

**United States Department of Labor
Employees' Compensation Appeals Board**

G.S., Appellant)

and)

U.S. POSTAL SERVICE, PROCESSING &)
DISTRIBUTION FACILITY, Gary, IN,)
Employer)

**Docket No. 14-281
Issued: May 23, 2014**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 20, 2013 appellant filed a timely appeal from an August 21, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP) denying her claim for disability compensation. She also appeals a nonmerit decision dated October 18, 2013 denying her request for reconsideration. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant established that she was disabled from May 18 to July 12, 2013 causally related to her March 19, 2013 work injury; and (2) whether OWCP properly denied her request for reconsideration under 5 U.S.C. § 8128(a).

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On March 23, 2013 appellant, then a 57-year-old mail processing clerk, filed a traumatic injury claim alleging that on March 19, 2013 she sustained injuries when she fell on a curb. OWCP accepted the claim for a contusion of the left hand.

Appellant submitted claims for compensation (Forms CA-7) requesting compensation for total disability from May 4 to 17 and May 18 to 31, June 1 to 15 and July 1 to 12, 2013.

In a disability certificate dated June 3, 2013, Dr. I. Benjamin Anigbo, Board-certified in family practice, listed that appellant was under his care and unable to work from May 13 to June 16, 2013. He determined that she could return to work on June 17, 2013.

By letter dated June 17, 2013, OWCP advised appellant that the evidence was insufficient to show disability from employment. It requested that she submit a reasoned opinion from her attending physician addressing how she was disabled as a result of her accepted work injury.

In a disability certificate dated June 17, 2013, Dr. Anigbo noted that appellant was under his care and unable to work from June 17 to July 2013. He diagnosed a left palmar wrist contusion and an exacerbation of left knee arthritis.

By decision dated August 21, 2013, OWCP denied appellant's claim for compensation for disability from May 18 to July 12, 2013. It found that the medical evidence was insufficient to establish that she was unable to work during the claimed period.

On October 7, 2013 appellant requested reconsideration. She maintained that OWCP had not received all the medical evidence submitted, including the results of x-rays and physical therapy reports.

By decision dated October 18, 2013, OWCP denied appellant's request for reconsideration. It found that she did not submit any evidence or raise an argument sufficient to warrant reopening her case for further review of the merits under section 8128.

On appeal, appellant contends that on October 7, 2013 she provided OWCP with physical therapy notes and progress reports from her physician. She described her work injury and related that she also injured her knee. Appellant indicates that she began physical therapy and initially was told that she had workers' compensation but then was told that her injury was not serious enough.

LEGAL PRECEDENT -- ISSUE 1

The term disability as used in FECA² means the incapacity because of an employment injury to earn the wages that the employee was receiving at the time of injury.³ Whether a particular injury caused an employee disability for employment is a medical issue which must be

² *Id.*; 20 C.F.R. § 10.5(f).

³ *Paul E. Thams*, 56 ECAB 503 (2005).

resolved by competent medical evidence.⁴ When the medical evidence establishes that the residuals of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in the employment held when injured, the employee is entitled to compensation for any loss of wage-earning capacity resulting from such incapacity.⁵ The Board will not require OWCP to pay compensation for disability in the absence of any medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.⁶

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.⁷ The opinion of the physician must be based on a complete factual and medical background of the claimant,⁸ must be one of reasonable medical certainty⁹ explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹⁰

ANALYSIS -- ISSUE 1

OWCP accepted that appellant sustained a left hand contusion as the result of a fall on March 19, 2013. It did not accept any injury to her left knee. Appellant filed claims for compensation for total disability from May 4 to July 12, 2013. By decision dated October 18, 2013, OWCP found that she had not established disability from employment from May 18 to July 12, 2013.¹¹ Appellant has the burden to submit reasoned medical evidence sufficient to establish her claim.¹²

In a disability certificate dated June 3, 2013, Dr. Anigbo listed that appellant was disabled from employment from May 13 to June 16, 2013. On June 17, 2013 he diagnosed a left palmar wrist contusion and an exacerbation of left knee arthritis. Dr. Anigbo noted that appellant was unable to work from June 17 to July 2013. He listed periods of disability from May to July 2013 but did not provide any narrative opinion explaining the basis for his opinion or addressing causal relationship. Medical evidence that does not offer any opinion regarding

⁴ *Id.*

⁵ *Id.*

⁶ *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

⁷ *John J. Montoya*, 54 ECAB 306 (2003).

