United States Department of Labor
Employees' Compensation Appeals Board

G.W., Appellant	)	
and	)	**Docket No. 16-0517**
	)	**Issued: April 27, 2016**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS HEALTH ADMINISTRATION, Decatur, GA, Employer	)	

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 January 27, 2016 appellant filed a timely appeal from a July 31, 2015 merit decision and an August 14, 2015 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (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 her burden of proof to establish an injury causally related to a November 22, 2014 employment incident; and (2) whether OWCP properly refused to reopen appellant's case for further reconsideration of the merits pursuant to 5 U.S.C. § 8128(a).

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that appellant submitted additional evidence after OWCP rendered its August 14, 2015 decision. The Board's jurisdiction is limited to reviewing the evidence that was before OWCP at the time of its final decision. Therefore, this additional evidence cannot be considered by the Board. 20 C.F.R. § 501.2(c)(1).

FACTUAL HISTORY

On November 26, 2014 appellant, a 65-year-old medical supply technician, filed a traumatic injury claim (Form CA-1), alleging that she injured her right wrist on November 22, 2014 as a result of lifting an orthopedic tray from a sterilization cart in the performance of duty. She stopped work on November 23, 2014 and returned to work on November 25, 2014.

In a letter received June 22, 2015, appellant asked that her claim be reopened. She submitted emergency treatment reports from the employing establishment's health clinic for visits on the following dates: March 5 and 9, May 21, and June 22, 2015. Dr. Elsie C. Morris, an employing establishment Board-certified occupational medicine specialist, asserted that appellant "injured her right wrist" while lifting instrument/sterilization trays. She opined that appellant's injury was work related and recommended physical therapy, wearing wrist support while at work, and work restrictions of lifting no more than 10 pounds.

In a June 26, 2015 letter, OWCP noted that when appellant's claim was received it appeared to be a minor injury that resulted in minimal or no lost time from work and, based on these criteria and because the employing establishment did not controvert continuation of pay or challenge the case, payment of a limited amount of medical expenses was administratively approved. It stated that it had reopened the claim because appellant requested that her claim be adjudicated. OWCP requested additional evidence and afforded appellant 30 days to respond to its inquiries.

Subsequently, appellant submitted a July 6, 2015 narrative statement indicating that she was in the preparation area of her department, working on the terminal load, when she lifted an orthopedic tray to put it on another cart to be used for surgery on the following Monday. She stated that she had a very sharp, excruciating pain in her right wrist while lifting the tray and immediately dropped it back down on the cart. The metal tray was rectangular and weighed about 35 to 40 pounds. Appellant reported that she was alone in her department at the time of the injury and had not sustained any other injuries since that time.

By decision dated July 31, 2015, OWCP accepted that the November 22, 2014 incident occurred as alleged but denied the claim as appellant had failed to submit evidence containing a medical diagnosis in connection with the incident. Thus, it concluded that she had not established fact of injury.

On August 11, 2015 appellant requested reconsideration and submitted a July 1, 2015 report from Dr. Rudolph V. Tacoronti, a Board-certified occupational medicine specialist, who asserted that appellant sustained a right wrist injury on June 22, 2015 as a result of lifting a 5- to 10-pound tray of instruments and diagnosed right wrist sprain. Dr. Tacoronti noted that appellant had a history of injury dated November 2014 which was treated with oral medications, but had not resolved. He reported that an x-ray of the right wrist dated June 22, 2015 was normal.

By decision dated August 14, 2015, OWCP denied appellant's request for reconsideration of the merits finding that submitted evidence was insufficient to warrant merit review as,

although it was new, it was irrelevant or immaterial and, consequently, had no bearing on the issue.

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 timely filed within the applicable time limitation period of FECA, that an injury[3] was sustained in the performance of duty, as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.[4]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "fact of injury" has been established. A fact of injury determination is based on two elements. First, the employee must submit sufficient evidence to establish that she actually experienced the employment incident at the time, place, and in the manner alleged. 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. An employee may establish that the employment incident occurred as alleged but fail to show that his or her condition relates to the employment incident.[5]

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the employee, 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 employee.[6]

ANALYSIS -- ISSUE 1

OWCP has accepted that the employment incident of November 22, 2014 occurred at the time, place, and in the manner alleged. The issue is whether appellant sustained an injury as a result. The Board finds that appellant has not met her burden of proof to establish an injury causally related to the November 22, 2014 employment incident. Appellant has not submitted sufficient medical evidence supporting that the November 22, 2014 work incident caused or contributed to a diagnosed medical condition.

