United States Department of Labor
Employees' Compensation Appeals Board

J.B., Appellant	)	
and	)	**Docket No. 15-0201**
	)	**Issued: October 6, 2015**
U.S. POSTAL SERVICE, HIGH POINT POST OFFICE, High Point, NC, Employer	)	

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 November 5, 2015 appellant filed a timely appeal from a September 24, 2014 merit decision and an October 7, 2014 nonmerit decision of the Office of Workers' Compensation Programs (OWCP).[1] Pursuant to the Federal Employees' Compensation Act[2] (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 met his burden of proof to establish that he sustained an injury causally related to an October 28, 2013 employment incident; and (2) whether OWCP properly denied appellant's request to reopen his case for further review of the merits under 5 U.S.C. § 8128(a).

[1] Appellant timely requested an oral argument before the Board, pursuant to 20 C.F.R. § 501.5(b). After exercising its discretion, the Board denied his request on August 21, 2015 concluding that the arguments on appeal could adequately be addressed in a decision based on a review of the case record. *See Order Denying Request for Oral Argument,* Docket No. 15-0201 (issued August 21, 2015).

[2] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On November 18, 2013 appellant, then a 40-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on October 28, 2013 he injured his back and experienced pain radiating into his feet in the performance of duty. He did not stop work. On the reverse side of the claim form, appellant's supervisor related that she spoke with appellant on the "day in question" and he told her that a dog grabbed his shoe, but that he was "alright."

In a statement dated November 18, 2013, appellant reported that on October 28, 2013 a small dog approached while he was delivering mail. He backed up towards his truck and the dog bit his foot. Appellant jerked his leg away and twisted his back while trying to remove the dog from his foot. He telephoned Gracie Jackson, his supervisor, and reported the incident. Appellant's back began to hurt and when he returned to his workstation he informed Christine Cain, a supervisor, that he had back pain from the encounter with the dog. He did not complete a traumatic injury claim form because he thought he needed another form since he had a prior injury to the same area of the body.

In a subsequent statement dated November 18, 2013, appellant described his history of a spinal fracture at T12 on August 25, 1999 while at work. He eventually returned to his work duties, but continued to periodically experience back problems. Appellant related that lifting trays of mail and equipment caused back pain and additional damage. A few weeks earlier, he jerked up his right leg to remove his foot from a dog's mouth. Appellant experienced pain from his back down through his legs, but he believed that the pain would improve.

On November 18, 2013 Ms. Jackson noted that appellant returned to work after a week's absence and asked to file a claim. She noted that he maintained that he missed work the prior week due to his injury and asked for help to determine the date of his injury. Ms. Jackson wrote, "I did [not] recall the date of the incident because [appellant] was [not] claiming any kind of injury and I knew that no paperwork had been filed." She recalled that appellant told her that she needed to do something about the dog before he again delivered mail to that customer. Ms. Jackson indicated that he did not tell her that he injured his back and that Ms. Cain denied knowledge of the injury.

In a form report dated November 18, 2013, a nurse practitioner diagnosed lumbar strain and provided work restrictions. She checked "yes" that the history provided by appellant corresponded to that on the form of him twisting his back getting away from a dog.

By letter dated November 20, 2013, the employing establishment controverted the claim. It asserted that the medical evidence did not address causation, that appellant had "recently been reprimanded for absence abuse," and that he did not seek medical treatment from October 28 to November 18, 2013.

By letter dated November 25, 2013, OWCP requested that appellant submit additional factual and medical information in support of his claim, including a detailed report from his attending physician addressing the causal relationship between any diagnosed condition and the identified work incident. It further advised him that a nurse practitioner was not considered a

physician under FECA and that the evidence was currently insufficient to show that the October 28, 2013 incident occurred as alleged.

In an initial evaluation dated November 18, 2013, received by OWCP on December 3, 2013 Dr. Jennifer League-Sobon, who specializes in family medicine, evaluated appellant for back pain radiating into the left thigh. She obtained a history of him twisting his back while trying to pull his right lower leg away from a dog when seated in his vehicle. Dr. League-Sobon reviewed appellant's history of a T12 compression fracture 13 years earlier. She diagnosed a lumbar strain.

In a December 2, 2013 response to OWCP's request for additional information, appellant noted that he told Ms. Jackson that a dog bit him on October 28, 2013. He also advised Ms. Cain at the end of the day of the incident and that his back hurt. Ms. Cain recommended that appellant file a claim, but he told her that he believed that his back would improve. On October 31, 2013 Ms. Jackson disciplined him for leave usage and he told her that his back continued to hurt after the October 28, 2013 incident. Appellant was not sure of the date of injury because he planned to file a notice of recurrence of disability rather than a claim for a new traumatic injury due to his prior fracture at T12.

On December 12, 2013 appellant advised that the date of injury was October 26, 2013, not October 28, 2013. In a letter dated December 20, 2013, OWCP requested that the employing establishment confirm the date of the alleged injury. In a response received January 2, 2014, the employing establishment verified that the incident occurred on October 28, 2013.

