

On appeal, appellant submitted additional medical evidence and contended that this evidence was sufficient to establish his claim.²

FACTUAL HISTORY

On November 8, 2013 appellant, then a 60-year-old district conservationist, filed a traumatic injury claim alleging that on November 6, 2013 he was in an all-terrain vehicle (ATV) accident, which ejected him from the vehicle. He sustained a dislocated sprain in his left wrist.

By letter dated November 15, 2013, OWCP noted that the documentation submitted was insufficient to support appellant's claim. It asked him to submit further evidence, including a detailed statement as to how the incident occurred. OWCP also requested a physician's opinion providing a diagnosis, the clinical course of treatment followed and a medical explanation of how the work incident caused or aggravated the diagnosed medical condition.

In response to OWCP's request, appellant submitted a statement detailing the circumstances of the ATV accident. He also submitted a copy of a November 6, 2013 emergency room report from North Canyon Medical Center signed by a physician's assistant. A radiology report of the left wrist, dated November 6, 2013, listed the attending medical person as a physician's assistant. The x-ray revealed no fracture or dislocation of the wrist but noted severe joint space narrowing with marked osteophytosis of the first carpometacarpal (CMC) joint.

By decision dated December 30, 2013, OWCP denied appellant's claim. It found that the medical evidence of record was not sufficient to establish a left wrist injury due to the November 6, 2013 incident.

On January 13, 2014 appellant requested reconsideration. He submitted a copy of an x-ray report of his left wrist dated November 6, 2013 that was electronically signed by Dr. Jeffrey Pugsley, a Board-certified radiologist, who interpreted the x-ray as showing no fracture or dislocation, but did note severe joint space narrowing with marked osteophytosis at the first CMC joint.

By decision dated February 20, 2014, OWCP denied reconsideration. It found that the evidence was not sufficient to warrant further review of the decision. OWCP noted that the evidence submitted consisted of the same radiology report previously considered.

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 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

² Appellant submitted new evidence on appeal. Pursuant to 20 C.F.R. § 501.2(c)(1), the Board may not consider new evidence for the first time on appeal.

related to the employment injury. 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

In order to determine whether an employee actually sustained an injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components, which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident or exposure, which is alleged to have occurred.⁴ The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.⁵ The medical evidence required to establish causal relationship is usually rationalized medical 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.⁶

ANALYSIS -- ISSUE 1

Appellant established that he was in an employment-related ATV accident on November 6, 2013. OWCP denied his claim, however, as he did not submit sufficient medical evidence to establish that he sustained a left wrist injury causally related to the accepted ATV accident.

At the time that appellant's claim was initially denied on December 30, 2013, he did not submit adequate rationalized medical evidence to establish that he sustained a left wrist injury causally related to the accident. He submitted a report from a physician's assistant detailing his visit to the emergency room on November 6, 2013 as well as an unsigned radiology report of the same date. The Board has held that certain health care providers, such as a physician's assistant, nurse practitioner, physical therapist or social worker are not defined as physicians under FECA.⁷ Consequently, their reports are of no probative medical value for purposes of establishing a claim under FECA.⁸ The unsigned radiology report is insufficient to establish appellant's claim. A report that is unsigned or bears an illegible signature lacks proper

³ *Jussara L. Arcanjo*, 55 ECAB 281, 283 (2004).

⁴ *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803(2)(a) (June 1995).

⁵ *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

⁶ *Judith A. Peot*, 46 ECAB 1036 (1995); *Ruby I. Fish*, 46 ECAB 276 (1994).

⁷ 5 U.S.C. § 10.115(3)(f); *see Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

⁸ *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006). A report from a physician's assistant or certified nurse practitioner will be considered medical evidence if countersigned by a qualified physician. *See supra* note 4 at Chapter 2.805.3a(1) (January 2013).

identification and cannot be considered probative medical evidence.⁹ Accordingly, appellant failed to submit sufficient medical evidence to establish that he sustained a left wrist injury causally related to the accepted employment incident. He did not meet his burden of proof.

LEGAL PRECEDENT -- ISSUE 2

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,¹⁰ OWCP's 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.¹¹ 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.¹² 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.¹³

ANALYSIS -- ISSUE 2

On reconsideration, appellant resubmitted the November 6, 2013 x-ray report of his wrist that was electronically signed by Dr. Jeffrey Pugsley, a Board-certified radiologist. OWCP denied reconsideration as it found that this was the same radiology report previously submitted to the record. For this reason, it properly denied reconsideration as the x-ray was duplicative of the x-ray previously submitted and considered. OWCP is well established that evidence that repeats or duplicates evidence previously of record has no evidentiary value and does not constitute a basis for reopening a case.¹⁴

The Board finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(3). 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 pertinent new and relevant evidence not previously considered. Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he sustained an injury in the performance of duty on November 6, 2013, as alleged. The Board

⁹ *Thomas L. Agee*, 56 ECAB 465 (2005); *Richard F. Williams*, 55 ECAB 343 (2004).

¹⁰ *See supra* note 1. Under section 8128 of FECA, “[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.” 5 U.S.C. § 8128(a).

¹¹ 20 C.F.R. § 10.606(b)(3).

¹² *Id.* at § 10.607(a).

¹³ *Id.* at § 10.608(b).

¹⁴ *See J.P.*, 58 ECAB 289 (2007); *D’Wayne Avila*, 57 ECAB 642 (2006).

further finds that OWCP properly denied appellant's request for reconsideration of the merits pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated February 20, 2014 and December 30, 2013 are affirmed.

Issued: November 4, 2014
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

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