



## **ISSUES**

The issues are: (1) whether appellant met her burden of proof to establish an injury causally related to a June 11, 2015 employment incident; and (2) whether OWCP properly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

## **FACTUAL HISTORY**

On June 13, 2015 appellant, then a 27-year-old city carrier assistant, filed a traumatic injury claim (Form CA-1) alleging that she sustained a neck injury while delivering mail on June 11, 2015. An unidentified young man reportedly snatched the headphones she was wearing and in the process grabbed her hair. Appellant claimed to have suffered a whiplash-type injury to the left side of her neck. She called 911 and reported the theft to the police. Appellant stopped work on June 12, 2015 and received continuation of pay.<sup>3</sup>

Appellant sought medical treatment on June 13, 2015. She submitted the first two pages of a June 13, 2015 document from New York Methodist Hospital in which it is noted that her chief complaint was neck pain. Appellant received prescriptions for Valium and Ibuprofen.<sup>4</sup>

In a June 30, 2015 note, Dr. Jacob Nir, a Board-certified physiatrist, referred appellant for physical therapy to treat her neck and left shoulder. Appellant also submitted physical therapy treatment notes beginning in late-June 2015.

In an attending physician's report (Form CA-20) dated July 17, 2015, Dr. Nir listed appellant's date of injury as June 11, 2015 and the mechanism of injury as having headphones pulled off her head while delivering mail and suffering whiplash due to the resultant force. He diagnosed cervical radiculopathy at C5-6 and left shoulder derangement. Dr. Nir checked a box marked "Yes" indicating that the diagnosed conditions were caused or aggravated by the employment activity. He advised that appellant was totally disabled beginning June 30, 2015.

In a form entitled "Work Capacity Evaluation Musculoskeletal Conditions" (Form OWCP-5c) dated July 18, 2015, Dr. Nir advised that appellant was not able to perform her usual job due to decreased neck motion, numbness, and tingling of the left upper extremity. He indicated that she could not perform any type of work at the present time, noting that she had left arm weakness, severe neck pain, spasms, and trigger points.

In a July 27, 2015 letter, OWCP requested that appellant submit additional factual and medical evidence in support of her claim.

Appellant submitted the second page of a July 18, 2015 form requesting authorization for examination and/or treatment (Form CA-16) in which Dr. Nir diagnosed radiculopathy with nerve root involvement and checked a box marked "Yes" indicating that the diagnosed

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<sup>3</sup> Appellant subsequently filed a claim for wage-loss compensation (Form CA-7) for the period July 27 through August 21, 2015.

<sup>4</sup> The document appears to be missing its third through fifth pages and does not contain a signature.

conditions were caused or aggravated by the employment activity. She also submitted a report from a physical therapy session in August 2015.

In a decision dated October 8, 2015, OWCP denied appellant's claim for a work-related injury on June 11, 2015. It accepted the June 11, 2015 work incident as alleged and that a medical condition had been diagnosed. However, OWCP denied the claim because appellant had failed to submit medical evidence establishing a causal relationship between the diagnosed condition and the accepted employment incident.

Appellant requested a telephone hearing with an OWCP hearing representative regarding the October 8, 2015 decision. During the hearing, held on June 14, 2016, she testified that on June 11, 2015 she was wearing the type of large headphones that entirely cover the ears, although at the time of the claimed injury the left side of the headphones covered her left ear and the right side of the headphones rested just behind her right ear so that she could hear out of her right ear. Appellant indicated that the young man who stole her headphones pulled them forward while removing them, thereby pulling her head forward. She provided a description of her symptoms and the treatment of her medical conditions.

