



## **FACTUAL HISTORY**

On October 3, 2014 appellant, then a 52-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that he injured his left elbow on September 3, 2014 while lifting a heavy parcel. He stated that, when he lifted the parcel off the floor, he felt a sharp pain in his left elbow. After placing the parcel in a postal container (postcon), appellant inspected his elbow and noticed it was swollen. Because there was only an hour left on his shift, he decided to keep working while minimizing the use of his left elbow.<sup>3</sup> The next day appellant sought medical treatment.

Appellant had previously injured the same elbow at work on April 12, 2014, which OWCP accepted for left elbow sprain under File No. xxxxxx651. Within a couple months of his April 2014 injury he was able to resume full-duty without restrictions. With respect to the current left elbow condition, appellant initially filed a recurrence claim (Form CA-2a) under File No. xxxxxx651, and after consulting with a union representative, he decided to file a Form CA-1 for a new left elbow injury.

OWCP initially received an October 6, 2014 form report from Dr. Lihua Mo, a Board-certified physiatrist. Dr. Mo's clinical impressions included status post work-related injury, left elbow pain, left elbow sprain, elbow swelling, and elbow tendon tear. She advised that appellant was totally disabled from October 7 through November 7, 2014.

On November 6, 2014 OWCP advised appellant that the evidence received to date was insufficient to establish entitlement to benefits under FECA. It requested additional factual and medical evidence, and afforded him 30 days to submit the required information.

OWCP subsequently received a September 4, 2014 left elbow magnetic resonance imaging (MRI) scan, which Dr. Mo had requested. The MRI scan revealed degenerative joint disease, moderate joint effusion suggestive of synovitis, partial thickness tear of the common extensor tendon (lateral epicondylitis), and a partial tear of the common flexor tendon (medial epicondylitis).

By decision dated December 12, 2014, OWCP denied appellant's traumatic injury claim. Although appellant established that the September 3, 2014 lifting incident occurred as alleged, it found the evidence of record insufficient to establish a medical diagnosis in connection with the accepted employment incident. Consequently, OWCP denied the claim as appellant had not established the medical component of fact of injury.

Appellant timely requested a review of the written record before an OWCP hearing representative. He also submitted additional medical evidence, which included a May 13, 2014 left elbow x-ray and a similarly dated narrative report from Dr. Mo. The x-ray revealed mild degenerative changes, but no fracture or dislocation. There was also no evidence of elbow joint effusion, and the soft tissues were noted to be unremarkable.

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<sup>3</sup> Appellant's regular tour of duty was 7:30 p.m. until 4:00 a.m. He indicated on his CA-1 form that the injury occurred at 2:30 a.m., on September 3, 2014.

In her May 13, 2014 narrative report, Dr. Mo noted that appellant was a mail handler who complained of a left elbow injury on April 12, 2014, which was due to constant and repetitive handling of heavy parcels at work. Appellant's then-current complaints included left elbow pain, swelling, and difficulty lifting and holding objects due to pain and weakness. His pain was reportedly 7 on a scale of 1 to 10. Physical examination of the left elbow revealed decreased range of motion (ROM) with swelling and tenderness, especially at the lateral epicondyle. Elbow muscle strength was 4/5. Appellant's neurological examination was unremarkable. Dr. Mo's diagnoses included left elbow sprain/strain, tendinitis, and lateral epicondylitis, which she attributed to his April 12, 2014 work-related injury. She further noted that appellant had been totally disabled since April 12, 2014.

Appellant had another left elbow MRI scan on January 9, 2015, which revealed a moderate to large joint effusion with minimal debris, lateral epicondylitis, and a partial thickness tear of the common extensor tendon. His left elbow common flexor tendon was noted to be intact.

In a January 10, 2015 follow-up report, Dr. Mo noted that appellant sustained injuries on April 12 and September 3, 2014. With respect to the April 12, 2014 injury, she indicated that he was diagnosed with work-related left elbow sprain/strain and epicondylitis. Appellant's treatment at the time included physical therapy and acupuncture. Dr. Mo further noted that he significantly improved and was able to return to full time and full duty on June 10, 2014.

Regarding appellant's latest injury, Dr. Mo noted that he returned to the office on "[September 2, 2014]" and reported that his left elbow pain had worsened due to "handling heavy parcels constantly and repetitively at work as (sic) mail handler." She further noted that he reportedly advised his supervisor about his new left elbow injury on September 3, 2014. Appellant's September 2, 2014 left elbow physical examination revealed decreased ROM, tenderness, swelling, and muscle strength of 4/5. Dr. Mo also reported that his September 4, 2014 left elbow MRI scan revealed partial tears of the common extensor and common flexor tendons, medial and lateral epicondylitis, and joint effusion. She noted that appellant's treatment included continued physical therapy, acupuncture, and an elbow injection. However, there had been no significant improvement since the new injury, and appellant continued to complain of left elbow pain and swelling. Dr. Mo also discussed the results of appellant's latest MRI scan dated January 9, 2015. Her diagnoses with respect to appellant's "new injury on [September 3, 2014]" included work-related left elbow tear of the common extensor and common flexor tendons, medial and lateral epicondylitis, joint effusion, and elbow derangement. Dr. Mo explained that, based on the history and medical data, it was her professional opinion that the above-noted new clinical impressions were the direct result of appellant's new injury at work on September 3, 2014.

