

FACTUAL HISTORY

On May 29, 2013 appellant, then a 49-year-old medical support assistant, filed an occupational disease claim (Form CA-2) alleging that she sustained neck pain while answering the telephone in the performance of duty on or before April 17, 2013. Her supervisor noted that on April 17, 2013, appellant was provided a hands-free telephone headset as an accommodation to prevent “the need for her to hold the phone in the crook of her neck.”

In a June 4, 2013 letter, OWCP advised appellant of the evidence needed to establish her claim, including a description of the work tasks alleged to have caused or contributed to the claimed condition and a statement from her attending physician explaining how those factors caused the condition. Appellant was afforded 30 days to submit such evidence.

In response, appellant provided her April 29, 2013 statement attributing her neck condition to answering pharmacy telephones at work from April 15 to 17, 2013. She noted consulting a chiropractor on April 25, 2013, who referred her to a physician. Appellant also submitted medical evidence.

Dr. Patrick E. Farrell, an attending Board-certified anesthesiologist, provided a May 8, 2013 report noting appellant’s history of neck and arm pain “over the past several months.” He ordered a May 13, 2013 cervical magnetic resonance imaging (MRI) scan, which showed degenerative disc disease from C5 to T1, moderate canal stenosis at C5-6 and mild canal stenosis from C2-4, C6-7 and C7-T1. In a May 13, 2013 report, Dr. Farrell noted that appellant first noticed neck pain “after she was holding the telephone receiver between her left neck and shoulder while working.” He opined that her complaints of pain and paresthesias into her left hand were consistent with the C5-6 neuroforaminal narrowing seen on MRI scan. Dr. Farrell diagnosed brachial neuritis, a degenerated cervical disc, a displaced cervical disc and cervicgia. He formulated a pain management plan on May 29, 2013.

By decision dated July 15, 2013, OWCP denied appellant’s occupational disease claim on the grounds that causal relationship was not established. It accepted that the identified work factors of answering the telephone on or before April 17, 2013 occurred as alleged. OWCP found that Dr. Farrell’s reports did not explain the medical reason why holding a telephone or other duties of appellant’s federal employment, would cause the claimed neck condition.

In an August 1, 2013 letter, appellant requested reconsideration, asserting that Dr. Farrell misstated her history. She submitted a July 22, 2013 report from Dr. Farrell, relating her account that “her original injury was noted on April 17, 2013 and she did not have neck pain prior to that date. [S]tarted when [appellant] was holding the phone against her shoulder.” Dr. Farrell opined that the cervical MRI scan did not show pathologies which would explain her symptoms. He diagnosed cervical spondylosis without myelopathy. Appellant also submitted copies of Dr. Farrell’s May 13 and 29, 2013 reports and the May 13, 2013 MRI scan previously of record.

By decision dated August 22, 2013, OWCP denied reconsideration on the grounds that the evidence submitted was insufficient to warrant a merit review. It found that the evidence appellant submitted on reconsideration was cumulative or irrelevant. Dr. Farrell’s July 22, 2013 report, although new, failed to address the critical issue of causal relationship in the case. The

remainder of the medical evidence was copies of documents previously of record and considered prior to the July 15, 2013 decision.

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

An occupational disease is defined as a condition produced by the work environment over a period longer than a single workday or shift.⁴ To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish causal relationship is generally rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician’s rationalized 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 of the claimant, 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.⁵

ANALYSIS -- ISSUE 1

Appellant claimed that she sustained neck pain while answering the telephone in the performance of duty on or before April 17, 2013. OWCP accepted that these work events occurred as alleged. It denied the claim, because as the medical evidence did not establish that holding the telephone receiver caused or aggravated any medical condition.

Dr. Farrell, an attending Board-certified anesthesiologist, provided reports dated from May 8 to 29, 2013 noting a history of neck and arm pain after holding the telephone receiver

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 20 C.F.R. § 10.5(q).

⁵ *Solomon Polen*, 51 ECAB 341 (2000).

between appellant's neck and left shoulder at work. He diagnosed brachial neuritis consistent with C5-6 neuroforaminal narrowing demonstrated by a May 13, 2013 cervical MRI scan. However, Dr. Farrell did not explain the medical reasons that holding the telephone receiver on her left shoulder would cause brachial neuritis. Because he did not provide rationale supporting causal relationship, his opinion is insufficient to meet appellant's burden of proof.⁶

In a June 4, 2013 letter, OWCP advised appellant of the type of evidence needed to establish her claim, including a report from her attending physician stating that medical reasons that holding a telephone handset between her neck and shoulder would cause the claimed neck condition. However, appellant did not submit such evidence.

The Board finds that appellant failed to submit sufficient rationalized medical evidence to establish that work factors caused or aggravated the claimed cervical spine condition. Therefore, OWCP's July 15, 2013 decision was proper under the law and circumstances of this case.

On appeal, appellant asserts that new medical evidence accompanying her appeal request is sufficient to establish her claim. The Board may not consider evidence for the first time on appeal that was not before OWCP at the time it issued the final decision in the case.⁷

Appellant may submit this or any other 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, 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 it; or (3) constitute relevant and pertinent new evidence not previously considered by OWCP. 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.

In support of a request for reconsideration, a claimant is not required to submit all evidence which may be necessary to discharge his or her burden of proof. He or she need only submit relevant, pertinent evidence not previously considered by OWCP. 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.

⁶ *Deborah L. Beatty*, 54 ECAB 340 (2003).

⁷ 20 C.F.R. § 501.2(c).

ANALYSIS -- ISSUE 2

In her August 1, 2013 request for reconsideration, appellant did not show that OWCP erroneously applied or interpreted a specific point of law. She did not advance a new and relevant legal argument. Appellant asserted that Dr. Farrell, an attending Board-certified anesthesiologist, misstated her history.

In support of her request for reconsideration, appellant submitted a new report from Dr. Farrell dated July 22, 2013, relating her account of events. However, Dr. Farrell did not address the critical issue of causal relationship and the report is not relevant to the claim. The Board has held that the submission of evidence which does not address the particular issue involved does not comprise a basis for reopening a case.⁸ Appellant also submitted duplicate copies of evidence previously of record. However, evidence which is duplicative or cumulative in nature is insufficient to warrant reopening a claim for merit review.⁹ A claimant may be entitled to a merit review by submitting new and relevant evidence, but appellant did not submit any new and relevant evidence in this case.

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. The August 22, 2013 decision denying reconsideration is proper under the law and facts of the case.

CONCLUSION

The Board finds that appellant did not establish that she sustained a cervical spine condition in the performance of duty. The Board further finds that OWCP properly denied reconsideration.

⁸ *Joseph A. Brown, Jr.*, 55 ECAB 542 (2004).

⁹ *Denis M. Dupor*, 51 ECAB 482 (2000).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated August 22 and July 15, 2013 are affirmed.

Issued: May 1, 2014
Washington, DC

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

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

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