United States Department of Labor
Employees' Compensation Appeals Board

J.L., Appellant	)	
and	)	**Docket No. 16-0023**
	)	**Issued: February 19, 2016**
U.S. POSTAL SERVICE, POST OFFICE, Madison, WI, Employer	)	

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
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On October 7, 2015 appellant filed a timely appeal from a July 8, 2015 merit decision and an August 12, 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 that her right leg conditions were causally related to a May 9, 2015 employment incident; and (2) whether OWCP properly denied appellant's request for 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, following the issuance of the August 12, 2015 OWCP decision, appellant submitted new evidence. The Board is precluded from reviewing evidence which was not before OWCP at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c)(1).

On appeal, appellant contends that her injury was not a preexisting injury or condition and occurred while performing her job duties, which required an excessive amount of walking and climbing stairs and hills. She argues that she had requested light-duty work while injured but was denied.

FACTUAL HISTORY

On May 9, 2015 appellant, a 39-year-old mail carrier, filed a traumatic injury claim (Form CA-1) alleging that she sustained an injury to her right leg and ankle on that date. She indicated that she felt a pull in her right calf muscle while going down steps. Appellant stopped work on May 9, 2015.

Appellant submitted a May 9, 2015 report from Dr. Terry Strawser, a family practitioner, who diagnosed "sprain/strain of knee/leg." She complained of constant pain of the right ankle since the morning of May 9, 2015, and that the pain made walking difficult. Dr. Strawser noted that appellant reported sudden onset of injury. Appellant denied any prior similar problems. X-rays of the ankle that date revealed no fractures, dislocations, or soft tissue swelling. In a May 9, 2015 duty status report (Form CA-17), Dr. Strawser diagnosed right knee and leg sprain/strain and released her to restricted duties. In an accompanying May 9, 2015 work status note, he noted seeing appellant that day for an injury that could be compensable under workers' compensation statutes. Dr. Strawser repeated his diagnosis and released appellant to "sit down work mainly."

In a May 16, 2015 report, Dr. Strawser asserted that appellant's pain was so bad that it was hard for her to walk. He indicated that when appellant was walking her postal route she felt a right ankle pain that gradually worsened. Examination was normal. Dr. Strawser repeated his diagnosis and advised that appellant was "stable/improved." In a May 16, 2015 duty status report (Form CA-17) and an attached May 16, 2015 work status note, he reiterated appellant's diagnoses and work restrictions, and noted that the injury could be compensable. In a May 23, 2015 progress report, Dr. Strawser restated the history from his prior reports and opined that appellant's condition was "stable/improved." In a May 23, 2015 duty status report (Form CA-17) and accompanying May 23, 2015 work status note, he released appellant to full-duty work without restrictions and restated that appellant's condition could be work related.

In a June 5, 2015 letter, OWCP advised appellant of the deficiencies of her claim and afforded her 30 days to submit additional evidence and respond to its inquiries.

Appellant resubmitted Dr. Strawser's May 23, 2015 progress report which reiterated his diagnosis and medical opinions, noting that appellant's reported muscle pain was an abnormal symptom related to her complaint.

By decision dated July 8, 2015, OWCP denied appellant's claim as the medical evidence was insufficient to establish a causal relationship between her diagnosed conditions and the May 9, 2015 employment incident.

On July 30, 2015 appellant requested reconsideration and resubmitted medical and duty status reports (Form CA-17) dated May 9, 16, and 23, 2015 from Dr. Strawser. She also

resubmitted her May 9, 2015 traumatic injury claim (Form CA-1) with an attached note, from an unidentified person, indicating that appellant felt a sharp pain as she walked down stairs.

By decision dated August 12, 2015, OWCP denied appellant's request for reconsideration without a merit review.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA[3] has the burden of establishing the essential elements of 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[4] 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.[5]

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 her condition relates to the employment incident.[6]

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.[7]

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met her burden of proof to establish that her right leg conditions are causally related to a May 9, 2015 employment incident.

[3] *Supra* note 1.

[4] 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).

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

[6] *Id.*

[7] *Id.*

The evidence supports that the May 9, 2015 employment incident, in which appellant went down steps while working, occurred as alleged. The issue is whether her diagnosed right leg conditions resulted from the May 9, 2015 employment incident. The Board finds that appellant failed to meet her burden of proof to establish a causal relationship between the diagnosed conditions and the employment incident.