OWCP also received a March 24, 2015 left elbow x-ray that revealed no evidence of acute fracture or dislocation, normal alignment, and no definite joint effusion.

In a May 22, 2015 decision, the OWCP hearing representative modified OWCP's December 12, 2014 decision, but affirmed the denial of appellant's traumatic injury claim. He found that, although appellant had since established fact of injury, the medical evidence of record failed to demonstrate a causal relationship between his current left elbow diagnoses and the

September 3, 2014 lifting incident. Specifically, the hearing representative found that Dr. Mo's latest report was based on an inaccurate history of injury. He noted that Dr. Mo reported examining appellant on September 2, 2014 which was a day prior to the September 3, 2014 employment incident. The hearing representative also noted that Dr. Mo attributed appellant's current left elbow condition to repetitive handling of parcels, rather than the accepted September 3, 2014 lifting incident. Consequently, he found that appellant failed to establish causal relationship.

On June 11, 2015 appellant timely requested reconsideration. In a follow-up letter dated June 18, 2015, he reiterated that he was seeking reconsideration. Appellant also noted that he had enclosed a narrative report from his physician in support of the request for reconsideration. However, the record does not include any additional medical evidence received after the hearing representative's May 22, 2015 decision.

In a nonmerit decision dated August 18, 2015, OWCP denied appellant's request for reconsideration. It noted, *inter alia*, that it had not received any new and relevant evidence.

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

A claimant seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence, including that an injury was sustained in the performance of duty as alleged and that any specific condition or disability claimed is causally related to the employment injury.<sup>4</sup>

To determine if 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 in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred.<sup>5</sup> The second component is whether the employment incident caused a personal injury.<sup>6</sup> An employee may establish that an injury occurred in the performance of duty as alleged, but fail to establish that the disability or specific condition for which compensation is being claimed is causally related to the injury.<sup>7</sup>

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<sup>4</sup> 20 C.F.R. § 10.115(e), (f); see *Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

<sup>5</sup> *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>6</sup> *John J. Carlone*, 41 ECAB 354 (1989). Causal relationship is a medical question that generally requires rationalized medical opinion evidence to resolve the issue. *Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factor(s). *Id.*

<sup>7</sup> *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

## ANALYSIS -- ISSUE 1

The mere fact that a condition manifests itself during a period of employment is not sufficient to establish causal relationship.<sup>8</sup> Temporal relationship alone will not suffice.<sup>9</sup> Generally, medical evidence is required to establish causal relationship.<sup>10</sup> The current medical evidence of record consists of a series of left elbow diagnostic studies and reports from Dr. Mo. Appellant's x-rays and MRI scans document various left elbow conditions, including degenerative joint disease, lateral and medial epicondylitis, common flexor and extensor tendon tears, and joint effusion/synovitis. However, these studies do not specifically address the cause of the documented left elbow condition(s). Consequently, appellant's left elbow x-rays and MRI scans do not satisfy his burden of establishing a causal relationship between the diagnosed condition(s) and his accepted September 3, 2014 employment exposure.

A physician's opinion on causal relationship must be based on a complete factual and medical background and must be supported by medical rationale.<sup>11</sup> As previously mentioned, the record includes reports from Dr. Mo dated May 13, October 6, and December 2, 2014, and January 10, 2015. Dr. Mo's May 13, 2014 report predates the September 3, 2014 lifting incident, and thus, cannot establish a causal relationship between appellant's current left elbow condition and the accepted employment incident. Additionally, while her October 6 and December 2, 2014 form reports referenced a "work-related injury" and included a diagnosis of left elbow tendon tear, she did not identify a date of injury or otherwise describe the cause of appellant's "work-related injury." Consequently, Dr. Mo's October 6 and December 2, 2014 form reports are of little or no probative value in determining the etiology of his current left elbow condition.<sup>12</sup>

Dr. Mo's latest report, dated January 10, 2015, referenced work-related injuries sustained on April 12 and September 3, 2014. The first injury was reportedly the result of "handling heavy mails constantly and repetitively," and the September 2014 injury was due to "handling heavy parcels constantly and repetitively at work as [a] mail handler."<sup>13</sup> With respect to the September 3, 2014 "work-related injury," Dr. Mo diagnosed tears of the common extensor and common flexor tendons, medial and lateral epicondylitis, left elbow joint effusion, and elbow derangement. The hearing representative previously found her January 10, 2015 report insufficient to establish causal relationship because she relied upon an inaccurate history of injury. Whereas appellant attributed his September 3, 2014 injury to lifting a heavy parcel off the floor and placing it in a postcon, Dr. Mo described an overuse-type injury that involved "handling heavy parcels constantly and repetitively...." As noted, a physician's opinion on causal relationship must be based on a complete factual and medical background and must be

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<sup>8</sup> 20 C.F.R. § 10.115(e).

