



OWCP properly refused to reopen appellant's case for further review on the merits pursuant to 5 U.S.C. § 8128(a).

On appeal, appellant contends that she has established that the injury occurred as a result of her employment.

### **FACTUAL HISTORY**

On December 2, 2014 appellant, then a 47-year-old carrier technician, filed an occupational disease claim (Form CA-2) alleging that she sustained a left thigh strain as a result of constant walking and ascending and descending stairs. In a note dated November 19, 2014, she stated that she was injured on November 15, 2014. Appellant indicated that she had completed her route and was returning to the station when she experienced excruciating pain in her left upper thigh. She noted that every time she walked up or down stairs, the pain would flare up again. The employing establishment controverted the claim.

In a December 5, 2014 note, a physician with an illegible signature indicated that appellant could work "in the station only" due to left groin injury.

By letter dated December 16, 2014, OWCP informed appellant of the additional information that was necessary to establish her claim. Appellant was afforded 30 days to submit the requested information. She did not file a timely response.

By decision dated January 16, 2015, OWCP denied appellant's claim as she failed to submit medical evidence establishing a diagnosed medical condition.

On March 16, 2015 appellant requested reconsideration of the January 16, 2015 decision. OWCP thereafter received additional medical evidence.

In a November 19, 2014 ultrasound of appellants left groin, Dr. Peter Berger, a Board-certified radiologist, found a small benign-appearing left inguinal lymph node, no evidence of soft tissue mass, and no definitive hernia.

In a January 6, 2015 report, Dr. Matthew T. Johnson, a physician Board-certified in family medicine, noted that appellant stated that on November 15, 2014 she "pulled a muscle in thigh" after finishing her walk for the employing establishment. He noted that she stated that the pain only returned with stairs, not walking. Dr. Johnson diagnosed muscle strain of left thigh and noted that appellant was already in physical therapy, but needed pain suppression and anti-inflammatory medication.

Appellant also submitted ongoing treatment notes from November 19, 2014 through February 11, 2015 by Dr. Joseph R. Mejia, a physician Board-certified in physical medicine and rehabilitation. She related that she injured her left groin on November 19, 2014 when exiting a vehicle while working for the employing establishment. Dr. Mejia diagnosed groin strain.

Appellant also submitted a January 5, 2015 duty status report by a physician with an illegible signature; work status reports dated December 5 and 30, 2014 and January 5, 2015 that also contained an illegible signature; and discharge instructions dated January 6, 2015 from the

University of Illinois Hospital and Health Science System. She also submitted physical therapy notes for treatment of groin strain by Sean O'Connor.

By decision dated June 24, 2015, OWCP modified its prior decision to reflect that appellant had now established a diagnosed condition of the upper thigh muscle/groin strain. However, the claim remained denied as she had not submitted sufficient medical evidence to establish how the diagnosed condition was attributable to the accepted factors of employment.

On July 1, 2015 appellant again requested reconsideration. In support thereof, she resubmitted the November 19, 2014 progress report by Dr. Mejia. However, Dr. Mejia added a June 30, 2015 addendum wherein he noted, "Regarding the mechanism of causation, it is my professional opinion that there is a causal relationship between [appellant's] conditions and the employment duties."

By decision dated August 12, 2015, OWCP denied appellant's reconsideration request without conducting a merit review under 5 U.S.C. § 8128(a).

### **LEGAL PRECEDENT -- ISSUE 1**

An employee seeking benefits under FECA has the burden of proof to establish 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 timely filed within the applicable time limitation period, that an injury was sustained in the performance of duty as alleged, and that any disabilities and/or specific conditions for which compensation is claimed are causally related to the employment injury.<sup>3</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>4</sup>

Whether an employee actually sustained an injury in the performance of duty begins with an analysis of whether fact of injury has been established.<sup>5</sup> To establish fact of injury in an occupational disease claim, 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.<sup>6</sup>

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

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<sup>3</sup> *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>4</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>5</sup> *See S.P.*, 59 ECAB 184, 188 (2007).

<sup>6</sup> *See Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *see also P.W.*, Docket No. 10-2402 (issued August 5, 2011).

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.<sup>7</sup>

### ANALYSIS -- ISSUE 1

Appellant established that she experienced the alleged factors of federal employment and established that she suffered from a groin strain. However, she failed to establish causal relationship between her diagnosed groin strain and the accepted factors of her federal employment. Accordingly, the Board finds that OWCP properly denied appellant's claim.

None of the physicians of record provided a rationalized medical opinion establishing a causal relationship between the accepted factors of appellant's federal employment and her medical diagnosis. In his progress notes dated from November 19, 2014 through February 11, 2015, Dr. Mejia noted that she indicated that she injured her left groin while exiting a vehicle at the employing establishment and he provided a diagnosis of a groin strain. The Board notes that Dr. Mejia's reports were based upon an inaccurate history of injury as appellant alleged that her injury occurred while walking and ascending up and descending stairs, not while exiting a vehicle. The Board has held that medical reports must be based on a complete and accurate factual and medical background. Medical opinions based on an incomplete or inaccurate history are of limited probative value.<sup>8</sup> Dr. Mejia did not provide a well-rationalized medical opinion explaining how appellant's groin strain was causally related to her accepted employment factors.

