

On appeal appellant contends that the history of his injury is important to establishing his claim.

FACTUAL HISTORY

On April 30, 2014 appellant, then a 60-year-old facilities maintenance worker, filed an occupational disease claim alleging that on February 1, 2013 he first became aware of his trigger finger condition being aggravated by factors of his federal employment. However, it was not until September 1, 2013 that he realized that the aggravation was due to his using a large hammer in the performance of duty. Appellant stated that he had been instructed to use the larger hammer instead of a smaller hammer. In support of his claim, he submitted details regarding his work history.

In correspondence dated May 21, 2014, OWCP informed appellant that the evidence of record was insufficient to establish his claim. It advised him as to the type of medical and factual evidence to submit and gave him 30 days to provide this information.

In response to OWCP's request, appellant submitted medical evidence. In progress notes dated May 13, 2013, Dr. Gary Pape, an examining Board-certified internist, diagnosed right fourth trigger finger and hypertension. He related that appellant was going to be examined by a Bonneville Power administration physician. Dr. Pape reported some triggering of the fourth finger on the right hand.

Dr. Edward Kim, an examining physician, reported on May 22, 2013 that appellant was seen for right hand pain and reported the results of a nerve conduction study. He reported an essentially normal study.

In progress notes dated June 20, 2013, Dr. Pape diagnosed right fourth trigger finger. A physical examination showed "triggering with the right fourth finger" and that appellant was "able to straighten the finger without using his other hand but it obviously catches."

In a July 20, 2014 report, Dr. Craig Newland, an examining Board-certified orthopedic surgeon with a subspecialty in hand surgery, diagnosed right trigger finger. Under social history he noted that appellant's job duties require significant hand use and using hammers as he works in facilities maintenance. A review of x-ray interpretations revealed right hand minimal osteoarthritic change in the distal interphalangeal.

By decision dated August 6, 2014, OWCP denied appellant's claim on the grounds that the medical evidence was insufficient to establish that his right trigger finger was caused or aggravated by the identified work factor.

On August 18, 2014 OWCP received a July 22, 2014 report from Dr. Niket Shrivastava, an examining Board-certified orthopedic surgeon with a subspecialty in hand surgery, diagnosing right trigger ring finger. A physical examination of the right hand revealed mild swelling, trigger finger, normal skin, no ecchymosis, no contracture, a nodule, and normal radial pulse. Right finger extension and flexion was 3/5. Dr. Shrivastava reported bilateral intact sensation and normal distal sensation and reflexes, but provided no opinion as to the cause of the diagnosed trigger finger.

On September 3, 2014 appellant requested reconsideration.

By decision dated October 9, 2014, 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 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

OWCP does not dispute that appellant used a larger hammer in the performance of his duties as alleged. Appellant has thus met his burden to establish that he experienced a specific

³ 5 U.S.C. § 8101 *et seq.*

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, 352 (1989).

event, incident, or exposure occurring at the time, place, and in the manner alleged. The question that remains is whether his employment duties caused or aggravated his right fourth trigger finger.

In support of his claim, appellant submitted medical evidence from Drs. Pape, Kim, and Newland. For the reasons set forth below, the Board finds that none of these physicians provided a report sufficient to support appellant's claim.

On July 20, 2014 Dr. Newland diagnosed right trigger finger. He noted that appellant's job duties require significant hand use and using hammers as he works in facilities maintenance. However, Dr. Newland offered no opinion as the cause of appellant's right trigger finger condition. The Board has held that medical evidence offering no opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.¹⁰ Thus, Dr. Newland's report is insufficient to establish appellant's right trigger finger condition is employment related.

Progress notes dated May 13 and June 20, 2013 from Dr. Pape diagnosed right fourth trigger finger and a May 20, 2013 progress note by Dr. Kim noted that appellant was seen for right hand pain. However, neither Dr. Pape nor Dr. Kim offered any opinion regarding the cause of appellant's condition or whether and how appellant's employment duties aggravated a preexisting condition. The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.¹¹ Furthermore, neither physician provided a complete history of appellant's employment duties. Medical opinions based on an incomplete or inaccurate history are of diminished probative value.¹² Thus, the reports by Drs. Pape and Kim are insufficient to establish appellant's claim.

