

ISSUES

The issues are: (1) whether appellant has established that her lumbar condition was causally related to the accepted August 12, 2014 employment incident; and (2) whether OWCP properly denied further merit review of appellant's case pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On August 19, 2014 appellant, then a 61-year-old rural carrier associate, filed a traumatic injury claim (Form CA-1) alleging that on August 12, 2014 she sustained an injury to her back when she lifted a flat sequencing system (FSS) tray. She stopped work on August 13, 2014 and returned to light duty on August 18, 2014.

In an August 19, 2014 statement, Tyrone N. Tutko, the closing supervisor for the employing establishment, explained that on August 12, 2014 appellant mentioned to him that she had dropped to her knees when she tried to pick up a yellow FSS tray. He noted that he called her later that night because he needed a rural carrier for Wednesday, but she informed him that she could not work and was going to see a physician the next day.

Appellant was initially examined by Dr. Richard Slater, a Board-certified internist, who provided duty status reports, CA-17 forms, dated August 20 and 29, 2014, which indicated that on August 12, 2014 appellant injured her back when she picked up a yellow FSS tray. He noted examination findings of lower left lumbar sciatica with left leg numbness and a diagnosis of lumbar sprain. Appellant was advised not to return to work. In an August 21, 2014 employer injury status report, Dr. Slater related a date of injury of August 12, 2014 and noted that appellant had left sciatic notch. He authorized appellant to return to modified duty with restrictions of no bending and no lifting more than 10 pounds.

On August 21, 2014 OWCP received a letter from Sean Cummings, appellant's supervisor, controverting appellant's claim. Mr. Cummings related that when she returned from completing her route on August 12, 2014 she informed him that she experienced pain when she grabbed an FSS tray. When he asked appellant if she was okay, however, she replied that she was not injured and refused medical treatment. Mr. Cummings described how over the following days she informed management that she would not be at work until August 18, 2014, and that she needed a Form CA-1. He related that since he transferred to the employing establishment appellant had consistently complained of back pain. Mr. Cummings pointed out that even though the alleged injury occurred around 8:00 a.m. on August 12, 2014 appellant was able to complete her route on August 12 and 18, 2014.

By letter dated October 7, 2014, OWCP advised appellant that the evidence submitted was insufficient to establish her claim. It requested that she submit additional factual evidence to demonstrate that the employment incident occurred as alleged and medical evidence to support that she sustained a diagnosed condition as a result of the alleged incident. Appellant was afforded 30 days to submit this evidence.

Appellant continued to receive medical treatment from Dr. Slater. In September 10 and 24, 2014 workers' compensation follow-up notes, he reported a date of injury of August 13,

2014 and related that appellant sustained a lower back injury. He provided examination findings which are illegible and indicated that appellant returned to work on August 18, 2014. In duty status reports dated September 10 to October 10, 2014, Dr. Slater related that on August 12, 2014 she injured her back when picking up a yellow FSS tray. He reported examination findings of lower lumbar sciatica and left leg numbness and diagnosed lumbar strain. Appellant was advised to resume modified duty on August 18, 2014. She also submitted physical therapy records dated October 2 to 30, 2014.

On October 7, 2014 the employing establishment informed appellant *via* a letter that her continuation of pay (COP) benefits had expired on September 26, 2014. It advised her that if she wanted to continue to receive wage-loss compensation benefits she must file a (Form CA-7) at the close of each pay period.

In an October 9, 2014 attending physician's report (Form CA-20), Dr. Slater reiterated that on August 12, 2014 appellant injured her low back when picking up a yellow FSS tray. He indicated that she had a preexisting injury of scoliosis and facet joint degenerative changes. Dr. Slater reported findings of left sacroiliac joint pain with numbness radiating to the left leg. He diagnosed lumbar radiculitis. Dr. Slater checked a box marked "yes" that appellant's condition was caused or aggravated by an employment activity, but provided no explanation. He described the medical treatment he provided and dates of examination. Dr. Slater indicated that appellant could resume light work on August 18, 2014 with restrictions of no lifting more than 10 pounds, no bending and kneeling, and standing for only four to eight hours.

On October 17, 2014 appellant filed a claim for wage-loss compensation (Form CA-7) for the period September 27 to October 10, 2014.

By letter dated November 3, 2014, appellant described that on August 12, 2014 at 8:00 a.m. she picked up a tray of FSS flats, but the weight shifted and caused her to fall on her knees. She related that she told Mr. Cummings right away, but he completely ignored her and never offered medical attention. Appellant explained that she was able to finish her mail route and did not feel any immediate effects, but she started to experience severe back pain when she returned home. She noted that she first sought treatment on August 13, 2014 from Dr. Slater. Appellant reported that she had experienced similar lower back pain on December 18, 2012. She mentioned that her physician recommended that she work light duty beginning August 18, 2014 for two weeks, but the employing establishment ignored his orders.

In a decision dated November 17, 2014, OWCP denied appellant's claim. It accepted that the August 12, 2014 incident occurred as alleged and that she sustained a diagnosed back condition, but denied her claim because the medical evidence failed to establish that her medical condition was causally related to the accepted incident.