Dr. Johnson noted appellant's employment history and diagnosed muscle strain of the left thigh, but failed to provide a well-rationalized opinion linking the medical diagnosis to her accepted employment factors. His opinion is of limited probative value as it does not contain any medical rationale explaining how her job duties physiologically caused the diagnosed left thigh condition.<sup>9</sup> Therefore, Dr. Johnson's report is insufficient to establish causal relationship.

Dr. Berger interpreted appellant's ultrasound, but offered no opinion on causation. Accordingly, his opinion is of limited probative value as he did not discuss causal relationship.<sup>10</sup>

The record contains numerous documents that contain an illegible signature. These documents are of no probative value as it cannot be discerned whether a physician signed the documents.<sup>11</sup> Similarly, the hospital discharge notes are not signed by a physician. Appellant

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<sup>7</sup> *I.J.*, 59 ECAB 408 (2008); *supra* note 4.

<sup>8</sup> *C.L.*, Docket No. 14-1585 (issued December 16, 2014); *J.R.*, Docket No. 12-1099 (issued November 7, 2012); *Douglas M. McQuaid*, 52 ECAB 382 (2001).

<sup>9</sup> *T.W.*, Docket No. 15-1603 (issued October 20, 2015).

<sup>10</sup> *G.M.*, Docket No. 14-2057 (issued May 12, 2015).

<sup>11</sup> *See Merton J. Sills*, 39 ECAB 572, 575 (1988); *see also Sheila A. Johnson*, 46 ECAB 323, 327 (1994).

also submitted physical therapy reports. However, physical therapists are not considered physicians as defined by FECA.<sup>12</sup>

An award of compensation may not be based on surmise, conjecture, or speculation. Neither the fact that appellant's claimed condition became apparent during a period of employment, nor her belief that the condition was caused by her employment is sufficient to establish causal relationship.<sup>13</sup> As appellant did not establish that her medical condition was causally related to the accepted factor of her employment, OWCP properly denied her claim.

Appellant may submit new evidence or argument as part of a formal 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,<sup>14</sup> 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.<sup>15</sup> 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.<sup>16</sup> 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.<sup>17</sup>

### **ANALYSIS -- ISSUE 2**

OWCP denied appellant's claim as she failed to submit medical evidence sufficient to establish that her accepted medical condition was causally related the accepted employment factors. The Board finds that she has not submitted sufficient evidence with her reconsideration request to warrant merit review. The only evidence that appellant submitted on reconsideration was a June 30, 2015 addendum to the previously submitted report wherein Dr. Mejia concluded

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<sup>12</sup> See *David P. Sawchuk*, 57 ECAB 316 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA). *A.C.*, Docket No. 08-1453 (issued November 18, 2008). Under FECA, a 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 also *Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (where the Board held that medical opinion, in general, can only be given by a qualified physician).

<sup>13</sup> *D.I.*, 59 ECAB 158 (2007); *Ruth R. Price*, 16 ECAB 688, 691 (1965).

<sup>14</sup> *Supra* note 1. Under section 8128 of FECA, "[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." 5 U.S.C. § 8128(a).

<sup>15</sup> 20 C.F.R. § 10.606(b)(3).

<sup>16</sup> *Id.* at § 10.607(a).

<sup>17</sup> *Id.* at § 10.608(b).

that there was causal relationship between her condition and her employment factors. This addendum is repetitive of Dr. Mejia's previously submitted reports. Although he emphasized that there is causal relationship, Dr. Mejia did not provide any explanation as to how appellant's injury occurred, causally related to the accepted employment factors. As previously noted, Dr. Mejia's previous reports all noted an inaccurate history of injury. The Board has found that evidence which is repetitive, duplicative, or cumulative in nature is insufficient to warrant reopening a claim for merit review.<sup>18</sup> Accordingly, the Board finds that this report is not sufficient to warrant a merit review.

Appellant did not submit relevant new and pertinent evidence with her request for reconsideration. Furthermore, she neither showed that OWCP erroneously applied or interpreted a specific point of law, nor advanced relevant legal argument not previously considered by OWCP. Because appellant failed to meet one of the standards enumerated under section 8128(a) of FECA, she was not entitled to further merit review of the claim.

### **CONCLUSION**

The Board finds that appellant has not established that she suffered an upper thigh muscle/groin strain causally related to factors of her federal employment. Furthermore, the Board finds that OWCP properly refused to reopen her case for further review on the merits pursuant to 5 U.S.C. § 8128(a).

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<sup>18</sup> *J.B.*, Docket No. 14-1164 (issued November 20, 2014); *Denis M. Dupor*, 51 ECAB 482 (2000).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated August 12 and June 24, 2015 are affirmed.

Issued: April 8, 2016  
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