



alleged that his injury began on July 7, 2010 and that he first became aware of the injury and its relation to his work on that date. Appellant referenced filing an accident report in 2005 when he had back pain and shooting leg pain, which OWCP had previously accepted for lumbar sprain/strain under file number xxxxxx589 on August 3, 2005. On September 23, 2008 OWCP expanded that claim to include lumbar herniated nucleus pulposus.

In a November 27, 2012 telephone memorandum, OWCP contacted appellant to seek clarification with regard to his claim as portions of his claim form were blurry and difficult to read. Appellant confirmed that he was claiming an injury to his hip. He also confirmed that he had been out of work for at least two years. OWCP advised that it would send him a claim development letter.

By letter dated November 27, 2012, OWCP informed appellant of the type of evidence needed to support his claim and requested that he submit such evidence within 30 days. In particular, it advised appellant that the evidence received was insufficient to establish that he experienced any employment factors that were alleged to have caused an injury.

Thereafter, appellant submitted an October 19, 2012 report from Dr. Lance Lehmann, M.D., who noted first treating appellant on December 30, 2005 for back and upper left leg pain for which he diagnosed disc herniations at L2-3 and L4-5 along with lumbar radiculopathy. Dr. Lehmann later saw appellant again in March 2010 for persistent pain in the left hip and buttock area. He advised that appellant had engaged in repetitive lifting, with twisting and turning of mail tubs and bins, since 2005. Dr. Lehmann noted that the July 7, 2010 left hip magnetic resonance imaging (MRI) scan showed some impingement syndrome in his acetabular head and some osteoarthritis in the joint space along with some labral tearing. He opined that he felt that these “findings and pain were secondary to his job and repetitive motion-type injury.” Dr. Lehmann indicated that he believed the injury was work related and should be covered. In a report dated September 27, 2012, Dr. Richard E. Strain, M.D., stated that appellant had bulging disc and herniated disc and was subsequently diagnosed with left hip problems. He indicated osteoarthritis in the left hip and noted that, as appellant had no prior history of hip fracture, this would not be work related.

OWCP indicated that it had bronzed medical documentation from Dr. Lehmann and Dr. Strain (under file number xxxxxx589) into the current record.

In a letter dated December 3, 2012, Amelia Brown, a health and resource management specialist, with the employing establishment controverted the claim. She noted that appellant was on the periodic compensation rolls for a prior claim, file number xxxxxx589, with the exact same conditions.<sup>2</sup> Ms. Brown advised that appellant stopped work on September 1, 2005, returned on December 17, 2007 and stopped work again on May 10, 2010. She questioned why he waited more than two years to file his occupational disease claim and suggested that his time away from work and nonwork activities may be the cause of his current condition.

In a December 12, 2012 report, Dr. Lehmann recounted his history of treating appellant and indicated that appellant’s last office visit was November 15, 2012. He explained that the

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<sup>2</sup> The other claim is not presently before the Board.

MRI scan on July 7, 2010 revealed impingement syndrome with femoral acetabular head osteoarthritis in the joint space and some labral tearing. Dr. Lehmann opined that “we believe this was due to the job and repetitive motion-type injury.” He advised that appellant’s injury was related to his work at the employing establishment. Dr. Lehmann noted “according to the patient’s own words, he felt that work had exacerbated his condition over the years regarding both his back and his hip and I believe it should be covered.”

On January 18, 2013 appellant indicated that he had spoken to his physician, who agreed that the physician, in his report, had provided the appropriate responses to OWCP’s questions.

By decision dated January 28, 2013, OWCP denied appellant’s claim. It found that the medical evidence did not demonstrate that the claimed medical condition was related to established work-related events.

On February 21, 2013 appellant requested reconsideration. In an undated statement, he noted that he was submitting a new report from Dr. Lehmann which supported causal relationship. Appellant also indicated that his claims examiner did not address his prior claim, file number xxxxxx589.

In a January 10, 2013 report, Dr. Lehmann diagnosed lumbar herniated nucleus pulposus, stenosis and hip pain. He continued to treat appellant and submit reports. In a February 19, 2013 report, Dr. Lehmann noted that he was further outlining why he believed that appellant sustained a hip injury, while working for the employing establishment, as well as a lumbar injury for which he had received treatment since 2005. He advised that on December 30, 2005 appellant completed a questionnaire and related that he was lifting flat tubs from work and twisting and turning in the process. Dr. Lehmann explained that an MRI scan of the hip at a later date revealed labral tearing. He advised that this was important because specific risk factors or causes for a hip labral tear might include specifically repetitive motion-type injuries that involved sudden twisting or pivoting. Dr. Lehmann opined that these findings, the examination from June 2005 and appellant’s description of injury from May 2005, in addition to the labral tear of the hip, was sufficient to establish causal relationship between work and his condition. He reiterated his belief that appellant’s condition was work related in March 7 and April 8, 2013 reports. OWCP also received a copy of an article on hip labral tears.

