

**United States Department of Labor
Employees' Compensation Appeals Board**

C.O., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
D'Iberville, MS, Employer)

**Docket No. 16-0396
Issued: April 18, 2016**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On December 29, 2015 appellant filed a timely appeal from an August 3, 2015 merit decision and a September 8, 2015 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

ISSUES

The issues are: (1) whether appellant met his burden of proof to establish head, abdominal, and right upper extremity injuries causally related to a June 18, 2015 employment incident; and (2) whether OWCP properly denied appellant's request for reconsideration under 5 U.S.C. § 8128(a).

¹ 5 U.S.C. § 8101 *et seq.*

² Appellant submitted additional evidence accompanying his request for appeal to the Board. The Board may not consider evidence for the first time on appeal that was not before OWCP at the time it issued the final decision in the case. 20 C.F.R. § 501.2(c)(1).

FACTUAL HISTORY

On June 19, 2015 appellant, then a 57-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging right upper extremity, abdominal, and head injuries in a June 18, 2105 motor vehicle accident while in the performance of duty. The employing establishment issued a Form CA-16 authorizing medical treatment related to the accident. Appellant submitted June 18, 2015 emergency room discharge instructions for “minor head injury,” signed by Deborah Anderson, a nurse practitioner. He did not return to work.

In a June 29, 2015 letter, OWCP advised appellant of the additional evidence needed to establish his claim, including a description of the motor vehicle accident alleged to have caused the claimed injuries, and a narrative report from his attending physician explaining how and why that accident would cause those injuries. It afforded appellant 30 days to submit such evidence.

Appellant provided reports dated from June 24 to July 20, 2015 by Dr. Eric Graham, an attending Board-certified orthopedic surgeon, who held appellant off work for unspecified reasons.

By decision dated August 3, 2015, OWCP denied the claim, finding that appellant had not established causal relationship as there was no medical diagnosis of an injury. It accepted that the June 18, 2015 motor vehicle accident occurred at the time, place, and in the manner alleged. OWCP found, however, that appellant had failed to provide sufficient medical evidence supporting that the incident caused any injury.

Appellant disagreed and on August 12, 2015 signed the appeal rights form accompanying the August 3, 2015 decision, marking an “X” on the line next to the paragraph describing reconsideration. He did not provide additional evidence or argument on or before September 8, 2015.

By decision dated September 8, 2015, OWCP denied reconsideration, finding that appellant’s August 12, 2015 reconsideration request neither raised substantive legal questions nor included new and relevant evidence.

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 the 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.³ 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.⁴

³ *Joe D. Cameron*, 41 ECAB 153 (1989).

⁴ *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

In order to determine whether an employee sustained a traumatic 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 that must be considered conjunctively. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident that is alleged to have occurred.⁵ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.⁶

The medical evidence required to establish causal relationship is generally rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician’s rationalized 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 of the claimant, 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 was involved in a June 18, 2015 motor vehicle accident. Appellant claimed that this incident caused head, abdominal, and right arm injuries.

The Board finds, however, that appellant has failed to submit sufficient medical evidence to establish his traumatic injury claim. To be of probative value, a physician’s opinion must relate the condition to the accepted incident, must be based on a complete and accurate factual history, and must contain adequate medical rationale in support of the conclusions.⁸

Dr. Graham, an attending Board-certified orthopedic surgeon, provided reports dated from June 24 to July 20, 2015 holding appellant off work. However, he did not provide a diagnosis, or identify any injury or condition disabling appellant for work. The Board has held that medical opinions which do not provide a firm diagnosis are insufficient to establish causal relationship.⁹ As Dr. Graham did not opine that the June 18, 2015 motor vehicle accident caused any injury, his reports are insufficient to establish causal relationship.¹⁰

⁵ *Gary J. Watling*, 52 ECAB 278 (2001).

⁶ *Deborah L. Beatty*, 54 ECAB 340 (2003).

⁷ *Solomon Polen*, 51 ECAB 341 (2000).

⁸ *Mary J. Ruddy*, 49 ECAB 545 (1998).

⁹ *Paul Foster*, 56 ECAB 208 (2004).

