

FACTUAL HISTORY

On April 8, 2015 appellant, then a 66-year-old housekeeping aid, filed an occupational disease claim (Form CA-2) alleging that on January 28, 2015 she first realized that her right long finger flexor tendon sheath tenosynovitis, right long finger extensor tendon subluxation and triggering, joint hand pain, and right knee contusion were the result of her filling linen carts on a daily basis.

By correspondence dated April 17, 2015 OWCP informed appellant that the evidence of record was insufficient to establish her claim. Appellant was advised as to the medical and factual evidence required and was afforded 30 days to provide the requested information.

An unattributed October 8, 2014 clinic chart note² documents appellant's chief complaints as right knee, hand, and wrist pain. Diagnoses included right long finger extensor tendon subluxation.

In an October 15, 2015 clinic note, Dr. Ronald Hillyer, a treating Board-certified orthopedic surgeon, diagnosed subluxing extensor tendon with possible carpal tunnel syndrome. A physical examination revealed positive Tinel's and Phalen's signs and right long finger subluxing extensor tendon into the ulnar canal. He reported that appellant has had symptoms since a 1997 work injury.

In an October 29, 2014 clinic note, Dr. Hillyer diagnosed right long finger extensor tendon subluxation and trigger of right long finger flexor tendon sheath tenosynovitis. He reviewed a nerve conduction study performed that day and reported no obstruction of the ulnar or median nerves at the wrist or elbow.

Dr. Hillyer, in a December 3, 2014 clinic chart note, reported appellant was seen for persistent right hand problems. He reported that appellant has had right hand difficulties since 2002 and that she sustained a knee injury in 1997. Dr. Hillyer noted appellant was first seen eight years after her 1997 injury in 2005 and that as a result of the injury she developed traumatic arthritis. Next, he reported appellant also had long finger extensor tendon subluxation and some flexor tendon tenosynovitis. Dr. Hillyer concluded that appellant has had persistent problems since her initial employment injury which have worsened over time and resulted in traumatic arthritis. He noted that in 2006 he requested OWCP to reopen appellant's claim due to her difficulties at that time.

In a letter dated December 3, 2014, Dr. Hillyer noted that since 1997 appellant has had difficulty with her right hand. At the time of his first examination in 2005, arthritic changes were seen which he determined were traumatic and thus caused by her employment injury. Dr. Hillyer opined that appellant's condition had progressed to the point where she was having difficulty performing work tasks with her right hand. On January 28, 2015 he reported that she was seen for persistent right hand pain and some left hand changes. Dr. Hillyer noted that appellant continued to have metacarpophalangeal (MCP) right hand joint arthritis and right long finger extensor tendon subluxation, which he attributed to a 1997 injury. He reported that her

² There is only one page and no identification as to whether the report was authored by a physician.

right hand condition has been persistent and gotten worse over the years. A review of an x-ray interpretation revealed basilar joint area bone-on-bone deformity. Dr. Hillyer, in a visit noted dated January 28, 2015, reviewed an x-ray interpretation of the left hand and diagnosed bilateral hand osteoarthros, right ligament laxity, and left hand joint pain.

In a February 25, 2015 disability note, Dr. Hillyer diagnosed hand osteoarthritis and reported that appellant was unable to work.

In a February 25, 2015 report, Dr. Hillyer detailed appellant's treatment and noted a history of hypertension and depression. He observed that she was unable to keep her long finger straight. Dr. Hillyer diagnosed right hand joint pain and osteoarthros. In clinic chart notes dated February 25, 2015, he diagnosed right knee tenderness, left thumb basilar joint arthritis, and MCP right hand joint arthritis and right long finger extensor tendon subluxation.

In March 25, 2015 clinic chart note, Dr. Hillyer diagnosed right long finger subluxing extensor tendon at the MCP joint, left thumb basilar joint arthritis, and persistent right knee tenderness. A review of x-ray interpretations revealed right knee arthritic changes. With respect to work capability, Dr. Hillyer reported that appellant was very limited as to what work she was capable of performing. He, in a March 25, 2015 disability note, diagnosed hand osteoarthritis and joint pain and released appellant to light-duty work on March 30, 2015.

By decision dated May 20, 2015 OWCP denied the claim as it found appellant failed to establish fact of injury. It found the evidence submitted failed to establish that the events described by appellant occurred as alleged as she did not respond to the factual questions posed. OWCP also found that medical evidence of record failed to establish that the diagnosed condition was causally related to the event alleged by appellant.

In a form dated June 2, 2015 appellant requested reconsideration and resubmitted progress reports and letter for the period October 15, 2014 to May 28, 2015, releases to work with restrictions, and disability slips/work excuse notes from Dr. Hillyer. She also resubmitted a November 14, 2014 employee health record.

The only new evidence submitted by appellant was a May 28, 2015 report from Dr. Hillyer diagnosing right upper extremity and knee difficulty. Dr. Hillyer discussed impairment ratings and referenced a 1997 employment injury. In concluding, he opined that appellant's condition was due to the 1997 employment injury.

By decision dated June 12, 2015 OWCP denied reconsideration.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA³ 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 filed within the applicable time limitation; that an injury was sustained while in the performance of duty as alleged and that any

³ 5 U.S.C. § 8101 *et seq.*

disability and/or specific condition for which compensation is claimed are causally related to the employment injury.⁴ 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.⁵

To establish that an injury was sustained in the performance of duty in a claim for occupational disease, an employee must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.⁶

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.⁷ Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the compensable employment factors.⁸ The opinion of the physician must be based on a complete factual and medical background of the employee, 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 employee.⁹

ANALYSIS -- ISSUE 1

Appellant alleged that her right long finger flexor tendon sheath tenosynovitis, right long finger extensor tendon subluxation and triggering, joint hand pain, and right knee contusion were due to her employment duties. OWCP denied her claim finding that the evidence of record was insufficient to establish that she performed the duties alleged and the medical evidence was insufficient to establish a causal relationship between the diagnosed medical conditions and identified employment duties.

