

FACTUAL HISTORY

On September 7, 2014 appellant, then a 51-year-old customs officer, filed a traumatic injury claim (Form CA-1), alleging that on September 7, 2014 he injured his right forearm during a secondary vehicle inspection. He contended that, while reaching into the bed of a pickup truck, “something sprang” on his forearm causing pain. Appellant did not stop work.

The employing establishment issued a Form CA-16 on September 12, 2014 to provide necessary medical treatment. The attending physician’s side of the form report was undated. Brad Schmeling, a physician assistant, diagnosed muscle strain and checked a box “yes” that the condition was caused or aggravated by appellant’s employment. Mr. Schmeling related that appellant developed pain while moving a tire in the back of a pickup truck. He further noted that x-rays of the right elbow were negative for fracture and that appellant could return to light duty immediately.

Appellant was seen by Dr. Walter Doerfler, a Board-certified family practitioner. In a report of September 12, 2014, he was discharged with instructions for care of a ligamentous strain and muscle strain and was provided work restrictions through September 16, 2014.

A September 16, 2014 referral form from Heather Stevens, a nurse practitioner, diagnosed appellant with epicondylitis and referred him for physical therapy. The record contains several reports from a physical therapist documenting appellant’s treatment.

In a December 10, 2014 letter, OWCP informed appellant that the evidence of record did not establish his claim. It requested that he provide a medical report with a physician’s explanation of how employment caused or aggravated a medical condition. OWCP specified that medical evidence must be submitted by a qualified physician, and that nurse practitioners and physician assistants were not considered physicians under FECA.

On January 12, 2015 OWCP denied appellant’s claim finding that appellant had failed to provide a medical report containing a physician’s opinion, supported by a medical explanation, as to how work factors caused or aggravated a diagnosed condition.

Appellant requested reconsideration on February 6, 2015. In a statement, he maintained that he suffered a work-related injury on September 7, 2014.

OWCP received a physical therapist reports, dated September 23, October 3, 27, and 29, and November 5, 2014. It also received documents previously of record.

On March 9, 2015 OWCP denied appellant’s request for reconsideration finding that the evidence was insufficient to warrant merit review.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking compensation under FECA must establish the essential elements of his or her claim by the weight of reliable, probative, and substantial evidence,³ including that he

³ *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 57 (1968).

or she is an employee within the meaning of FECA and that he or she filed his or her claim within the applicable time limitation.⁴ The employee must also establish that he sustained an injury in the performance of duty as alleged and that his disability for work, if any, was causally related to the employment injury.⁵

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 evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.⁶

Causal relationship is a medical issue and the evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion must include a physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. 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.⁷

ANALYSIS -- ISSUE 1

OWCP accepted that appellant reached into a truck to move a tire on September 7, 2014. The Board finds, however, that appellant has not offered medical evidence establishing that a diagnosed condition caused or aggravated his employment incident.

In a September 12, 2014 report, Dr. Doerfler discharged appellant with care instructions for ligamentous strain and muscle strain. However, he did not provide any opinion on the cause of appellant's condition. Medical evidence that does not provide any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.⁸

⁴ *R.C.*, 59 ECAB 427 (2008).

⁵ *Id.*; *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁶ *T.H.*, 59 ECAB 388 (2008).

⁷ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁸ *Jaja K. Asaramo*, 55 ECAB 200 (2004).

Appellant also submitted evidence from a nurse practitioner, physical therapist, and physician assistant. This evidence is insufficient to establish appellant's claim as the persons completing the reports do not qualify as physicians under FECA.⁹

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, OWCP 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.¹⁰ Where the request for reconsideration fails to meet at least one of these standards, OWCP will deny the application for reconsideration without reopening the case for review of the merits.¹¹

ANALYSIS -- ISSUE 2

OWCP denied appellant's traumatic injury claim, finding that the medical evidence did not establish a diagnosed condition causally related to his employment. Appellant requested reconsideration and on March 9, 2015 OWCP denied appellant's reconsideration request.

The Board finds that OWCP correctly denied appellant's reconsideration request. In support of his request, appellant submitted that he had suffered a work-related injury on September 7, 2014. He did not, however, advance a relevant legal argument not previously considered, or show that OWCP erroneously applied or interpreted a specific point of law.

Appellant submitted several physical therapy reports which were previously of record. These reports are not medical evidence as they were prepared by a physical therapist and they do not constitute probative medical evidence.¹² Other documents submitted with the reconsideration request are not relevant because they were previously considered by OWCP.¹³

⁹ The term physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. 5 U.S.C. § 8101(2). *See L.B.*, Docket No. 13-1253 (issued September 18, 2013) (physicians assistants, physical therapists, and nurse practitioners do not qualify as physicians under FECA and, therefore, their medical reports do not qualify as probative medical evidence, unless such medical reports are countersigned by a physician).

¹⁰ 20 C.F.R. § 10.606(b)(3); *see J.M.*, Docket No. 09-218 (issued July 24, 2009).

¹¹ *Id.* at § 10.608(b); *see K.H.*, 59 ECAB 495, 499 (2008).

¹² *See supra* note 9.

¹³ *See J.A.*, Docket No. 14-1719 (issued December 5, 2014) (material which is duplicative of that already contained in the case record does not constitute a basis for reopening a case).

On appeal appellant maintains he submitted the proper documentation to OWCP. As explained, the evidence submitted by appellant is insufficient

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish a medical condition causally related to his employment. The Board also finds that OWCP properly denied appellant's request for reconsideration.

ORDER

IT IS HEREBY ORDERED THAT the March 9 and January 12, 2015 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: October 8, 2015
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board