain pants on October 9, 2013. The question of whether the employment incident caused a personal injury can only be established by probative medical evidence.¹⁰ Appellant has not submitted any probative medical evidence to establish that the October 9, 2013 employment incident caused a low back condition.

Appellant submitted four summary reports from the employing establishment's occupational health unit dated October to November 2013. They provided excuses for appellant taking off workdays and outlined his work restrictions. He was authorized to return to work on November 14, 2013. None of the reports, however, provide any history of the October 9, 2013 incident or a medical opinion regarding whether the October 9, 2013 work incident caused his claimed personal injury.

The weight of medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of physician's knowledge of the facts of the case, the medical history provided, the care of analysis manifested and the medical rationale expressed in support of stated conclusions.¹¹ Appellant failed to provide a rationalized, probative medical opinion which addresses or explain how the October 9, 2013 work incident would have been competent to cause a diagnosed back condition. There is, therefore, no rationalized evidence in the record that appellant sustained a work-related injury.

OWCP advised appellant of the evidence required to establish his claim; however, appellant failed to submit such evidence. Appellant did not provide a medical opinion which

⁶ *John J. Carlone*, 41 ECAB 354 (1989).

⁷ *Id.* For a definition of the term "injury," see 20 C.F.R. § 10.5(e).

⁸ *See Joe T. Williams*, 44 ECAB 518, 521 (1993).

⁹ *Id.*

¹⁰ *Carlone*, *supra* note 6.

¹¹ *See Anna C. Leanza*, 48 ECAB 115 (1996).

describes or explains the medical process through which the October 9, 2013 work accident would have caused a diagnosed back condition. Accordingly, he did not establish that he sustained an injury in the performance of duty. OWCP properly denied appellant's claim for compensation.

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

Pursuant to 20 C.F.R. § 10.606(b), a claimant may obtain review of the merits of his or her claim by showing that OWCP erroneously applied or interpreted a specific point of law; by advancing a relevant legal argument not previously considered by OWCP; or by constituting relevant and pertinent evidence not previously considered by OWCP.¹² Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.¹³

ANALYSIS -- ISSUE 2

In the present case, appellant has not shown that OWCP erroneously applied or interpreted a specific point of law nor has he advanced a relevant legal argument not previously considered by OWCP. The issue in this case is medical; *i.e.*, whether he submitted probative, rationalized medical evidence sufficient to establish that he sustained a personal injury causally related to the October 9, 2013 work incident. Appellant did not submit any medical evidence in support of his request for reconsideration. His reconsideration request failed to show that OWCP erroneously applied or interpreted a point of law nor did it advance a point of law or fact not previously considered by OWCP. OWCP did not abuse its discretion in refusing to reopen appellant's claim for a review on the merits.

CONCLUSION

The Board finds that appellant has failed to establish that he sustained an injury to his lower back in the performance of duty on October 9, 2013. The Board finds that OWCP properly refused to reopen appellant's case for reconsideration on the merits of his claim under 5 U.S.C. § 8128(a).

¹² 20 C.F.R. § 10.606(b). *See generally* 5 U.S.C. § 8128(a).

¹³ *Howard A. Williams*, 45 ECAB 853 (1994).

ORDER

IT IS HEREBY ORDERED THAT the December 12 and November 20, 2013 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: June 13, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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