

FACTUAL HISTORY

On October 6, 2014 appellant, then a 52-year-old physician, filed an occupational disease claim (Form CA-2) alleging that she sustained wrist and neck pain and numbness of the upper extremities as a result of her federal employment. She stated that she noted increasing pain in her wrists when she moved from one Veterans Health Administration facility to another. Appellant requested an ergonomic keyboard and headset as a result of this increasing pain and received a keyboard, headset, and mouse for her office. However, she only received a keyboard in the examination room. Appellant noted that she worked from 1.5 to 2 hours per night on her home laptop engaging in patient care. She stated that she had wrist pain since May 22, 2014 and even before that time. Appellant noted that she would sometimes have numbness in the right fourth and fifth digits while sleeping, and that both of her hands would go numb. She stated that she wore a right splint.

On December 9, 2014 the employing establishment noted that appellant's current case status was unreviewed. It requested that the case status be changed to "closed."

By letter dated December 29, 2014, OWCP requested that appellant submit additional factual and medical evidence in support of her claim. It noted that appellant had not submitted any medical evidence from a physician and asked that appellant respond to its inquiries. Appellant did not respond.

By decision dated January 29, 2015, OWCP denied appellant's claim. It noted that she had not submitted any evidence from a qualified physician containing a medical diagnosis in support of her claim. OWCP accepted that appellant was a federal civilian employee who filed a timely claim and that the employment factors occurred as alleged, and afforded appellant 30 days to submit additional evidence.

In a record of a telephone conversation dated February 11, 2015, appellant told an OWCP representative that she was never able to schedule an appointment for her condition and asked about her options. The representative told her that because her claim was not accepted as work related, she would have to be seen by a physician under her private insurance and that if she later obtained medical evidence she could file an appeal, but needed to choose an avenue of appeal that allowed her to submit additional evidence.

On February 21, 2015 appellant requested reconsideration of her claim. With her request for reconsideration, appellant submitted a narrative statement in which she stated that she had difficulty filing this claim and seeing a physician within the appropriate time frames. She noted that she would submit medical information after seeing her own physician.

By decision dated April 2, 2015, OWCP denied appellant's request for reconsideration. It noted that appellant had not submitted any new and relevant evidence to support reconsideration. OWCP stated that it had allowed 30 days for submission of additional medical evidence, as appellant had mentioned in her narrative statement of February 21, 2015. No additional medical evidence was not received.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA 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 or specific condition for which compensation is claimed is causally related to the employment injury.³ These are the essential elements of every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁴

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

ANALYSIS -- ISSUE 1

Appellant alleged that she sustained wrist and neck pain and numbness of the upper extremities as a result of duties of her federal employment. The Board finds that she did not submit sufficient medical evidence from a qualified physician to establish that a medical condition was diagnosed in connection with this incident.

OWCP requested that appellant submit medical evidence containing a diagnosis from a qualified physician by letter dated December 29, 2014 and afforded her 30 days to submit such evidence. Appellant did not submit any medical evidence from a qualified physician containing a diagnosis during this time period. While the Board notes that appellant herself is a physician, the evidence submitted in support of her claim is of a factual, rather than a medical, character and does not contain diagnoses of any condition or a statement of opinion on causal relationship. In the similar case of *D.G.*, Docket No. 12-644 (issued June 25, 2012), an appellant, who was also a physician for the Department of Veterans Affairs, submitted a claim for bilateral carpal tunnel syndrome and right medial nerve neuritis due to her repetitive work on a keyboard and mouse, but did not submit any medical evidence in support of her claim. The Board found that appellant had not met her burden of proof to establish that she sustained an employment-related injury.

As in *D.G.*, appellant, in the present case, is a physician claiming an occupational disease, but did not submit any medical evidence in support of her claim. It is appellant's burden to submit a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition. It is also her burden to submit medical

³ *Gary J. Watling*, 52 ECAB 278, 279 (2001); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁴ *Michael E. Smith*, 50 ECAB 313, 315 (1999).

evidence from a treating physician to establish a diagnosis of the disease or condition for which compensation is claimed and that the diagnosed condition is causally related to the implicated employment factors. The Board finds that appellant failed to submit any medical evidence to establish a firm medical diagnosis or the causal relationship between her claimed condition and factors of her federal employment. Although OWCP informed appellant of the deficiencies in the evidence, she did not submit sufficient factual and medical evidence to establish her claim. Appellant did not meet her burden of proof to establish that she sustained an employment-related injury.⁵

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), OWCP 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.⁶ Section 10.608(b) of OWCP's regulations provide that 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.⁷

The Board has found that evidence that repeats or duplicates evidence already in the case record has no evidentiary value.⁸ 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.⁹ While the reopening of a case may be predicated solely on a legal premise not previously considered, such reopening is not required where the legal contention does not have a reasonable color of validity.¹⁰

ANALYSIS -- ISSUE 2

OWCP issued a January 29, 2015 decision finding that appellant had not established an occupational disease related to factors of her federal employment. On February 21, 2015 appellant requested reconsideration of this decision.

⁵ See *Donald W. Wenzel*, 56 ECAB 390 (2005).

⁶ 20 C.F.R. § 10.606(b)(3); *D.K.*, 59 ECAB 141, 146 (2007).

⁷ *Id.* at § 10.608(b); see *K.H.*, 59 ECAB 495, 499 (2008).

⁸ See *Daniel Deparini*, 44 ECAB 657, 659 (1993).

⁹ *P.C.*, 58 ECAB 405, 412 (2007); *Ronald A. Eldridge*, 53 ECAB 218, 222 (2001); *Alan G. Williams*, 52 ECAB 180, 187 (2000).

¹⁰ *Vincent Holmes*, 53 ECAB 468, 472 (2002); *Robert P. Mitchell*, 52 ECAB 116, 119 (2000).

The issue presented on appeal is whether appellant met any of the requirements of 20 C.F.R. § 10.606(b)(3), requiring OWCP to reopen the case for review of the merits of her claim. In her February 21, 2015 request for reconsideration, appellant did not show that OWCP erroneously applied or interpreted a specific point of law, or advance a new and relevant legal argument not previously considered. Thus, she 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).

The underlying issue is whether appellant met her burden of proof to establish an occupational disease, and specifically whether she had submitted sufficient medical evidence to establish a diagnosis from a qualified physician. A claimant may be entitled to a merit review by submitting new and relevant evidence, but appellant did not submit any new and relevant evidence in this case. Appellant submitted a statement dated February 21, 2015 detailing her difficulties filing a claim and stated that she would submit more medical evidence once she had seen her own physicians under private insurance. This document, while not previously considered by OWCP, was irrelevant to the underlying issue of appellant's burden of proof to establish an occupational disease in the performance of duty. Appellant's claim was denied due to lack of sufficient medical evidence to establish a diagnosis from a qualified physician. As her statement did not contain a diagnosis from a qualified physician, it was irrelevant to the basis upon which her claim was denied.

The Board, therefore, finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(2). Appellant did not show that OWCP erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by OWCP, or constitute relevant and pertinent evidence not previously considered. Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she sustained wrist and neck pain and numbness of the upper extremities causally related to factors of her federal employment. The Board further finds that OWCP properly denied appellant's request for review of the merits of her 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 April 2 and January 29, 2015 are affirmed.

Issued: September 17, 2015
Washington, DC

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

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

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board