

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

D.F., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Jamaica, NY, Employer**

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**Docket No. 15-1745
Issued: February 11, 2016**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 18, 2015 appellant filed a timely appeal from a July 8, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP) and an August 3, 2015 nonmerit decision. 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 her burden of proof to establish an injury to her back and left shoulder causally related to factors of her federal employment; and (2) whether OWCP properly denied her request to reopen her case for further review of the merits under 5 U.S.C. § 8128(a).

¹ 5 U.S.C. § 8101 *et seq.*

² Appellant submitted new evidence with her appeal; however, the Board has no jurisdiction to review new evidence on appeal; *see* 20 C.F.R. § 501.2(c)(1).

FACTUAL HISTORY

On April 1, 2015 appellant, then a 36-year-old mail carrier, filed a traumatic injury claim (Form CA-1) alleging that on March 2, 2015 she experienced left shoulder pain and back pain with spasms from carrying mail. She stopped work on March 2, 2015.

On April 21, 2015 the employing establishment advised that it appeared that appellant was claiming an occupational disease rather than a traumatic injury.³

By letter dated April 30, 2015, OWCP advised appellant that she should submit additional factual and medical information, including a detailed report from her attending physician, addressing the causal relationship between any diagnosed condition and the identified work incident. It enclosed a questionnaire requesting specific information, including clarification of whether she was claiming a traumatic injury or an occupational disease.

Appellant submitted an emergency room discharge report indicating that she had received treatment on March 3, 2015 for a backache.⁴

On May 4, 2015 appellant completed the section of the questionnaire form provided by OWCP relevant to claims for occupational diseases. She indicated that she had strained her shoulder on March 2, 2015 after four hours of mail delivery because of the weight of her mailbag. Appellant further related that she had performed these duties six hours a day, five days a week for a period of two years.

By decision dated July 8, 2015, OWCP denied appellant's claim after finding that she had not established an injury due to factors of her federal employment. It adjudicated her claim as an occupational disease based on her May 4, 2015 statement. OWCP found that appellant had not factually established the identified work factors as she failed to provide a detailed description of the circumstances surrounding her injury. It further noted that she had not clarified whether she was claiming a back condition as well as a left shoulder condition, and had not provided the medical evidence establishing a diagnosed condition as a result of a claimed work factor.

On July 23, 2015 appellant requested reconsideration. She resubmitted the first page of her traumatic injury claim form and a May 8, 2015 form report from her physician.

³ In a report dated March 9, 2015, Dr. Stella Ilyaev, a Board-certified internist, related that she had treated appellant for three years for "chronic back pain, associated with muscle spasms, exacerbated by [the] carrying of heavy bags" as a result of her work for the employing establishment. She noted that appellant's "last day of work ended in the emergency room...." In a March 30, 2015 work restriction evaluation, Dr. Ilyaev diagnosed back spasms and sprain and checked "yes" that the history of injury corresponded to that provided by appellant that she was experiencing a back strain with sore muscles and spasms.

⁴ In a form report dated May 8, 2015, Dr. Ilyaev diagnosed back strain/strain and checked a box marked "yes" that the condition was caused or aggravated by employment, providing as a rationale that appellant carried up to 70 pounds at work. She advised that appellant was totally disabled from March 2, 2015 to the present. In a June 8, 2015 work restriction evaluation, Dr. Ilyaev diagnosed lower back strain and listed work restrictions.

In a decision dated August 3, 2015, OWCP denied appellant's request for reconsideration as she had not raised an argument or submitted evidence sufficient to warrant reopening her case for further merit review under section 8128(a).

On appeal appellant asserts that the employing establishment incorrectly spelled her name and thus she was not in the system as sustaining a work injury under file number xxxxxx521. She maintains that she has met her burden of proof and is entitled to reconsideration of the adverse decision.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA⁵ has the burden 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 and/or specific condition for which compensation is claimed are causally related to the employment injury.⁶ 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.⁷

Appellant has the burden of proof to submit a factual statement identifying the employment factors alleged to have caused the occurrence of the claimed disease or condition.⁸

ANALYSIS -- ISSUE 1

The Board finds that appellant did not meet her burden of proof to establish an injury in the performance of duty. Appellant alleged that she sprained her back and injured her left shoulder on March 2, 2015 after carrying mail. By letter dated April 30, 2015, OWCP advised her of the deficiencies of her claim and the need to submit additional information regarding the alleged incident. It provided appellant with a questionnaire to complete. In response, on the section of the questionnaire relevant to occupational disease claims, appellant asserted that on March 2, 2015 she strained her shoulder delivering mail. She further indicated that she had performed the described activities five days a week, six hours a day, for two years. Based on appellant's response, OWCP adjudicated her claim as an occupational injury. It found, however, that she had not adequately described the circumstances surrounding her injury or discuss whether she had any previous history of similar symptoms.