The Board has held that the fact that a condition manifests itself during a period of employment does not raise an inference of causal relation.¹³ An award of compensation may not be based on surmise, conjecture, or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that his condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship.¹⁴

OWCP advised appellant that it was his responsibility to provide a comprehensive medical report which described his symptoms, test results, diagnosis, treatment and the

¹⁰ *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *A.D.*, *supra* note 7; *Jaja K. Asaramo*, 55 ECAB 200 (2004).

¹¹ *Id.*

¹² *L.G.*, Docket No. 09-1692 (issued August 11, 2010); *M.W.*, 57 ECAB 710 (2006); *James R. Taylor*, 56 ECAB 537 (2005).

¹³ *L.D.*, Docket No. 09-1503 (issued April 15, 2010); *D.I.*, 59 ECAB 158 (2007); *Daniel O. Vasquez*, 57 ECAB 559 (2006).

¹⁴ *See D.U.*, *supra* note 6; *D.I.*, *supra* note 13; *Robert Broome*, 55 ECAB 339 (2004); *Anna C. Leanza*, 48 ECAB 115 (1996).

physician's opinion with medical explanation of 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 right trigger finger condition was caused or aggravated by the identified employment duties, he has not met his burden of proof.

On appeal appellant contends that the history of his right trigger finger injury is important including his being bullied into using a larger hammer instead of a small hammer. He was advised as to the medical and factual evidence required to support his claim. As discussed above, none of the medical reports submitted by appellant contain an opinion or explanation as to how his right trigger finger was caused or aggravated by the identified employment factors. The Board will therefore affirm OWCP's August 6, 2014 decision.

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,¹⁵ 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) constitute relevant and pertinent new evidence not previously considered by OWCP.¹⁶ 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.¹⁷ 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.¹⁸

ANALYSIS -- ISSUE 2

On September 3, 2014 appellant disagreed with OWCP's August 6, 2014 decision denying his claim for an injury in the performance of duty and requested reconsideration. The relevant issue on reconsideration is whether he submitted sufficient medical evidence to establish his claim for employment-related right trigger finger.

In his September 3, 2014 request for reconsideration, appellant did not show that OWCP erroneously applied or interpreted a specific point of law. He did not identify a specific point of

¹⁵ 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.

¹⁶ 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).

¹⁷ *Id.* at § 10.607(a). See *S.J.*, Docket No. 08-2048 (issued July 9, 2009); *Robert G. Burns*, 57 ECAB 657 (2006).

¹⁸ *Id.* at § 10.608(b). See *Y.S.*, Docket No. 08-440 (issued March 16, 2009); *Tina M. Parrelli-Ball*, 57 ECAB 598 (2006).

law or show that it was erroneously applied or interpreted. Appellant did not advance a new and relevant legal argument not previously considered by OWCP.

A claimant may be entitled to a merit review by submitting pertinent new and relevant evidence or new argument, but appellant did not submit any pertinent new and relevant evidence or argument in this case. Appellant submitted new evidence with his request for reconsideration which was an August 18, 2014 report by Dr. Shrivastava. The Board notes that submission of Dr. Shrivastava's report does not require reopening appellant's case for merit review. Dr. Shrivastava diagnosed right trigger finger, but offered no opinion as to the cause of the condition or whether appellant's employment duties aggravated this condition. OWCP denied his claim finding that none of the medical evidence contained rationale explaining how the diagnosed right trigger finger condition was caused or aggravated by appellant's employment, specifically the use of a larger hammer instead of a small hammer. Thus, Dr. Shrivastava's report is not relevant or pertinent to the underlying issue in this case, *i.e.*, causal relationship, as he provided no opinion nor explanation as to how the diagnosed right trigger finger had been caused or aggravated by the identified employment factor and, thus, are not sufficient to require OWCP to reopen his claim for consideration of the merits.¹⁹

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.

CONCLUSION

The Board finds that appellant failed to establish that his right trigger finger condition was caused or aggravated by the identified employment factor. The Board further finds that OWCP properly denied his request for further merit review of his claim pursuant to 5 U.S.C. § 8128(a).

¹⁹ See *James W. Scott*, 55 ECAB 606 (2004).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated October 9 and August 6, 2014 are affirmed.

Issued: March 4, 2015
Washington, DC

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

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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