

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

C.T., Appellant)

and)

DEPARTMENT OF JUSTICE, U.S. MARSHALS)
SERVICE, Columbia, SC, Employer)

**Docket No. 14-1116
Issued: September 24, 2014**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA HOWARD FITZGERALD, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On April 14, 2014 appellant filed a timely appeal of a December 3, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP) concerning the denial of a traumatic injury claim. The Board also has jurisdiction over a January 21, 2014 nonmerit decision denying merit review. 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 he sustained a traumatic injury in the performance of duty on March 11, 2013; and (2) whether OWCP properly refused to reopen appellant's case for further review of the merits pursuant to 5 U.S.C. § 8128(a).

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On March 21, 2013 appellant, then a 26-year-old deputy U.S. marshal, filed a traumatic injury claim alleging that on March 11, 2013 he felt acute pain in his left rib cage when he was taken to the ground during training by another deputy who landed with his full body weight on appellant's chest.

In a letter dated September 16, 2013, OWCP informed appellant that the evidence was insufficient to establish his claim. Specifically, it advised him that medical evidence was required. Appellant was given 30 days to provide the requested information. No evidence was received.

By decision dated October 25, 2013, OWCP denied his claim on the grounds that he failed to establish fact of injury.

On November 6, 2013 appellant requested reconsideration. In support of his request, he submitted the following medical evidence.

In a March 25, 2013 report, Dr. Erica L. Pate, a treating physician, reported that appellant was seen on March 22, 2013 and when diagnosing his condition stated, "I suspect he has suffered a bruised rib and possible intercostal muscle strain." A review of an x-ray interpretation revealed no evidence of any fractured ribs. Appellant related having a moderate sharp pain with a stabbing sensation. According to him, his symptoms began about two weeks ago when he was in training and another man's shoulder landed on his top left anterior chest. Appellant related that his symptoms were aggravated by sneezing, deep breathing and exertion.

By decision dated December 3, 2013, OWCP denied modification.

On January 3, 2014 appellant requested reconsideration and submitted evidence in support of his request. In a December 19, 2013 note, Dr. Pate related seeing appellant about two weeks after an alleged work injury on March 22, 2013 for rib pain. She related that the injury occurred as the result of another deputy's shoulder landing on appellant's chest during a training session.

By decision dated January 21, 2014, OWCP denied reconsideration.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA² has the burden of establishing the essential elements of his 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

² 5 U.S.C. § 8101 *et seq.*

injury.³ 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.⁴

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.⁵ First, the employee must submit sufficient evidence to establish that he or she actually experienced 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

ANALYSIS -- ISSUE 1

Appellant claimed a rib injury as the result of being taken to the ground during training by another deputy who landed with his full body weight on appellant's chest. The issue is whether appellant sustained an injury as a result of the March 11, 2013 employment incident. OWCP accepted that the incident occurred as alleged. However, the Board finds that appellant did not meet his burden of proof to establish that he sustained a medical condition due to the accepted March 11, 2013 employment incident.

The medical evidence of record is insufficient to establish that the employment incident caused an injury. The only medical evidence submitted by appellant was a March 25, 2013 report by Dr. Pate who diagnosed a suspected bruised rib and intercostal muscle strain. While Dr. Pate stated that the injury occurred approximately two weeks previously when appellant was in training and another man's shoulder landed onto appellant's top left anterior chest, she provided no opinion as to whether the diagnosed conditions were caused or aggravated by the March 11, 2013 employment incident. Medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.⁸ Moreover, use of the word "suspect" when describing the diagnosis indicates that Dr. Pate's opinion is speculative and has little probative value.⁹

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's conditions became apparent during a period of employment nor the belief that his condition was caused, precipitated or aggravated by his employment is

³ *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

⁴ *S.P.*, 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *B.F.*, Docket No. 09-60 (issued March 17, 2009); *Bonnie A. Contreras*, *supra* note 3.

⁶ *D.B.*, 58 ECAB 464 (2007); *David Apgar*, 57 ECAB 137 (2005).

⁷ *C.B.*, Docket No. 08-1583 (issued December 9, 2008); *D.G.*, 59 ECAB 734 (2008); *Bonnie A. Contreras*, *supra* note 3.

⁸ *E.K.*, Docket No. 09-1827 (issued April 21, 2010); *A.F.*, 59 ECAB 714 (2008); *Michael E. Smith*, 50 ECAB 313 (1999).