On December 1, 2014 OWCP received appellant's request for reconsideration.

Appellant resubmitted Dr. Slater's October 9, 2014 attending physician's report (Form CA-20) with revisions. He checked a box marked "yes" that her condition was caused or aggravated by her employment and explained that her condition was aggravated by repetitive

lifting of 35 pounds, truncal twisting while holding 35 pounds, and bending then lifting 35-pound trays. Appellant also resubmitted the October 9, 2014 duty status report.

By decision dated December 11, 2014, OWCP denied modification of the November 17, 2014 decision.

On December 26, 2014 OWCP received appellant's reconsideration request. Appellant resubmitted Dr. Slater's October 9, 2014 attending physician's report and duty status reports dated August 20 to October 8, 2014.

Appellant also provided October 23 and November 6, 2014 duty status reports by Dr. Slater, which mentioned that on August 12, 2014 appellant strained her back when she picked up a yellow FSS tray. He described clinical findings of left paralumbar pain and left sciatic notch. Appellant was advised to return to modified duty on August 18, 2014.

In a decision dated February 18, 2015, OWCP denied further merit review of appellant's claim finding that her request did not meet any of the requirements warranting merit review under 5 U.S.C. § 8128(a).

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA⁴ has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence⁵ including that he or she sustained an injury in the performance of duty and that any specific condition or disability for work for which he or she claims compensation is causally related to that employment injury.⁶

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether "fact of injury" has been established.⁷ There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged.⁸ Second, the employee must submit evidence, generally only in the form of probative medical evidence, to establish that the employment incident caused a personal injury.⁹ An employee may establish that the

⁴ *Supra* note 1.

⁵ *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

⁶ *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁷ *S.P.*, 59 ECAB 184 (2007); *Alvin V. Gadd*, 57 ECAB 172 (2005).

⁸ *Bonnie A. Contreras*, 57 ECAB 364 (2006); *Edward C. Lawrence*, 19 ECAB 442 (1968).

⁹ *David Apgar*, 57 ECAB 137 (2005); *John J. Carlone*, 41 ECAB 354 (1989).

employment incident occurred as alleged, but fail to show that his or her disability or condition relates to the employment incident.¹⁰

Whether an employee sustained an injury requires the submission of rationalized medical opinion evidence.¹¹ 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.¹² The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.¹³

ANALYSIS -- ISSUE 1

Appellant alleged that on August 12, 2014 she sustained a back injury as a result of lifting an FSS tray in the performance of duty. OWCP accepted that the August 12, 2014 incident occurred as alleged and that she was diagnosed with acute lumbar sprain and lumbar radiculitis, but denied her claim finding that the medical evidence failed to establish that her diagnosed medical condition was causally related to the August 12, 2014 employment incident. The Board finds that appellant has not met her burden of proof to establish that her back condition resulted from the accepted employment incident.

Dr. Slater treated appellant and completed an attending physician's report dated October 9, 2014. He noted that on August 12, 2014 she picked up a yellow FSS tray at work and injured her low back. Dr. Slater related that appellant had a history of scoliosis and facet joint degenerative changes in her lumbar spine. He reported examination findings and diagnosed lumbar radiculitis. Dr. Slater checked a box marked "yes" that appellant's condition was caused or aggravated by an employment activity. He explained that the condition was aggravated by repetitive lifting of 35 pounds, truncal twisting while holding 35 pounds, and bending then lifting 35-pound trays.

Although Dr. Slater noted a date of injury of August 12, 2014 and described a lifting incident he also attributed appellant's lumbar condition to her repetitive employment duties, specifically lifting, twisting, and bending. The Board notes, however, that he failed to clearly explain the causal relationship between her lumbar condition and the August 12, 2014 employment incident. Instead, Dr. Slater related the cause of appellant's condition to both an August 12, 2014 injury and to repetitive employment duties. The Board finds that because his opinion is vague and equivocal on the issue of causal relationship it is of diminished probative value and fails to establish her claim.¹⁴ The Board has held that in a traumatic injury claim a

¹⁰ *T.H.*, 59 ECAB 388 (2008); *see also Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006).

¹¹ *See J.Z.*, 58 ECAB 529 (2007); *Paul E. Thams*, 56 ECAB 503 (2005).

¹² *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

¹³ *James Mack*, 43 ECAB 321 (1991).

¹⁴ *D.D.*, 57 ECAB 734, 738 (2006); *Kathy A. Kelley*, 55 ECAB 206 (2004).

physician must provide a narrative description of the identified employment incident and a reasoned opinion on whether the employment incident described caused or contributed to appellant's diagnosed medical condition.¹⁵ Because Dr. Slater has not provided such a reasoned opinion in this case, his report is insufficient to establish her claim.