On the day of the hearing, appellant submitted several additional documents. In an October 20, 2015 report entitled "Initial Medical Evaluation," Dr. Dorina Drukman, a Board-certified physiatrist, reported that on June 11, 2015 a man pulled appellant's headset, thereby twisting her neck, and causing her head to jerk. Appellant reported that she did not fall but that she thereafter experienced severe headaches and neck pain. Dr. Drukman noted that appellant's current complaints included neck pain, left worse than right, with pain radiating down her left arm to her hand. Appellant also reported persistent numbness in her left hand and tingling and numbness in her left arm.<sup>5</sup> Dr. Drukman detailed the findings of her physical examination of appellant on October 20, 2015 and diagnosed pain in the cervical spine, spasm in the cervical paraspinals, sprain in the cervical spine, and numbness in the left arm. She indicated that appellant needed additional diagnostic testing, including a magnetic resonance imaging scan, x-ray testing, and electro-diagnostic testing to rule out cervical radiculopathy versus brachial plexopathy or peripheral traumatic neuropathy. Dr. Drukman noted that appellant was temporarily totally disabled from her work as a letter carrier. The record contains the findings of October 20, 2015 x-ray testing of appellant's cervical spine which contained an impression of "slight reversal of lordosis, otherwise unremarkable examination."

Appellant also submitted a January 26, 2016 note from Dr. Salvatore R. Lenzo, a Board-certified orthopedic surgeon. Dr. Lenzo indicated that she was totally incapacitated from January 26 to February 24, 2016 due to the diagnosed condition of status post left index finger trigger release, left carpal tunnel release, and decompression of the left median nerve at the forearm level. In an undated disability certification note, he indicated that appellant was totally incapacitated from February 23 to April 22, 2016. Dr. Lenzo noted that this disability was due to the diagnosed condition of status post left index finger trigger release, left carpal tunnel release, and decompression of the left median nerve at the forearm level.

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<sup>5</sup> Appellant reported that the tingling and numbness in her left arm started about one week after the June 11, 2015 employment incident.

Appellant later submitted a July 1, 2016 report of Dr. Lenzo. In this report, Dr. Lenzo indicated that she reported that on June 11, 2015 she was wearing headphones while in a bent-over position when “[appellant] was accosted and someone actually ripped the headphones off of her head and she sustained a violent injury to her cervical spine.” He noted that appellant further reported that she developed significant pain in her cervical spine area which radiated into her left upper extremity. Dr. Lenzo advised that Dr. Drukman performed electrodiagnostic studies on October 20, 2010 which revealed evidence of a C5-6 cervical radiculopathy and carpal tunnel syndrome, *i.e.*, compression of the median nerve within the left arm. He indicated that he first saw appellant on December 22, 2015 at which time he diagnosed compression of the medial nerve both at the level of the hand and within the forearm at the level of the pronator near the elbow. Dr. Lenzo noted that she also developed swelling and tenderness consistent with tenosynovitis of the flexor tendons within the left index finger. He explained that, due to appellant’s continuing complaints lasting more than six months, he performed surgery on January 14, 2016 including “decompression of the respective nerves within the forearm and hand at the level of the median nerve as well as tenolysis and tenosynovectomy of the tendons.” Dr. Lenzo reported that, upon physical examination on July 1, 2016, she had well-healed scars on the volar aspect of the left proximal forearm over the volar aspect of the hand and the base of the left index finger. He noted:

“Thus to summarize, [appellant] sustained a serious injury to her neck and left upper extremity which is causally related to the date of accident. She developed a cervical radiculopathy and a double crush syndrome in the left upper extremity, *i.e.*, compression of the nerve at several sites. There is no prior history in this case for these similar problems and thus all of the symptoms I believe are related to the incident of June 11, 2015. This is with a degrees (sic) [of] medical certainty.”

In a decision dated July 27, 2016, the hearing representative affirmed OWCP’s October 8, 2015 decision denying appellant’s claim for a work-related injury on June 11, 2015. The hearing representative determined that appellant had not submitted rationalized medical evidence relating specific, diagnosed conditions to the accepted June 11, 2015 work incident.

On September 7, 2016 appellant, through counsel, requested reconsideration of OWCP’s July 27, 2016 decision. Counsel enclosed an August 9, 2016 report of Dr. Lenzo which he claimed provided an adequate explanation of how the claimed June 11, 2015 injury occurred.