<sup>9</sup> See *D.I.*, 59 ECAB 158, 162 (2007).

<sup>10</sup> *Robert G. Morris*, *supra* note 6.

<sup>11</sup> *Victor J. Woodhams*, *supra* note 6.

<sup>12</sup> *Id.*

<sup>13</sup> Dr. Mo mistakenly reported that she examined appellant on September 2, 2014.

supported by medical rationale.<sup>14</sup> Dr. Mo's history of injury is inconsistent with appellant's description of the September 3, 2014 employment incident, which OWCP accepted as having been factually established. Therefore, the Board finds her reliance on an inaccurate history renders his January 10, 2015 report is insufficient to establish causal relationship.<sup>15</sup>

The Board finds that the evidence of record fails to establish causal relationship between the September 3, 2014 employment incident and appellant's diagnosed left elbow condition(s).<sup>16</sup> Accordingly, OWCP properly denied his traumatic injury 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**

Section 8128(a) of FECA does not entitle a claimant to review of an OWCP decision as a matter of right.<sup>17</sup> OWCP has discretionary authority in this regard and has imposed certain limitations in exercising its authority.<sup>18</sup> One such limitation is that the request for reconsideration must be received by OWCP within one year of the date of the decision for which review is sought.<sup>19</sup> A timely application for reconsideration, including all supporting documents, 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.<sup>20</sup> When a timely application for reconsideration does not meet

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<sup>14</sup> *Victor J. Woodhams, supra* note 6.

<sup>15</sup> *Id.*

<sup>16</sup> Appellant's personal belief that his employment activities either caused or contributed to his condition is insufficient, by itself, to establish causal relationship. 20 C.F.R. § 10.115(e); *Phillip L. Barnes*, 55 ECAB 426, 440 (2004).

<sup>17</sup> This section provides in pertinent part: "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on [his or her] own motion or on application." 5 U.S.C. § 8128(a).

<sup>18</sup> 20 C.F.R. § 10.607.

<sup>19</sup> *Id.* at § 10.607(a). The one-year period begins on the next day after the date of the original contested decision. For merit decisions issued on or after August 29, 2011, a request for reconsideration must be "received" by OWCP within one year of the OWCP decision for which review is sought. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (February 2016). Timeliness is determined by the document receipt date of the request for reconsideration as indicated by the "received date" in the Integrated Federal Employees' Compensation System (iFECS). *Id.* at Chapter 2.1602.4b. For decisions issued on or after June 1, 1987 through August 28, 2011, the request for reconsideration must be "mailed" to OWCP within one year of the OWCP decision for which review is sought. *Id.* at Chapter 2.1602.4e.

<sup>20</sup> *Id.* at § 10.606(b)(3).

at least one of the above-noted requirements, OWCP will deny the request for reconsideration without reopening the case for a review on the merits.<sup>21</sup>

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

Appellant timely requested reconsideration. The Board finds, however, that his June 11 and 18, 2015 letters neither alleged nor demonstrated that OWCP erroneously applied or interpreted a specific point of law. Additionally, appellant did not advance any relevant legal arguments not previously considered by OWCP. Accordingly, he is not entitled to a review of the merits based on the first and second requirements under section 10.606(b)(3).<sup>22</sup>

Appellant also failed to submit any “relevant and pertinent new evidence” with his request for reconsideration. Although he claimed to have enclosed a narrative report with his June 18, 2015 correspondence, OWCP noted in its decision that “no such report was enclosed.” Because appellant did not provide OWCP with any “relevant and pertinent new evidence,” he is not entitled to a review of the merits based on the third requirement under section 10.606(b)(3).<sup>23</sup> Accordingly, OWCP properly declined to reopen his case under 5 U.S.C. § 8128(a).

### **CONCLUSION**

Appellant failed to establish that his claimed left elbow condition is causally related to the September 3, 2014 employment incident. The Board further finds that OWCP properly denied appellant’s June 11, 2015 request for reconsideration under 5 U.S.C. § 8128(a).

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<sup>21</sup> *Id.* at § 10.608(a), (b).

<sup>22</sup> *Id.* at § 10.606(b)(3)(i) and (ii).

<sup>23</sup> *Id.* at § 10.606(b)(3)(iii).

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 18 and May 22, 2015 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: August 1, 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