Dr. Slater also provided several CA-17 form reports dated August 20 to November 6, 2014 and follow-up notes dated September 10 and 24, 2014, which indicated a date of injury of August 12, 2014. Dr. Slater described that appellant strained her back when she picked up a yellow FSS tray. He reported clinical findings of left paralumbar pain, lower lumbar sciatica, left sciatic notch, and left leg numbness. Dr. Slater diagnosed lumbar strain. He indicated with an affirmative mark that the diagnosed condition was caused by the described employment incident. The Board has held, however, that when a physician's opinion on causal relationship consists only of checking a box marked "yes" to a form question, without more by way of rationale, that opinion has little probative value and is insufficient to establish causal relationship.¹⁶ These reports, therefore, also fail to establish appellant's claim.

On appeal, appellant alleges that the attending physician's report dated October 9, 2014 contained a rationalized medical opinion which established causal relationship. As found above, however, Dr. Slater's October 9, 2014 attending physician's report is of diminished probative value and fails to establish a causal relationship between appellant's lumbar condition and the August 12, 2014 employment incident. The issue of causal relationship is a medical question that must be established by probative medical opinion from a physician.¹⁷ Because appellant did not submit such probative medical evidence, she has failed to establish 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(a) and 20 C.F.R. §§ 10.605 through 10.607.

LEGAL PRECEDENT -- ISSUE 2

Section 8128(a) of FECA vests OWCP with discretionary authority to determine whether to review an award for or against compensation. The Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application.¹⁸

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or an argument that: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by

¹⁵ *John W. Montoya*, 54 ECAB 306 (2003).

¹⁶ *See T.C.*, Docket No. 15-1534 (issued March 1, 2016).

¹⁷ *W.W.*, Docket No. 09-1619 (issued June 2, 2010); *David Apgar*, *supra* note 9.

¹⁸ 5 U.S.C. § 8128(a).

OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.¹⁹

A request for reconsideration must also be received by OWCP within one year of the date of OWCP's decision for which review is sought.²⁰ If OWCP chooses to grant reconsideration, it reopens and reviews the case on its merits.²¹ If the request is timely, but fails to meet at least one of the requirements for reconsideration, OWCP will deny the request for reconsideration without reopening the case for review on the merits.²²

ANALYSIS -- ISSUE 2

In decisions dated November 17 and December 11, 2014, OWCP denied appellant's traumatic injury claim finding that the evidence did not establish that her lumbar condition was causally related to the accepted August 12, 2014 employment incident. On December 26, 2014 it received her request for reconsideration. In a decision dated February 18, 2015, OWCP denied further merit review pursuant to 5 U.S.C. § 8128(a). The Board finds that OWCP properly refused to reopen appellant's case for further consideration of the merits of her claim under 5 U.S.C. § 8128(a).

Appellant did not submit any evidence to show that OWCP erroneously applied or interpreted a specific point of law; she did not advance a relevant legal argument not previously considered by OWCP; and she did not submit relevant and pertinent new evidence not previously considered by OWCP.

Along with her reconsideration request, appellant provided additional medical reports, including a September 24, 2014 workers' compensation note and October 23 and November 6, 2014 duty status reports by unknown providers, which described the August 12, 2014 employment incident and her back symptoms. These reports do not constitute competent medical evidence as it is unclear that they were prepared by physicians. Thus, they are not relevant to the medical issue of whether appellant has established a lumbar condition causally related to the August 12, 2014 employment incident.²³ She also submitted an August 29, 2014 injury status note by Dr. Slater, which noted the August 12, 2014 date of injury and recommended that she return to modified duty. Although this medical report was not previously considered by OWCP, it is substantially similar and duplicative of evidence previously considered and reviewed by OWCP. This medical report merely referenced the date of injury and described examination findings, as had previously submitted medical reports. The Board has held that evidence or argument that repeats or duplicates evidence previously of record has no

¹⁹ 20 C.F.R. § 10.606(b)(3); *see also* *L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

²⁰ *Id.* at § 10.607(a).

²¹ *Id.* at § 10.608(a); *see also* *M.S.*, 59 ECAB 231 (2007).

²² *Id.* at § 10.608(b)(3); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

²³ *See N.D.*, Docket No. 15-0027 (issued February 4, 2016); *Merton J. Sills*, 39 ECAB 572 (1988).

evidentiary value and does not constitute a basis for reopening a case.²⁴ As these medical reports do not constitute relevant new evidence, the Board finds that OWCP properly refused to reopen appellant's case for further consideration of the merits of her claim under 5 U.S.C. § 8128(a).

The Board finds that as appellant did not meet any of the necessary requirements for further consideration of the merits of her claim under 5 U.S.C. § 8128(a), OWCP properly denied further merit review of appellant's traumatic injury claim.

CONCLUSION

The Board finds that appellant has failed to establish that her lumbar condition was causally related to the August 12, 2014 employment incident. The Board further finds that OWCP properly denied further merit review of her case pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the December 11 and November 17, 2014 merit decisions and a February 18, 2015 nonmerit decision of the Office of Workers' Compensation Programs are affirmed.

Issued: July 22, 2016
Washington, DC

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

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

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

²⁴ *E.M.*, Docket No. 09-39 (issued March 3, 2009).