By decision dated January 3, 2014, OWCP denied appellant's claim after finding that the evidence on record was insufficient to establish that the October 28, 2013 employment incident occurred as alleged. It noted that he had not provided proof of the date of injury and did not provide a statement from Ms. Cain, as requested, confirming that he informed her of the October 28, 2013 incident.

On January 9, 2014 appellant requested an oral hearing before an OWCP hearing representative. In an accompanying statement, he described his injury as occurring on October 26, 2013 when he pulled up his leg and twisted his back while trying to prevent a dog from biting his shoe. Appellant telephoned Ms. Jackson and told her of the incident. He noted that he also told Ms. Cain of the incident, but believed that it would improve so did not complete a claim form. Appellant's back worsened so he asked to complete a claim for a recurrence of disability because he believed that he would not have injured his back if not for the 1999 fracture. Management advised him to file a claim for a new traumatic injury. Appellant stated, "I wasen't prepared to have to remember the exact dates of the dog bite and asked Ms. Jackson if I had worked on Oct 28, 13 and she said yes, which was a false truth. It had been Oct 26." Ms. Cain informed him that she did not remember him mentioning the dog bite.

In a report dated March 17, 2014, Dr. John Begovich, an osteopath, noted that appellant experienced a T12 compression deformity as the result of a 1999 employment injury. He indicated that following appellant's 1999 injury he had occasional recurrences of back pain. Dr. Begovich noted, "[Appellant's] most recent recurrence of his back injury was in October 2013. He denies any specific trauma, but states that on that particular date of

October [2013] he began to experience an increase in pain after doing his typical work-related twisting and moving and bending. It started to go from [appellant's] low back down to his left leg." He diagnosed lumbar disc disease with spondylosis and radiculopathy of the left leg. Dr. Begovich opined that appellant should continue working light duty.

At the telephone hearing, held on August 11, 2014 appellant described his 1999 back fracture when he stepped in a fence post hole while delivering mail. Subsequent to the 1999 injury, he filed two notices of recurrences of disability for continued back problems. On October 28, 2013 appellant walked to a delivery point to leave mail at a place where he had previously experienced problems with a small dog. He returned to his vehicle, but before he was inside the dog bit his shoe. Appellant jerked his leg back and felt "something strain and pull" in his back. The hearing representative advised him to submit medical evidence addressing the causal relationship between any diagnosed condition to the October 28, 2013 incident.

In a statement dated September 5, 2014, the employing establishment provided a response from Ms. Jackson to appellant's account of the October 28, 2013 incident. Ms. Jackson reported, "On the day in question [appellant] called and stated that the dog had come after him and tore his shoe all to hell. I asked if he was ok and if I needed to do anything." Appellant responded that he was fine. When he returned to his workstation there was "barely a nick, not even a hole on his shoe." Appellant did not complain of a back injury. At a disciplinary investigation he told Ms. Jackson that his back felt better after purchasing "a couple of new pillows." Ms. Jackson noted that she tried to contact the customer who owned the dog on several occasions. She reported that appellant missed work for over a week after the incident, but did not mention that his back was hurting until he returned to work and requested a claim form.

By decision dated September 24, 2014, an OWCP hearing representative affirmed the January 3, 2014 decision. He found that the October 28, 2013 incident occurred as alleged, but that the medical evidence of record was insufficient to show that appellant sustained a diagnosed condition causally related to the accepted employment incident.

On October 1, 2014 appellant requested reconsideration. He related that Dr. Begovich had sent in a medical report to OWCP. Appellant resubmitted the March 17, 2014 report from Dr. Begovich.

In a decision dated October 7, 2014, OWCP denied appellant's request for reconsideration as he had not raised an argument or submitted factual or medical evidence sufficient to warrant reopening his case for further merit review under 5 U.S.C. § 8128(a).

On appeal appellant asserts that OWCP received evidence from Dr. Begovich supporting his claim.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA[3] 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

[3] *Id*.

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 determine whether an employee sustained a traumatic injury in the performance of duty, OWCP must determine whether "fact of injury" is established. First, an employee has the burden of demonstrating the occurrence of an injury at the time, place, and in the manner alleged, by a preponderance of the reliable, probative, and substantial evidence.[6] Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish a causal relationship between the employment incident and the alleged disability and/or condition for which compensation is claimed.[7] An employee may establish that the employment incident occurred as alleged, but fail to show that his or her disability and/or condition relates to the employment incident.[8]

Causal relationship is a medical issue and the evidence generally required to establish causal relationship is rationalized medical opinion evidence. 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.[9]

ANALYSIS -- ISSUE 1

Appellant alleged that he injured his back on October 28, 2013 when he jerked his right leg and twisted away from a dog that had bitten his shoe. OWCP accepted that the October 28, 2013 employment incident occurred as alleged. The issue, is whether the medical evidence establishes that he sustained an injury as a result of the October 28, 2013 employment incident.