The Board finds that the factual evidence of record is insufficient to establish the work factors that caused or aggravated appellant's right long finger flexor tendon sheath tenosynovitis, right long finger extensor tendon subluxation, and triggering, joint hand pain, and right knee contusion.

⁴ *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

⁵ *S.P.*, 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁶ *D.U.*, Docket No. 10-144 (issued July 27, 2010); *R.H.*, 59 ECAB 382 (2008); *Roy L. Humphrey*, 57 ECAB 238 (2005); *Donald W. Wenzel*, 56 ECAB 390 (2005).

⁷ *Y.J.*, Docket No. 08-1167 (issued October 7, 2008); *A.D.*, 58 ECAB 149 (2006); *D'Wayne Avila*, 57 ECAB 642 (2006).

⁸ *J.J.*, Docket No. 09-27 (issued February 10, 2009); *Michael S. Mina*, 57 ECAB 379 (2006)

⁹ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

Appellant alleged in a Form CA-2 dated April 8, 2015 that her right long finger flexor tendon sheath tenosynovitis, right long finger extensor tendon subluxation and triggering, joint hand pain, and right knee contusion were sustained while in the performance of duty. OWCP informed her in an April 17, 2014 letter that additional medical and factual evidence was needed to establish her occupational disease claim and afforded her opportunities to submit statements clarifying the job activities that resulted in the injuries, as well as a comprehensive medical report containing a diagnosis and an explanation as to how her diagnosed conditions were caused by the identified employment activities. Appellant did not respond with any additional factual evidence. As part of her burden of proof, appellant must provide a detailed description of the employment factors or conditions that she believes caused or adversely affected the condition or conditions for which compensation is claimed.¹⁰ The Board finds, therefore, that she has not established the alleged employment activities. Appellant failed to meet her burden of proof.¹¹

On appeal appellant argues that medical evidence and documents submitted establish her claim. OWCP denied her claim as the factual evidence was insufficient to establish fact of injury. It requested additional medical and factual evidence from appellant describing her work duties which she believed caused or contributed to the diagnosed conditions. Appellant did not provide a statement or detailed description of the duties she performed and attributed as causing her condition was provided. As discussed above, OWCP properly denied her claim as she failed to supply the factual evidence requested regarding her work duties.

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,¹² 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.¹³ 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.¹⁴ When a claimant fails to meet one of the above standards, OWCP

¹⁰ C.C., Docket No. 14-0939 (issued July 6, 2015); *Penelope C. Owens*, 54 ECAB 684 (2003).

¹¹ Since appellant did not establish the factual component of fact of injury, it is not necessary for the Board to consider the medical evidence with respect to causal relationship. C.C., *supra* note 10; *D.F.*, Docket No. 10-1774 (issued April 18, 2011).

¹² 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.

¹³ 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).

¹⁴ 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).

will deny the application for reconsideration without reopening the case for review on the merits.¹⁵

ANALYSIS -- ISSUE 2

The Board finds that OWCP did not abuse its discretion in denying appellant's request for reconsideration.

Appellant's June 2, 2015 request for reconsideration neither alleged, nor demonstrated that OWCP erroneously applied or interpreted a specific point of law. She did not identify a specific point of law or show that it was erroneously applied or interpreted. Additionally, appellant did not advance a relevant legal argument not previously considered by OWCP. Consequently, appellant is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(3).¹⁶

The Board further finds that appellant did not submit relevant or pertinent new evidence not previously considered by OWCP. Appellant submitted a new report from Dr. Hillyer dated May 28, 2015 attributing her right upper extremity and knee conditions to a 1997 employment injury and resubmitted medical evidence from October 15, 2014 to March 25, 2015 from Dr. Hillyer and a November 14, 2014 employee health record. The submitted medical evidence is irrelevant as the underlying issue is factual in nature; whether appellant established employment factors which she claimed caused right long finger flexor tendon sheath tenosynovitis, right long finger extensor tendon subluxation and triggering, joint hand pain, and right knee contusion.¹⁷ The Board, therefore, finds that Dr. Hillyer's May 28, 2014 report is insufficient to reopen appellant's claim for a merit review.

Appellant resubmitted progress reports and letters for the period October 15, 2014 to May 28, 2015, releases to work with restrictions, and disability slips/work excuse notes from Dr. Hillyer and a November 14, 2014 employee health record. This evidence was previously of record and considered by OWCP in its May 20, 2015 decision. Evidence which is duplicative or cumulative in nature is insufficient to warrant reopening a claim for merit review.¹⁸ The Board finds, therefore, that this evidence is insufficient to reopen appellant's claim for a merit review.

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

¹⁵ 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).

¹⁶ 20 C.F.R. § 10.606(b)(3).

¹⁷ *R.M.*, 59 ECAB 690 (2008); *Betty A. Butler*, 56 ECAB 545 (2005).

¹⁸ *L.H.*, 59 ECAB 253 (2007); *Denis M. Dupor*, 51 ECAB 482 (2000).

CONCLUSION

The Board finds that appellant failed to establish that she sustained an injury due to factors of her federal employment. The Board further finds that OWCP properly denied appellant's request for further merit review of his claim pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated June 12 and May 20, 2015 are affirmed.

Issued: December 24, 2015
Washington, DC

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

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board