⁸ *Tomas Martinez*, 54 ECAB 623 (2003); *Gary J. Watling*, 52 ECAB 278 (2001).

⁹ *Supra* note 7.

¹⁰ *Judy C. Rogers*, 54 ECAB 693 (2003).

¹¹ OWCP has not adjudicated appellant's claim for compensation from May 4 to 18, 2013.

¹² *See K.M.*, Docket No. 13-1406 (issued December 18, 2013).

the cause of an employee's condition is of diminished probative value on the issue of causal relationship.¹³

On appeal, appellant contends that she provided OWCP with physical therapy reports and her physician's progress notes. As discussed, however, the progress reports from her physician are insufficient to meet her burden of proof. Further, records from a physical therapist do not constitute competent medical evidence as a physical therapist is not a physician as defined under FECA.¹⁴

Appellant asserts that she also injured her knee on March 19, 2013. Where a claimant maintains that, a condition not accepted or approved by OWCP was due to her employment injury, she bears the burden of proof to establish that the condition is causally related to the employment injury through the submission of rationalized medical evidence.¹⁵ Appellant has not submitted any evidence addressing the cause of a knee condition and thus has not met her burden of proof.

Appellant alleged that OWCP initially told her that she was covered by workers' compensation when she began physical therapy. OWCP's decision, however, addresses a period of claimed disability rather than whether her medical treatment is compensable.

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 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,¹⁶ OWCP's 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 OWCP; or (3) constitute relevant and pertinent new evidence not previously considered by OWCP.¹⁷ 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.¹⁸ When a claimant fails to meet one of the above standards, OWCP

¹³ See *S.E.*, Docket No. 08-2214 (issued May 6, 2009); *Conrad Hightower*, 54 ECAB 796 (2003).

¹⁴ 5 U.S.C. § 8101(2); see also *D.D.*, Docket No. 13-1916 (issued February 24, 2014).

¹⁵ See *JaJa K. Asaramo*, 55 ECAB 200, 204 (2004).

¹⁶ See *supra* note 1. Section 8128(a) of FECA provides that "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application."

¹⁷ 20 C.F.R. § 10.606(b)(3).

¹⁸ *Id.* at § 10.607(a).

will deny the application for reconsideration without reopening the case for review on the merits.¹⁹

The Board has held that the submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.²⁰ The Board also has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.²¹ While the reopening of a case may be predicated solely on a legal premise not previously considered, such reopening is not required where the legal contention does not have a reasonable color of validity.²²

ANALYSIS -- ISSUE 2

On October 7, 2013 appellant requested reconsideration, arguing that she had submitted medical evidence not reviewed by OWCP, including x-rays and physical therapy reports. OWCP, however, reviewed all of the medical evidence that it received prior to issuing its decision. Appellant did not submit any evidence corroborating her allegation that OWCP failed to review the medical evidence. She did not show that OWCP erroneously applied or interpreted a specific point of law. Appellant did not identify a specific point of law or show that it was erroneously applied or interpreted. She did not advance a new and relevant legal argument. The underlying issue in this case is whether appellant has established that she was disabled from employment from May 18 to July 12, 2013. As this is a medical issue it must be addressed by relevant medical evidence.²³ A claimant may be entitled to a merit review by submitting pertinent new and relevant evidence, but appellant did not submit any pertinent new and relevant medical evidence with her request for reconsideration.

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 submit relevant and pertinent new evidence not previously considered. Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

CONCLUSION

The Board finds that appellant has not established that she was disabled from employment for intermittent dates from May 18 to July 12, 2013. The Board further finds that OWCP properly denied her request for reconsideration under section 8128.

¹⁹ *Id.* at § 10.608(b).

²⁰ *F.R.*, 58 ECAB 607 (2007); *Arlesa Gibbs*, 53 ECAB 204 (2001).

²¹ *P.C.*, 58 ECAB 405 (2007); *Ronald A. Eldridge*, 53 ECAB 218 (2001); *Alan G. Williams*, 52 ECAB 180 (2000).

²² *Vincent Holmes*, 53 ECAB 468 (2002); *Robert P. Mitchell*, 52 ECAB 116 (2000).

²³ *See Bobbie F. Cowart*, 55 ECAB 746 (2004).

ORDER

IT IS HEREBY ORDERED THAT the October 18 and August 21, 2013 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: May 23, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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