The Board finds that appellant failed to establish her claim. It is her burden to submit a detailed description of the employment factors that she believes caused or adversely affected the condition or conditions for which compensation is claimed.⁹ The need in this case for detailed

⁵ *Supra* note 1.

⁶ *Tracey P. Spillane*, 54 ECAB 608 (2003); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁷ *See Ellen L. Noble*, 55 ECAB 530 (2004).

⁸ *See Allen C. Hundley*, 53 ECAB 551 (2002).

⁹ *Penelope C. Owens*, 54 ECAB 684 (2003).

factual evidence is especially important since it is currently difficult to determine the exact nature of the claimed injury and whether appellant is claiming a traumatic injury or occupational disease. On her claim form, appellant attributed a back and left shoulder condition to carrying mail on March 2, 2015. In a May 4, 2015 response to OWCP's request for information, she alleged that she strained her shoulder delivering mail for four hours on March 2, 2015. Appellant thus appears to implicate a traumatic event as the cause of either a shoulder or back condition rather than work factors occurring over more than one work shift.¹⁰ She further related, however, that she performed the activities alleged to have caused her condition five days a week for two years. As appellant did not provide a factual statement describing in detail the events that caused the claimed injury and the circumstances surrounding the injury, she has not met her burden of proof. Consequently, it is unnecessary to address the medical evidence of record.¹¹

On appeal appellant maintains that the employing establishment initially did not list her as having a work injury because it misspelled her name. She also contends that she has met her burden of proof. As noted, however, appellant's burden of proof includes the submission of a factual statement describing the claimed injury. She did not submit such evidence and thus did not meet her burden of proof.¹² The prior alleged misspelling of appellant's name is irrelevant to the present denial of her 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 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 OWCP's regulations provide that 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.¹⁴ 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.¹⁵ When a claimant fails to meet one of the above standards, OWCP

¹⁰ A traumatic injury is defined 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." 20 C.F.R. § 10.5(ee). An occupational disease is defined as a condition produced by the work environment over a period longer than a single workday or shift." 20 C.F.R. § 10.5(q).

¹¹ See *M.P.*, Docket No. 15-0952 (issued July 23, 2015); *Alvin V. Gadd*, 57 ECAB 172 (2005).

¹² See *R.H.*, Docket No. 15-0508 (issued July 10, 2015).

¹³ 5 U.S.C. § 8101 *et seq.* Section 8128(a) of FECA provides that "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application."

¹⁴ 20 C.F.R. § 10.606(b)(3).

¹⁵ *Id.* at § 10.607(a).

will deny the application for reconsideration without reopening the case for review on the merits.¹⁶

The Board has held that the submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.¹⁷ The Board also has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.¹⁸

ANALYSIS -- ISSUE 2

The underlying issue on reconsideration is whether appellant submitted sufficient evidence to establish that she sustained an employment injury. OWCP received her July 23, 2015 reconsideration request within one year of its July 8, 2015 merit decision. Appellant's request is, therefore, timely. The question that remains is whether the request meets at least one of the three standards for obtaining a merit review.

The Board finds that appellant's request for reconsideration is insufficient to require OWCP to reopen the case for merit review. She indicated with a checkmark on the appeal request form that she was requesting reconsideration. Appellant did not attempt to show that OWCP erroneously applied or interpreted a point of law or advance a relevant argument. Further, she did not submit pertinent new and relevant evidence not previously considered. With her reconsideration request, appellant resubmitted a page of her claim form and a May 8, 2015 form report from her physician. Evidence which repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.¹⁹

On appeal appellant argues that she should receive reconsideration of the adverse decision. As her July 23, 2015 request for reconsideration did not meet any of the standards for reopening her case, the Board therefore finds that OWCP properly denied her request for further merit review under section 8128(a).

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish an injury to her back and left shoulder causally related to factors of her federal employment. The Board further finds that OWCP properly denied her request to reopen her case for further review of the merits under 5 U.S.C. § 8128(a).

¹⁶ *Id.* at § 10.608(b).

¹⁷ *F.R.*, 58 ECAB 607 (2007); *Arlesa Gibbs*, 53 ECAB 204 (2001).

¹⁸ *P.C.*, 58 ECAB 405 (2007); *Ronald A. Eldridge*, 53 ECAB 218 (2001); *Alan G. Williams*, 52 ECAB 180 (2000).

¹⁹ *See J.P.*, 58 ECAB 289 (2007); *Richard Yadron*, 57 ECAB 207 (2005).

ORDER

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

Issued: February 11, 2016
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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