[3] OWCP regulations define a traumatic injury as a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected. 20 C.F.R. § 10.5(ee).

[4] *See T.H.*, 59 ECAB 388 (2008).

[5] *Id.*

[6] *Id.*

In her reports, Dr. Morris asserted that appellant "injured her right wrist" while lifting instrument/sterilization trays and opined that appellant's injury was work related. The Board finds that the diagnosis of "right wrist injury" is a description of a symptom rather than a clear diagnosis of the medical condition.[7] Thus, the reports from Dr. Morris are insufficient to establish a medical diagnosis in connection with the injury and appellant has failed to establish a claim.

Further, appellant's narrative describing the pain she experienced in her right wrist while lifting the tray is insufficient to establish that she sustained an injury as she is a lay person and not a physician. The Board has held that lay persons are not competent to render medical opinions.[8]

Consequently, the Board finds that appellant has not met her burden of proof as she has not submitted competent medical evidence addressing how the November 22, 2014 work incident caused or contributed to a diagnosed medical condition.

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

Section 8128(a) of FECA does not entitle a claimant to a review of an OWCP decision as a matter of right; it vests OWCP with discretionary authority to determine whether it will review an award for or against compensation.[9] OWCP, through regulations, has imposed limitations on the exercise of its discretionary authority under section 8128(a).[10]

To require OWCP to reopen a case for merit review under section 8128(a) of FECA, 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.[11] To be entitled to a merit review of an OWCP decision denying or terminating a benefit, a claimant's application for review must be received within one year of the date of that decision.[12] When a claimant fails to meet one of

[7] *See P.S.*, Docket No. 12-1601 (issued January 2, 2013); *C.F.*, Docket No. 08-1102 (issued October 10, 2008).

[8] *See James A. Long*, 40 ECAB 538 (1989); *see also J.D.*, Docket No. 15-1879 (issued February 10, 2016).

[9] 5 U.S.C. § 8128(a). Under section 8128 of FECA, the Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application. 5 U.S.C. § 8128(a).

[10] *See Annette Louise*, 54 ECAB 783, 789-90 (2003).

[11] 20 C.F.R. § 10.606(b)(3). *See A.L.*, Docket No. 08-1730 (issued March 16, 2009).

[12] *Id.* at § 10.607(a).

the above standards, OWCP will deny the application for reconsideration without reopening the case for review on the merits.[13]

The Board has held that the submission of evidence or argument which repeats or duplicates evidence or argument already in the case record[14] and the submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.[15]

ANALYSIS -- ISSUE 2

In support of her August 11, 2015 reconsideration request, appellant submitted a July 1, 2015 report from Dr. Tacoronti who asserted that she sustained a right wrist injury on June 22, 2015 and diagnosed right wrist sprain. Although Dr. Tacoronti noted that appellant had a history of injury dated November 2014, he did not provide a medical diagnosis related to the November 22, 2014 employment incident. He provided a diagnosis for a June 22, 2015 incident which has not been accepted in this case. The Board finds that submission of this report did not require reopening appellant's case for merit review as it failed to address the point at issue before OWCP.[16] As OWCP denied the claim based on the lack of sufficient medical evidence establishing a diagnosis in connection with the injury or events, the Board finds that this report does not constitute pertinent new and relevant evidence. Therefore, it is not sufficient to require OWCP to reopen appellant's claim for consideration of the merits.

Appellant failed to show that OWCP erroneously applied or interpreted a specific point of law, or advanced a relevant legal argument not previously considered by OWCP. Because she did not submit pertinent new and relevant evidence with her request for reconsideration, the Board finds that she did not meet any of the necessary requirements and is not entitled to further merit review.[17]

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish an injury causally related to a November 22, 2014 employment incident. The Board further finds that OWCP properly refused to reopen her case for further reconsideration of the merits pursuant to 5 U.S.C. § 8128(a).

[13] *Id.* at § 10.608(b).

[14] *See A.L.*, *supra* note 11. *See also Eugene F. Butler*, 36 ECAB 393, 398 (1984).

[15] *Id. See also Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

[16] *Id.*

[17] *See L.H.*, 59 ECAB 253 (2007).

ORDER

IT IS HEREBY ORDERED THAT the August 14 and July 31, 2015 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: April 27, 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