

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

D.N., Appellant)

and)

U.S. POSTAL SERVICE, SYRACUSE POSTAL)
& DISTRIBUTION CENTER, Syracuse, NY,)
Employer)

**Docket No. 15-0987
Issued: August 3, 2015**

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 H. FITZGERALD, Deputy Chief Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 30, 2015 appellant filed a timely appeal from a November 19, 2014 merit decision and a January 5, 2015 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over merits of this case.

ISSUES

The issues are: (1) whether appellant has met his burden of proof to establish that he sustained an injury on September 24, 2014; and (2) whether OWCP properly denied appellant's request for further merit review of his claim pursuant to 5 U.S.C. § 8128(a).

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On September 25, 2014 appellant, then a 51-year-old mail processing equipment mechanic, filed a traumatic injury claim alleging that on September 24, 2014 he injured his right hand and wrist when he tripped while retrieving a package from a conveyor when his knee got caught on the frame. No evidence was submitted with his claim.

By letter dated October 10, 2014, OWCP advised appellant of the deficiencies in his claim and provided him 30 days in which to submit additional factual and medical evidence, including a medical report which provided a diagnosis of a medical condition which was sustained as a result of the claimed events.

In response to the development letter, OWCP received appellant's November 20, 2014 statement and a copy of a September 25, 2014 x-ray report of the right wrist.

In a September 25, 2014 report, Dr. Shelly L. Hearn, a Board-certified family practitioner, noted that appellant hit the dorsum of his right wrist on the conveyor belt at work while inspecting it. She noted that he had a history of carpal tunnel syndrome and was wearing a splint. X-rays of the right wrist were negative. An assessment of wrist injury was provided.

By decision dated November 19, 2014, OWCP denied the claim on the basis that fact of injury was not established. Specifically, it found that appellant did not submit any medical evidence containing a medical diagnosis in connection with the injury and/or event.

By letter dated November 27, 2014, received by OWCP on December 1, 2014, appellant requested reconsideration. Evidence received in support of the reconsideration request included a December 1, 2014 letter from the employing establishment instructing appellant to submit bills to his personal health insurance and duplicate copies of the September 25, 2014 right wrist x-ray report and September 25, 2014 medical report of Dr. Hearn.

By decision dated January 5, 2015, OWCP denied appellant's request for reconsideration without merit review.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA 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 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

² C.S., Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

³ *S.P.*, 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

OWCP regulations, at 20 C.F.R. § 10.5(ee) define a traumatic injury as a condition of the body caused by a specific event or incident or series of events or incidents within a single workday or shift.⁴ To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident at the time, place, and in the manner alleged. Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.⁵

Rationalized medical opinion evidence is generally required to establish causal relationship. The opinion of the physician must be based on a complete factual and medical background, 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 alleged that he hit his right wrist and hand during the performance of his duties on September 24, 2014. The evidence supports that the claimed incident occurred. Therefore, the Board finds that the first component of fact of injury is established. However, the medical evidence is insufficient to establish a medical diagnosis in connection with the accepted September 24, 2014 employment incident.

In her September 25, 2014 report, Dr. Hearn provided a history of preexisting carpal tunnel syndrome and an assessment of wrist injury. However, an injury is not a valid diagnosis of a medical condition and, in and of itself, cannot support compensation benefits under FECA.⁷ Without a valid medical diagnosis of a current medical condition linked to the accepted incident, the medical component of fact of injury cannot be met. Thus, this report is insufficient to establish the medical component of fact of injury.⁸

The September 25, 2014 x-ray report is also insufficient to establish appellant's claim as diagnostic reports fail to provide a rationalized opinion regarding the causal relationship between the diagnosed conditions, if any, and the accepted employment incident.⁹ Thus, this is insufficient to establish appellant's claim.

⁴ 20 C.F.R. § 10.5(ee); *Ellen L. Noble*, 55 ECAB 530 (2004).

⁵ *T.H.*, 59 ECAB 388 (2008).

⁶ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁷ 20 C.F.R. § 10.501(a)(3).

⁸ *See Elaine Pendleton*, 40 ECAB 1143 (1989).

⁹ *K.W.*, 59 ECAB 271 (2007); *A.D.*, 58 ECAB 149 (2006); *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Michael E. Smith*, 50 ECAB 313 (1999).

The Board finds that the evidence of record does not establish a medical diagnosis in connection with appellant's September 24, 2014 employment incident. Consequently, appellant failed to establish fact of injury.

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,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

The issue on reconsideration is whether appellant has established the medical component of fact of injury. Appellant's request for reconsideration neither alleged nor demonstrated that OWCP erroneously applied or interpreted a specific point of law. Consequently, appellant was not entitled to a review of the merits based on the first and second above-noted requirements under 20 C.F.R. § 10.606(b)(2).

The Board also finds that appellant did not provide any relevant or pertinent new evidence warranting the reopening of the case on the merits. On reconsideration, appellant submitted duplicative copies of the September 25, 2014 right wrist x-ray report and Dr. Hearn's September 25, 2014 report. Evidence which repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.¹⁴ While the December 1, 2014 letter from the employing establishment instructing appellant to submit bills to his personal health insurance is new, it is not relevant to the fact of injury issue in his claim.¹⁵

¹⁰ Under section 8128 of FECA, the Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application. 5 U.S.C. § 8128(a).

¹¹ 20 C.F.R. § 10.606(b)(2).

¹² *Id.* at § 10.607(a).

¹³ *Id.* at § 10.608(b).

¹⁴ *See J.P.*, 58 ECAB 289 (2007); *Richard Yadron*, 57 ECAB 207 (2005).

¹⁵ *Ronald A. Eldridge*, 53 ECAB 218 (2001); *Alan G. Williams*, 52 ECAB 180 (2000) (evidence which does not address the particular issue involved does not constitute a basis for reopening a case for a merit review).

The Board finds that appellant did not show that OWCP erroneously interpreted a specific point of law, advance a relevant legal argument not previously considered, or submit relevant and pertinent new evidence not previously considered by OWCP. Appellant did not meet any of the regulatory requirements and OWCP properly declined to reopen his claim for further merit review.¹⁶

On appeal, appellant enclosed duplicative copies of the evidence of record and stated that he believed that all the information showed the cause of the accident, timely reporting, and follow-up medical attention. As noted, OWCP denied his claim as the medical component of fact of injury was not established. Appellant has the burden of proof to submit medical evidence that contains a medical diagnosis in relation to the injury and/or events of September 24, 2014. He must also submit medical evidence that establishes causal relationship. Appellant has not met his burden in this case.

CONCLUSION

The Board finds that appellant has not established that he sustained an injury in the performance of duty on September 24, 2014, as alleged. Furthermore, the Board finds that OWCP properly denied appellant's request for merit review under 5 U.S.C. § 8128(a).

¹⁶ *M.E.*, 58 ECAB 694 (2007); *Susan A. Filkins*, 57 ECAB 630 (2006); *A.K.*, Docket No. 09-2032 (issued August 3, 2010) (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 January 5, 2015 and November 19, 2014 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: August 3, 2015
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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