

FACTUAL HISTORY

On April 16, 2015 appellant, then a 63-year-old tractor trailer driver, filed an occupational disease claim (Form CA-2) alleging that he developed arthritis of the left shoulder as a result of his federal employment duties. He first became aware of his condition on February 16, 2015 and of its relationship to his employment on March 3, 2015.

By letter dated May 7, 2015, OWCP informed appellant that the evidence of record was insufficient to support his claim. It provided a questionnaire for completion and advised him to describe in detail the employment-related activities which he believed contributed to his condition. Appellant was informed of the medical and factual evidence necessary and was afforded 30 days to respond.

In support of his claim, appellant submitted medical and diagnostic reports dated March 3 through June 22, 2015. In an April 27, 2015 report, Dr. Anatoly Rozman, Board-certified in physical medicine and rehabilitation, diagnosed left shoulder osteoarthritis and possible rotator cuff tendinitis. She noted that given appellant's work for over 18 years as a truck driver, it appeared that he suffered from cumulative trauma disorder/occupational disease which could be related to driving, pushing, and pulling heavy objects at work.

By decision dated July 16, 2015, OWCP denied appellant's claim finding that the evidence of record failed to establish that the occupational exposure occurred as alleged. It noted that he had failed to explain what work duties caused or aggravated his condition and noted that appellant had not responded to the questions provided in its May 7, 2015 development letter.

On August 13, 2015 appellant requested reconsideration of OWCP's decision.

In support of his claim, appellant submitted an August 13, 2015 report from Dr. Estella Hernandez, Board-certified in family medicine. Dr. Estella reported a history of a prior accepted claim for left shoulder tendinitis and bursitis from December 2002. She argued that appellant's prior accepted conditions were aggravated resulting in osteoarthritis of the left shoulder due to his repetitive employment duties over the years which included pulling, pushing, and throwing mail.

By decision dated November 18, 2015, OWCP denied appellant's request for reconsideration finding that the evidence submitted was insufficient to warrant a merit review as it did not address the outstanding issue of the factors of employment responsible for the osteoarthritis.

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 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 determine whether an employee actually sustained an injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.⁵ The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.

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

To establish causal relationship between the condition, including any attendant disability claimed, and the employment event or incident, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background, supporting such a causal relationship.⁷ The opinion of the physician 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. This medical opinion must include an accurate history of the employee's employment injury and must explain how the condition is related to the injury. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.⁸

ANALYSIS -- ISSUE 1

The Board finds that appellant failed to establish left shoulder osteoarthritis causally related to factors of his federal employment as a tractor trailer driver.

Appellant has not provided sufficient detail to establish what factors of employment caused or aggravated his left shoulder osteoarthritis.⁹ On his Form CA-2, he failed to provide

³ *Gary J. Watling*, 52 ECAB 278 (2001); *Elaine Pendleton*, 40 ECAB 1143, 1154 (1989).

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

⁵ *Elaine Pendleton*, *supra* note 3.

⁶ *See Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

⁷ *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

⁸ *James Mack*, 43 ECAB 321 (1991).

⁹ *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

any discussion of his employment duties. By letter dated May 7, 2015, OWCP requested that appellant provide the factual circumstances of his injury and provided him with a questionnaire for completion. Appellant did not respond. The record contains no explanation provided by appellant pertaining to the employment factors allegedly responsible for his injury. By failing to describe his employment duties and circumstances surrounding his alleged injury, appellant has not established that the occupational exposure occurred as alleged.¹⁰

Subsequent to OWCP's May 7, 2015 development letter, appellant submitted an April 27, 2015 medical report from Dr. Rozman. The Board notes that, in her report, Dr. Rozman described some of appellant's employment duties. However, Dr. Rozman's report lacks sufficient explanation to determine to which specific employment duties appellant is attributing his injury, how often he performed these tasks, and the frequency and duration of each task. The factual and medical evidence of record fails to establish the factual element of appellant's claim, namely, that a claimed occupational exposure caused him medical injury or disease.¹¹

The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference of causal relation.¹² An award of compensation may not be based on surmise, conjecture, or speculation. Appellant did not submit an adequately detailed description of his specific employment duties which he believed caused or aggravated his condition and, as such, the Board finds that OWCP properly denied his claim.¹³

Appellant may submit additional evidence, together 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 and 10.607.

LEGAL PRECEDENT -- ISSUE 2

To require OWCP to reopen a case for merit review under FECA section 8128(a), OWCP regulations provide that a request for reconsideration must set forth arguments and contain evidence that either: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.¹⁴ Section 10.608(b) of OWCP regulations provides that when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(3), OWCP will deny the application for reconsideration without reopening the case for a review on the merits.¹⁵

¹⁰ *P.T.*, Docket No. 14-598 (issued August 5, 2014).

¹¹ *B.S.*, Docket No. 13-405 (issued July 18, 2013).

¹² *Daniel O. Vasquez*, 57 ECAB 559 (2006).

¹³ Given that appellant did not establish employment factors, further consideration of the medical evidence is unnecessary. See *Bonnie A. Contreas*, 57 ECAB 364, 368 n.10 (2006).

¹⁴ *D.K.*, 59 ECAB 141 (2007).

¹⁵ *K.H.*, 59 ECAB 495 (2008).

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly refused to reopen appellant's case for further consideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

In his August 13, 2015 request for reconsideration, appellant failed to show that OWCP erroneously applied or interpreted a specific point of law and he did not advance a relevant legal argument not previously considered by OWCP. Appellant also failed to submit relevant and pertinent new evidence.

The underlying issue on appeal involves fact of injury. Appellant's reconsideration request does not provide the requested detail pertaining to the factors of his employment. He failed to submit a narrative statement detailing the federal employment duties alleged to have caused his injury, or a response to OWCP's May 7, 2015 questionnaire. Rather, appellant submitted new evidence in the form of medical reports. While these documents have some connection to his claim, they are not relevant to the issue for which OWCP denied appellant's claim, the failure to establish factors of his federal employment. Therefore, these documents do not constitute a basis for reopening appellant's claim.¹⁶

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 did not meet his burden of proof to establish that his left shoulder osteoarthritis was causally related to factors of his federal employment as a tractor trailer driver. OWCP properly denied appellant's request for reconsideration without a merit review.

¹⁶ *David J. McDonald*, 50 ECAB 185 (1990).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decisions dated November 18 and July 16, 2015 are affirmed.

Issued: April 21, 2016
Washington, DC

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

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board