A copy of the August 9, 2016 report of Dr. Lenzo was received by OWCP on the September 7, 2016 letter. In this report, Dr. Lenzo indicated that he produced the report in order to clarify his prior report of July 1, 2016. He noted that he wished to clarify that appellant was significantly injured when a young man grabbed headphones from her head and violently injured her cervical spine while she was bending over a mailbag in the course of delivering mail. Dr. Lenzo noted:

“[Appellant] sustained a violent type of whiplash injury to the cervical spine. This caused her to develop a significant C5-6 radiculopathy and a subsequent double crush syndrome with compression of the median nerve within the left arm. [Appellant] had no preexisting problem before this and I feel I can clearly state

with a degree of medical certainty that the injury of [June 11, 2015] was the causation for her injury at the neck and subsequent problems in the left upper extremity for which she needed my treatment.”

By decision dated November 28, 2016, OWCP denied appellant’s request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a). It noted that it had reviewed counsel’s September 6, 2016 letter. In denying appellant’s request for reconsideration of the merits of her claim, OWCP further noted:

“Because [appellant’s] letter neither raised substantive legal questions *nor included new and relevant evidence*, it is insufficient to warrant a review of our prior decision at this time. Any future request for reconsideration must be made within one year from the prior decision and must be accompanied by statements or evidence as described above.” (Emphasis added).

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

An employee seeking benefits under FECA has the burden of proof 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 timely filed within the applicable time limitation period of FECA, that an injury was sustained 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.<sup>6</sup> These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>7</sup>

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the fact of injury has been established. There are two components involved in establishing the fact of injury. 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.<sup>8</sup> Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.<sup>9</sup>

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 claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the

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<sup>6</sup> C.S., Docket No. 08-1585 (issued March 3, 2009); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>7</sup> *S.P.*, 59 ECAB 184 (2007); *Victor J. Woodhams*, 41 ECAB 345 (1989). A traumatic injury refers to injury caused by a specific event or incident or series of incidents occurring within a single workday or work shift, whereas an occupational disease refers to an injury produced by employment factors which occur or are present over a period longer than a single workday or work shift. 20 C.F.R. § 10.5 (q), (ee); *Brady L. Fowler*, 44 ECAB 343, 351 (1992).

<sup>8</sup> *Julie B. Hawkins*, 38 ECAB 393 (1987).

<sup>9</sup> *John J. Carlone*, 41 ECAB 354 (1989).

nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>10</sup>

### **ANALYSIS -- ISSUE 1**

The Board finds that appellant did not meet her burden of proof to establish an injury causally related to a June 11, 2015 employment incident.

Appellant filed a Form CA-1 claiming that on June 11, 2015 she sustained a neck injury, in the form of left-sided whiplash and muscle strains of her neck, while delivering mail on her route. She indicated that a young man snatched the headphones she was wearing off her head in the course of stealing them. In decisions dated October 8, 2015 and July 27, 2016, OWCP found that appellant had established the June 11, 2015 work incident as alleged, but that she had failed to submit sufficient medical evidence establishing an injury due to that work incident.

In support of her claim, appellant submitted a Form CA-20 dated July 17, 2015 in which Dr. Nir listed her date of injury as June 11, 2015 and the mechanism of injury as having headphones pulled off her head while delivering mail and suffering whiplash due to the resultant force. Dr. Nir diagnosed cervical radiculopathy at C5-6 and left shoulder derangement and checked a box marked “Yes” indicating that the diagnosed conditions were caused or aggravated by the employment activity. He advised that appellant was totally disabled from June 30, 2015 to the present.

The Board has held that when a physician’s opinion on causal relationship consists only of checking “Yes” to a form question, without more by the way of medical rationale, that opinion has little probative value and is insufficient to establish causal relationship. Appellant’s burden includes the necessity of furnishing an affirmative opinion from a physician who supports her conclusion with sound medical reasoning.<sup>11</sup> As Dr. Nir did no more than check a box “yes” in response to a form question, his opinion on causal relationship is of little probative value and is insufficient to discharge her burden of proof to establish a June 11, 2015 work injury. He did not provide a rationalized medical opinion explaining why the diagnosed conditions of cervical radiculopathy at C5-6 and left shoulder derangement were related to the June 11, 2015 work incident. Dr. Nir did not describe the June 11, 2015 incident in any detail or explain how it could have caused or aggravated the diagnosed conditions.