In his May 9, 16, and 23, 2015 reports, Dr. Strawser diagnosed sprain or strain of right knee and leg that began on May 9, 2015, and advised that appellant reported no prior similar problem. He noted that appellant had related her condition to walking her postal route as she felt a right ankle pain that gradually worsened. Dr. Strawser's work status notes also indicated that appellant was seen that day "for an injury that could be compensable under workers' compensation statutes." On May 23, 2015 he opined that appellant's condition was stable and he released her to full-duty work without restrictions. Although Dr. Strawser provides some support for causal relationship, he appears to be repeating the history provided by appellant without providing his own medical reasoning, or rationale, to explain the mechanism of how appellant's right leg conditions were caused or aggravated by walking up and down stairs on May 9, 2015.[8] He indicated that his opinion was based, in part, on temporal correlation. However, the Board has held that neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish a causal relationship.[9] Dr. Strawser's work status notes provided only equivocal support for causal relationship, indicating that appellant's condition could be compensable under workers' compensation statutes.[10] Consequently, the reports from Dr. Strawser are of limited probative value and insufficient to establish the claim.

On appeal, appellant contends that her injury was not a preexisting injury or condition and occurred while performing her job duties, which required an excessive amount of walking and climbing stairs and hills. She argues that she had requested light-duty work while injured but was denied. The issue before the Board is medical in nature and appellant has not submitted sufficient medical evidence which explains why her diagnosed medical condition is causally related to the May 9, 2015 employment incident.

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

[8] *See George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

[9] *E.J.*, Docket No. 09-1481 (issued February 19, 2010).

[10] *See Leonard J. O'Keefe*, 14 ECAB 42, 48 (1962) (where the Board held that medical opinions which are speculative or equivocal in character have little probative value).

an award for or against compensation.[11] OWCP, through regulations, has imposed limitations on the exercise of its discretionary authority under section 8128(a).[12]

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.[13] 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.[14] When a claimant fails to meet one of the above standards, OWCP will deny the application for reconsideration without reopening the case for review on the merits.[15]

The Board has held that the submission of evidence or argument which repeats or duplicates evidence or argument already in the case record[16] and the submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.[17]

ANALYSIS -- ISSUE 2

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

Appellant did not attempt to demonstrate that OWCP erroneously applied or interpreted a point of law. Moreover, appellant did not advance a legal argument not previously considered by OWCP.

In support of her July 30, 2015 reconsideration request, appellant resubmitted medical and duty status reports (Form CA-17) dated May 9, 16, and 23, 2015 from Dr. Strawser. She also resubmitted her CA-1 form. The Board finds that the resubmission of evidence is insufficient to warrant reopening appellant's case for merit review. As the reports repeat evidence already in the case record, they are duplicative and do not constitute relevant and pertinent new evidence.[18] With the resubmitted CA-1 form, appellant attached an undated note indicating that she felt a sharp pain as she walked down stairs. However, the underlying issue,

[11] 5 U.S.C. § 8101 *et seq.* 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).

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

[13] 20 C.F.R. § 10.606(b)(3). *See A.L.*, Docket No. 08-1730 (issued March 16, 2009).

[14] 20 C.F.R. § 10.607(a).

[15] *Id*. at § 10.608(b).

[16] *See A.L., supra* note 13. *See also Eugene F. Butler*, 36 ECAB 393, 398 (1984).

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

[18] *See D.K.*, 59 ECAB 141 (2007).

causal relationship is medical in nature[19] and there is no indication that the person who wrote the note is a physician as defined by FECA.[20] Thus, this note is irrelevant to the medical issue in this case and is not a basis for reopening the claim.[21]

Because appellant failed to meet one of the standards enumerated under the regulations at 20 C.F.R. § 10.606(b)(3), she was not entitled to further merit review of her claim.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that her right leg conditions are causally related to a May 9, 2015 employment incident. The Board further finds that OWCP properly denied appellant's request for reconsideration of the merits pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the August 12 and July 8, 2015 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: February 19, 2016
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

[19] *See Jennifer Atkerson*, 55 ECAB 317 (2004).

[20] *See* 5 U.S.C. § 8101(2).

[21] *See Betty A. Butler*, 56 ECAB 545 (2005) (evidence that does not address the particular issue involved does not constitute a basis for reopening a claim).