⁹ *Ricky S. Storms*, 52 ECAB 349 (2001); *Leslie C. Moore*, 52 ECAB 132 (2000).

sufficient to establish causal relationship.¹⁰ Causal relationship must be established by rationalized medical opinion evidence and such evidence was not submitted.

OWCP advised appellant that it was his responsibility to provide a comprehensive medical report which described his symptoms, test results, diagnosis, treatment and the physician's opinion, with medical reasons, on the cause of his condition. Appellant failed to submit appropriate medical documentation in response to OWCP's request. As there is no probative, rationalized medical evidence addressing how his claimed rib condition was caused or aggravated by the March 11, 2013 employment incident, he has not met his burden of proof.

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

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,¹¹ 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) submit relevant and pertinent new evidence not previously considered by OWCP.¹² 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.¹³ 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.¹⁴

ANALYSIS -- ISSUE 2

Appellant's January 3, 2014 request for reconsideration did not allege or demonstrate that OWCP erroneously applied or interpreted a specific point of law. Additionally, he did not advance a relevant legal argument not previously considered by OWCP or submit any pertinent new and relevant evidence with his reconsideration request. The Board finds that appellant is not entitled to a review of the merits of his claim based on any of the three requirements under section 10.606(b)(3).

¹⁰ See *D.U.*, Docket No. 10-144 (issued July 27, 2010); *D.I.*, 59 ECAB 158 (2007); *Robert Broome*, 55 ECAB 339 (2004); *Anna C. Leanza*, 48 ECAB 115 (1996).

¹¹ 5 U.S.C. §§ 8101-8193. Section 8128(a) of FECA provides that the Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application.

¹² 20 C.F.R. § 10.606(b)(3). See *J.M.*, Docket No. 09-218 (issued July 24, 2009); *Susan A. Filkins*, 57 ECAB 630 (2006).

¹³ 20 C.F.R. § 10.607(a). See *S.J.*, Docket No. 08-2048 (issued July 9, 2009); *Robert G. Burns*, 57 ECAB 657 (2006).

¹⁴ 20 C.F.R. § 10.608(b). See *Y.S.*, Docket No. 08-440 (issued March 16, 2009); *Tina M. Parrelli-Ball*, 57 ECAB 598 (2006).

Along with his reconsideration request, appellant submitted a new December 19, 2013 note from Dr. Pate. Dr. Pate noted the employment incident of March 11, 2013 and that appellant had rib pain following the incident and addressed causal relationship in a manner similar to her previously considered March 22, 2013 report. The Board finds that this evidence is cumulative and does not offer any relevant or pertinent new evidence on the relevant issue in this claim, causal relationship. OWCP already accepted the employment incident and previously found that Dr. Pate's prior opinion failed to diagnose a medical condition causally related to the accepted March 11, 2013 incident. In the December 19, 2013 note, Dr. Pate related seeing appellant for rib pain without providing any diagnosis. She also opined that he was injured at work on March 11, 2013 without any discussion as to how she arrived at this conclusion beyond describing how the incident occurred. As such, this letter is also repetitive of Dr. Pate's previously submitted report and fails to diagnose a definitive medical condition due to the accepted March 11, 2013 employment incident.

Appellant did not provide any relevant and pertinent new medical evidence supporting how the specific employment incident on March 11, 2013 caused a diagnosed medical condition. He also did not otherwise show that OWCP erroneously applied or interpreted a specific point of law or advance a relevant legal argument not previously considered by OWCP.

The Board finds that OWCP properly determined that appellant was not entitled to further review of the merits of his claim pursuant to any of the three requirements under section 10.606(b)(3) and properly denied his January 3, 2014 request for reconsideration.¹⁵

CONCLUSION

The Board finds that appellant did not meet his burden of proof in establishing that he sustained a traumatic injury in the performance of duty on March 11, 2013, as alleged. The Board further finds that OWCP properly refused to reopen appellant's case for further review of the merits pursuant to 5 U.S.C. § 8128(a).

¹⁵ *M.E.*, 58 ECAB 694 (2007); *Susan A. Filkins*, 57 ECAB 630 (2006); *Candace A. Karkoff*, 56 ECAB 622 (2005) (when an application for reconsideration 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).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated January 21, 2014 and December 3, 2013 are affirmed.

Issued: September 24, 2014
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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