Appellant submitted the second page of a July 18, 2015 Form CA-16 in which Dr. Nir diagnosed radiculopathy with nerve root involvement and checked a box marked “Yes” indicating that the diagnosed conditions were caused or aggravated by the employment activity. The submission of this form report would not establish her claim for a June 11, 2015 work injury because he did not provide any explanation in this incomplete report that he felt that the diagnosed condition was caused or aggravated by the June 11, 2015 work incident. Dr. Nir did not provide a rationalized medical opinion relating the diagnosed condition to a specific,

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<sup>10</sup> See *I.J.*, 59 ECAB 408 (2008); *Donna Faye Cardwell*, 41 ECAB 730 (1990).

<sup>11</sup> *Lillian M. Jones*, 34 ECAB 379, 381 (1982).

accepted work factor.<sup>12</sup> In Form OWCP-5c dated July 18, 2015, he advised that appellant was not able to perform her usual job due to decreased neck motion, numbness, and tingling of the left upper extremity. Dr. Nir did not, however, provide an opinion that this inability to work was due to any condition related to the June 11, 2015 work incident.<sup>13</sup>

In an October 20, 2015 report, Dr. Drukman, an attending physician, detailed the June 11, 2015 work incident as reported by appellant and described her neck and upper extremity conditions. She provided the findings of her physical examination of appellant on October 20, 2015 and diagnosed pain in the cervical spine, spasm in the cervical paraspinals, sprain in the cervical spine, and numbness in the left arm. Dr. Drukman noted that appellant was temporarily totally disabled from her work as a letter carrier. The submission of this report would not establish appellant's claim because Dr. Drukman did not provide any indication that the diagnosed condition(s)/disability were related to the June 11, 2015 work incident.<sup>14</sup>

In a July 1, 2016 report, Dr. Lenzo, an attending physician, indicated that appellant reported that on June 11, 2015 she was wearing headphones while in a bent-over position when "[appellant] was accosted and someone actually ripped the headphones off of her head and she sustained a violent injury to her cervical spine." He advised that Dr. Drukman performed electrodiagnostic studies on October 20, 2010, which revealed evidence of a C5-6 cervical radiculopathy and carpal tunnel syndrome. The Board notes that these diagnostic testing results are not currently in the record. Dr. Lenzo also noted that he performed surgery on January 14, 2016 including "decompression of the respective nerves within the forearm and hand at the level of the median nerve as well as tenolysis and tenosynovectomy of the tendons." There is no report of this surgery in the record.

In his July 1, 2016 report, Dr. Lenzo further noted, "Thus to summarize, [appellant] sustained a serious injury to her neck and left upper extremity which is causally related to the date of accident. She developed a cervical radiculopathy and a double crush syndrome in the left upper extremity, *i.e.*, compression of the nerve at several sites." The Board notes that his opinion in this regard is of limited probative value because he did not support this opinion with adequate medical rationale. The Board has held that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale.<sup>15</sup> Dr. Lenzo did not explain how the June 11, 2015 work incident could have caused or aggravated the conditions of cervical radiculopathy or double crush syndrome in the left upper extremity. He further indicated, "There is no prior history in this case for these similar problems and thus all of the symptoms I believe are related to the incident of the June 11, 2015. This is with a degrees [of] medical certainty." However, the Board has held that the fact that a condition manifests itself or worsens during a period of

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

<sup>13</sup> See *Y.D.*, Docket No. 16-1896 (issued February 10, 2017); see also *D.R.*, Docket No. 16-0528 (issued August 24, 2016).

<sup>14</sup> *Id.*

<sup>15</sup> *C.M.*, Docket No. 14-0088 (issued April 18, 2014).

employment<sup>16</sup> or that work activities produce symptoms revelatory of an underlying condition<sup>17</sup> does not raise an inference of causal relationship between a claimed condition and employment factors. The Board notes that Dr. Lenzo's opinion is of limited probative value for the further reason that he did not provide a complete factual and medical history, particularly with regard to whether appellant had any neck or upper extremity problems prior to her June 11, 2015 work incident.<sup>18</sup>

For these reasons, appellant did not establish an injury causally related to a June 11, 2015 employment incident. Thus, she has failed to meet her burden of proof.