¹⁰ *Deborah L. Beatty*, 54 ECAB 340 (2003).

The June 18, 2015 hospital discharge instructions signed by Ms. Anderson are not probative medical evidence, as nurse practitioners are not considered physicians under FECA.¹¹ Section 8101(2) of FECA provides that physicians include surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law.¹²

OWCP advised appellant on June 29, 2015 of the necessity of providing a narrative report from his attending physician with medical rationale supporting causal relationship. As appellant did not provide such evidence, OWCP's August 3, 2015 decision denying the claim is proper under the law and facts of the case.

On appeal appellant contends that he submitted all medical evidence necessary to establish his claim. He alleges that OWCP did not fully consider his physician's reports. As explained, Dr. Graham failed to diagnose any condition resulting from the June 18, 2015 accident. The discharge instructions do not constitute medical evidence as they were signed only by a nurse practitioner. Therefore, OWCP properly found that appellant had not provided sufficient medical evidence to establish his claim.

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,¹³ section 10.606(b)(3) of Title 20 of the Code of Federal Regulations provides that a claimant must set forth arguments and contain evidence that either: (1) shows 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) provides that when an application for review of the merits of a claim 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

In support of a request for reconsideration, a claimant is not required to submit all evidence which may be necessary to discharge his or her burden of proof.¹⁶ A claimant need

¹¹ *P. W.*, Docket No. 15-1814 (issued January 15, 2016); *L.D.*, 59 ECAB 648 (2008).

¹² 5 U.S.C. § 8101(2).

¹³ *Id.* at § 8128(a).

¹⁴ 20 C.F.R. § 10.606(b)(3).

¹⁵ 20 C.F.R. § 10.608(b). *See also D.E.*, 59 ECAB 438 (2008).

¹⁶ *Helen E. Tschantz*, 39 ECAB 1382 (1988).

only submit relevant and pertinent new evidence not previously considered by OWCP.¹⁷ When reviewing an OWCP decision denying a merit review, the function of the Board is to determine whether OWCP properly applied the standards set forth at section 10.606(b)(3) to the claimant's application for reconsideration and any evidence submitted in support thereof.¹⁸

ANALYSIS -- ISSUE 2

OWCP accepted that appellant was involved in a June 18, 2015 motor vehicle accident that occurred in the performance of his duties. It denied the claim because appellant had failed to provide medical evidence from a physician diagnosing any conditions causally related to the accepted incident. Appellant on August 12, 2015 requested reconsideration, but did not provide additional evidence or argument.

The Board finds that OWCP appropriately denied reconsideration as appellant failed to submit any relevant or pertinent new evidence or argument for OWCP to consider. He submitted nothing other than the appeal form requesting reconsideration. A claimant may be entitled to a merit review by submitting argument or evidence that either shows that OWCP erroneously applied or interpreted a specific point of law, advances a relevant legal argument not previously considered by OWCP, or constitutes relevant and pertinent new evidence not previously considered by OWCP. Appellant did not do so in this case. Therefore, pursuant to 20 C.F.R. § 10.608, OWCP's September 8, 2015 decision properly denied merit review.

On appeal appellant contends that his physician provided additional evidence on reconsideration. However, there is no medical evidence of record submitted between the August 3 and September 8, 2015 decisions.

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.

CONCLUSION

The Board finds that appellant did not establish that he sustained a cervical spine injury causally related to a June 18, 2015 employment incident. The Board further finds that OWCP properly denied reconsideration under 5 U.S.C. § 8128(a).¹⁹

¹⁷ See 20 C.F.R. § 10.606(b)(3). See also *Mark H. Dever*, 53 ECAB 710 (2002).

¹⁸ *Annette Louise*, 54 ECAB 783 (2003).

¹⁹ The Board notes that the record contains a CA-16. Ordinarily, where there is a properly executed CA-16 form, OWCP is under a contractual obligation to pay for the medical care provided. Upon return of the case record, this matter should be reviewed. *Val D. Winn*, 40 ECAB 666 (1989).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated September 8 and August 3, 2015 are affirmed.

Issued: April 18, 2016
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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