By decision dated May 21, 2013, OWCP affirmed, as modified, to show that both components of fact of injury had not been met. It found that appellant had not identified specific work factors alleged to have caused his claimed hip condition nor did the evidence support that appellant had been working in July 2010 as he was on the periodic rolls under file number xxxxxx589 beginning May 10, 2010.

On July 10, 2013 appellant completed an appeal request form and requested reconsideration. No evidence or argument accompanied his request.

By decision dated July 29, 2013, OWCP denied appellant’s request for reconsideration finding that the evidence submitted was insufficient to warrant review of its prior decision.

### **LEGAL PRECEDENT -- ISSUE 1**

An employee seeking benefits under FECA<sup>3</sup> has the burden of proof to establish 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.<sup>4</sup> 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.<sup>5</sup>

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) a 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.

### **ANALYSIS -- ISSUE 1**

Appellant must establish all of the elements of his claim in order to prevail. He must prove his employment, the time, place and manner of injury, a resulting personal injury and that his injury arose in the performance of duty. Appellant alleged that he sustained a back, leg and hip condition as a result of his federal employment duties as a clerk.

The evidence establishes that appellant has a prior accepted lumbar sprain/strain and lumbar herniated nucleus pulposus. However, appellant did not present a clear factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition. In this case, appellant has not explained how work duties caused or aggravated his current claimed left hip condition. This is particularly important in light of the fact that he stopped work on May 10, 2010 and has been on the periodic rolls under a prior claim for a back condition.<sup>6</sup>

On November 27, 2012 OWCP informed appellant that the evidence received to date was insufficient to establish that he experienced any employment factors that were alleged to have caused an injury. Appellant did not provide any statements clearly identifying the work activities (and when those work activities occurred) with regard to his claimed left hip condition.

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<sup>3</sup> 5 U.S.C. §§ 8101-8193.

<sup>4</sup> *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>5</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>6</sup> To the extent that appellant may be alleging a recurrence of his prior claim or a consequential hip condition, he may submit a claim under that claim number.

Thus, the Board finds that appellant has not sufficiently identified employment factors alleged to have caused or contributed to his claimed hip condition to meet his burden of proof.<sup>7</sup>

As appellant has not established the factual component of his claim, the Board will not address the medical evidence with respect to causal relationship.<sup>8</sup>

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.<sup>9</sup> Neither the fact that the condition became apparent during a period of employment nor the belief that the condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.<sup>10</sup>

On appeal, appellant submitted new additional evidence. However, the Board has no jurisdiction to review this evidence for the first time on appeal.<sup>11</sup> Furthermore, with regard to his argument that his physician provided all the answers in his letter, the Board notes that appellant has not established the factual component in the present claim and it is premature to address the medical aspects.<sup>12</sup>

Appellant may submit evidence or argument with a written request for reconsideration 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**

Under section 8128(a) of FECA,<sup>13</sup> OWCP may reopen a case for review on the merits in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations, which provides that a claimant may obtain review of the merits if the written application for reconsideration, including all supporting documents, sets forth arguments and contains evidence that:

“(i) Shows that [OWCP] erroneously applied or interpreted a specific point of law; or

“(ii) Advances a relevant legal argument not previously considered by OWCP; or

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<sup>7</sup> See *C.J.*, Docket No. 12-1927 (issued March 29, 2013); *C.G.*, Docket No. 11-1897 (issued April 24, 2012).

<sup>8</sup> See *Bonnie A. Contreras*, 57 ECAB 364 (2006).

<sup>9</sup> See *Joe T. Williams*, 44 ECAB 518, 521 (1993).

<sup>10</sup> *Id.*

<sup>11</sup> 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35 (1952).

<sup>12</sup> *Supra* note 8.

<sup>13</sup> 5 U.S.C. § 8128(a).

“(iii) Constitutes relevant and pertinent new evidence not previously considered by [OWCP].”<sup>14</sup>

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by OWCP without review of the merits of the claim.<sup>15</sup>

### **ANALYSIS -- ISSUE 1**

Appellant disagreed with OWCP’s May 21, 2013 decision, which denied his claim for an occupational disease. The underlying issue on reconsideration was whether appellant had sufficiently identified and established work factors or incidents as the cause of his claimed hip condition. On July 10, 2013 appellant completed an appeal request form and requested reconsideration. No evidence or argument accompanied his request.

Appellant did not provide any relevant and pertinent new evidence to establish that he sustained an occupational disease in the performance of duty. He also has not shown that OWCP erroneously applied or interpreted a specific point of law, or advanced a relevant new argument not previously submitted. Therefore, OWCP properly denied his request for reconsideration.

### **CONCLUSION**

The Board finds that appellant has not met his burden of proof to establish an injury in the performance of duty causally related to factors of his federal employment. The Board also finds that OWCP properly refused to reopen appellant’s case for further review of the merits of his claim under 5 U.S.C. § 8128(a).

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<sup>14</sup> 20 C.F.R. § 10.606(b).

<sup>15</sup> *Id.* at § 10.608(b).

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 28 and May 21, 2013 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: September 15, 2014  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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