### **LEGAL PRECEDENT -- ISSUE 2**

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,<sup>19</sup> OWCP's 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.<sup>20</sup> 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.<sup>21</sup> 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.<sup>22</sup> The Board has held that the submission of evidence or argument which repeats or duplicates evidence or argument already in the case record<sup>23</sup> and the submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.<sup>24</sup> While a reopening of a case may be predicated solely on a legal

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<sup>16</sup> *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

<sup>17</sup> *Richard B. Cissel*, 32 ECAB 1910, 1917 (1981).

<sup>18</sup> See *supra* note 11. In disability certification notes from early-2016, Dr. Lenzo indicated that appellant was totally incapacitated from January 26 to April 22, 2016. He noted that this disability was due to the diagnosed condition of status post left index finger trigger release, left carpal tunnel release, and decompression of the left median nerve at the forearm level. These notes are of limited probative value on the relevant issue of this case because Dr. Lenzo did not provide any indication that the diagnosed condition or disability was related to the June 11, 2015 work incident.

<sup>19</sup> Under section 8128 of FECA, "[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." 5 U.S.C. § 8128(a).

<sup>20</sup> 20 C.F.R. § 10.606(b)(3).

<sup>21</sup> *Id.* at § 10.607(a).

<sup>22</sup> *Id.* at § 10.608(b).

<sup>23</sup> *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Jerome Ginsberg*, 32 ECAB 31, 33 (1980).

<sup>24</sup> *Edward Matthew Diekemper*, 31 ECAB 224-25 (1979).

premise not previously considered, such reopening is not required where the legal contention does not have a reasonable color of validity.<sup>25</sup>

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

OWCP issued a decision on July 27, 2016. Appellant, through counsel, requested reconsideration of this decision in a September 6, 2016 letter received by OWCP on September 7, 2016. In addition to this letter, she submitted an August 9, 2016 report of Dr. Lenzo.

The issue presented on appeal is whether appellant met any of the requirements of 20 C.F.R. § 10.606(b)(3), requiring OWCP to reopen the case for review of the merits of the claim.

The Board notes that, in its November 28, 2016 decision denying appellant's request for reconsideration of the merits of her claim, OWCP did not provide any indication that it considered the August 9, 2016 report of Dr. Lenzo.

FECA provides that OWCP shall determine and make findings of fact in making an award for or against payment of compensation after considering the claim presented by the employee and after completing such investigation as OWCP considers necessary with respect to the claim.<sup>26</sup> Since the Board's jurisdiction of a case is limited to reviewing that evidence which is before OWCP at the time of its final decision,<sup>27</sup> it is necessary that OWCP review all evidence submitted by a claimant and received by OWCP prior to issuance of its final decision. As the Board's decisions are final as to the subject matter appealed,<sup>28</sup> it is crucial that all evidence relevant to that subject matter which was properly submitted to OWCP prior to the time of issuance of its final decision be addressed by OWCP.<sup>29</sup>

The Board finds that OWCP improperly failed to consider all the relevant evidence submitted by appellant in denying her request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a). Therefore, the case is remanded to OWCP for consideration of the evidence she submitted in connection with her reconsideration request, to be followed by the issuance of an appropriate decision regarding her reconsideration request.

### **CONCLUSION**

The Board finds that appellant did not meet her burden of proof to establish an injury causally related to a June 11, 2015 employment incident. The Board further finds that OWCP failed to consider all the relevant evidence submitted by her in denying her request for

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<sup>25</sup> *John F. Critz*, 44 ECAB 788, 794 (1993).

<sup>26</sup> 5 U.S.C. § 8124(a)(2).

<sup>27</sup> 20 C.F.R. § 501.2(c).

<sup>28</sup> *Id.* at § 501.6(d).

<sup>29</sup> *See E.P.*, Docket No. 14-0278 (issued February 26, 2014); *see also William A. Couch*, 41 ECAB 548, 553 (1990).

reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a) and the case is remanded to OWCP for consideration of the evidence she submitted in connection with her reconsideration request.

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 27, 2016 decision of the Office of Workers' Compensation Programs is affirmed. The November 28, 2016 decision of OWCP is set aside and the case remanded to OWCP for further proceedings consistent with this decision of the Board.

Issued: April 6, 2017  
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