In a form report dated November 18, 2013, a nurse practitioner diagnosed lumbar strain and checked "yes" that the history provided by appellant was consistent with the incident description that he twisted his back while averting a dog. A nurse practitioner, however, is not considered a "physician" under FECA and thus cannot render a medical opinion.[10] Thus, the report is of no probative value.

[4] *Alvin V. Gadd*, 57 ECAB 172 (2005); *Anthony P. Silva*, 55 ECAB 179 (2003).

[5] *See Elizabeth H. Kramm (Leonard O. Kramm)*, 57 ECAB 117 (2005); *Ellen L. Noble*, 55 ECAB 530 (2004).

[6] *David Apgar*, 57 ECAB 137 (2005); *Delphyne L. Glover*, 51 ECAB 146 (1999).

[7] *Gary J. Watling*, 52 ECAB 278 (2001); *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

[8] *Id.*

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

[10] *Vincent Holmes*, 53 ECAB 468 (2002).

On November 18, 2013 Dr. League-Sobon discussed appellant's history of a 1999 compression fracture at T12 and his current symptoms of back pain radiating into the left thigh. She noted a twisting injury to his back in October 2013 and diagnosed a lumbar strain. While Dr. League-Sobon obtained a history of the October 28, 2013 work incident, she did not specifically attribute the diagnosed lumbar strain due to that incident. Dr. League-Sobon's report is of little probative value on the issue of causal relationship.[11]

On March 17, 2014 Dr. Begovich found that appellant had a compression deformity at T12 due to a 1999 injury at work. He reviewed appellant's history of occasional back pain following the injury at T12, the latest episode in October 2013. Dr. Begovich determined that there was no "specific trauma" on that date, but appellant had increased pain after twisting and bending in his usual employment duties. He diagnosed lumbar disc disease with spondylosis and radiculopathy of the left leg. Dr. Begovich did not provide a history of the October 28, 2013 employment incident and also found that appellant's back pain began without an identifiable trauma or event. Appellant claimed that he sustained a work injury on October 28, 2013 as a result of twisting his back and jerking his leg escaping from a dog. The opinion of Dr. Begovich does not support appellant's claim.

On appeal appellant contends that he provided OWCP with evidence from Dr. Begovich supporting his claim. He has the burden to submit a well-reasoned medical report based on an accurate history explaining how the work incident caused a diagnosed medical condition.[12] As discussed, Dr. Begovich's report as found in the record is insufficient to meet appellant's burden of proof to show that he sustained a back condition that was caused or aggravated by the October 28, 2013 employment incident. Consequently, appellant has not established his claim for an employment-related traumatic 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 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,[13] 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.[14] To be entitled to a merit review of an OWCP decision denying or terminating a benefit, a claimant's application for review must be received within one year of the

[11] *See J.S.*, Docket No. 08-2283 (issued May 21, 2009).

[12] *See D.B.*, Docket No. 14-1815 (issued December 16, 2014).

[13] *Supra* note 2. Section 8128(a) of FECA provides that "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application."

[14] 20 C.F.R. § 10.606(b)(3).

date of that decision.[15] 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.[16]

The Board has held that the submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.[17] The Board also has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.[18]

ANALYSIS -- ISSUE 2

In its last merit decision dated September 24, 2014, OWCP denied appellant's claim. It found that the medical evidence was insufficient to establish that he sustained a back injury as a result of an October 28, 2013 employment incident. On October 1, 2014 appellant requested reconsideration of the September 24, 2014 decision. His request is timely. The question for determination is whether appellant's request meets at least one of the three standards for obtaining merit review.

In his reconsideration request, appellant did not show that OWCP erroneously applied or interpreted a specific point of law. He did not identify any legal error or raise any new and relevant legal argument regarding OWCP's analysis of the medical evidence. Appellant also did not submit pertinent new and relevant evidence in support of his claim. He resubmitted Dr. Begovich's March 17, 2014 report. Evidence which repeats or duplicates evidence already in the case record, however, has no evidentiary value and does not constitute a basis for reopening a case.[19]

As appellant's reconsideration request did not meet any of the standards for reopening his case, the Board finds that OWCP properly denied his request for further merit review under 5 U.S.C. § 8128(a).

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he sustained an injury causally related to an October 28, 2013 employment incident. The Board further finds that OWCP properly denied his request to reopen his case for further review of the merits under 5 U.S.C. § 8128(a).

[15] *Id*. at § 10.607(a).

[16] *Id*. at § 10.608(b).

[17] *F.R.*, 58 ECAB 607 (2007); *Arlesa Gibbs*, 53 ECAB 204 (2001).

[18] *P.C.*, 58 ECAB 405 (2007); *Ronald A. Eldridge*, 53 ECAB 218 (2001); *Alan G. Williams*, 52 ECAB 180 (2000).

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

ORDER

IT IS HEREBY ORDERED THAT the October 7 and September 24, 2014 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: October 6, 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