

FACTUAL HISTORY

On March 30, 2016 appellant, then a 44-year-old correctional officer, filed a traumatic injury claim (Form CA-1), alleging that on March 26, 2016 he felt back pain while moving a food cart. He did not immediately stop work.

Appellant submitted a March 28, 2016 urgent medical care note prepared by a healthcare provider whose signature is illegible, who noted that appellant was disabled from work. The provider noted that he could not participate in sports and would be reevaluated on April 4, 2016.

The employing establishment submitted a letter of contraversion from Lieutenant A. Huberti, who indicated on March 26, 2016 that appellant reported having neck pain and that he was awaiting back surgery for six discs and two of the discs were herniated. Lt. Huberti noted that on March 27, 2016 appellant requested sick leave and reported that he injured his back and requested a Form CA-1. He indicated that appellant did not inform him that he sustained a work injury.

In an April 6, 2016 letter, OWCP advised appellant to submit additional information including a comprehensive medical report from his treating physician which included a reasoned explanation as to how the specific work factors or incidents identified by appellant had contributed to his claimed injury.

Appellant submitted an April 12, 2016 statement relating that on March 26, 2016 at approximately 2:30 p.m. he was pushing a food cart around the employing establishment facility and twisted several muscles in his lower back. He indicated that the staff did not have use of electric carts to transport food and, therefore, the food carts were pushed manually the entire length of the institution throughout the day. Appellant indicated that he experienced pain, muscle spasms, and a sprain of his low back affecting his mobility. He reported not being able to work the next day due to pain and sought medical attention. Appellant did not have additional injuries or symptoms in his low back area.

In a May 11, 2016 decision, OWCP denied appellant's claim because he failed to establish that a medical condition was diagnosed in connection with the March 26, 2016 employment incident.

In a May 25, 2016 appeal request form, received on June 1, 2016, appellant requested reconsideration.

In a June 9, 2016 decision, OWCP denied appellant's request for reconsideration because he neither raised substantive legal questions nor included relevant and pertinent new evidence and was therefore insufficient to warrant a merit review.

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 filed within the applicable time

limitation 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. These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.²

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. There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident at the time, place, and in the manner alleged. Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.³

Rationalized medical opinion evidence is generally required to establish causal relationship. The opinion of the physician must be based on a complete factual and medical background, 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 claimant.⁴

ANALYSIS -- ISSUE 1

It is undisputed that appellant pushed a food cart on March 26, 2016, as alleged. The Board finds, however, that there is no medical evidence of record sufficient to establish that appellant sustained a back injury causally related to the March 26, 2016 employment incident. In a letter dated April 6, 2016, OWCP requested that appellant submit additional evidence in support of his claim, specifically a comprehensive medical report from his treating physician which included a reasoned explanation as to how the specific work factors or incidents identified by appellant had contributed to his claimed injury.

Appellant submitted a March 28, 2016 urgent medical care note prepared by a healthcare provider whose signature is illegible who noted that appellant was disabled from work and could not participate in sports. However, as this person's signature is illegible, there is no indication who signed this report. The Board has held that medical reports lacking proper identification do not constitute probative medical evidence.⁵ Therefore, this report is insufficient to meet appellant's burden of proof.

As noted, part of appellant's burden of proof includes the submission of rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship between the employment incident and a diagnosed condition. The record contains no probative medical evidence. Because appellant has not submitted reasoned medical

² *Gary J. Watling*, 52 ECAB 357 (2001).

³ *T.H.*, 59 ECAB 388 (2008).

⁴ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁵ *See R.M.*, 59 ECAB 690 (2008); *D.D.*, 57 ECAB 734 (2006).

explaining how and why his low back condition was employment related, he has failed to meet his burden of proof.

Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical evidence.⁶ Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors.

An award of compensation may not be based on surmise, conjecture, or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that his condition was caused, precipitated, or aggravated by his employment is sufficient to establish causal relationship. Causal relationship must be established by rationalized medical opinion evidence.⁷ Appellant failed to submit such evidence and OWCP, therefore, properly denied his claim for compensation.

On appeal appellant disagrees with OWCP's decision denying his claim for compensation. He explained the facts surrounding his claim noting that he injured his back while pushing heavy carts around the compound. Appellant asserted that he prepared the necessary paperwork and his physician sent in proof he was injured at work. As explained above, the record contains no medical evidence explaining how and why his low back condition was employment related and; therefore, he has not met his burden of proof.

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

Under section 8128(a) of FECA,⁸ OWCP has the discretion to reopen a case for review on the merits. It must exercise this discretion in accordance with the guidelines set forth in section 10.606(b)(3) of the implementing federal regulations, which provides that a claimant may obtain review of the merits of his or his written application for reconsideration, including all supporting documents, sets forth arguments, and contain evidence that:

“(i) Shows that OWCP erroneously applied or interpreted a specific point of law;

or

“(ii) Advances a relevant legal argument not previously considered by [OWCP];

or

⁶ *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

⁷ *See Dennis M. Mascarenas*, 49 ECAB 215 (1997).

⁸ 5 U.S.C. § 8128(a).

“(iii) Constitutes relevant and pertinent new evidence not previously considered by OWCP.”⁹

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by OWCP without review of the merits of the claim.¹⁰

ANALYSIS -- ISSUE 2

OWCP denied appellant’s claim because he failed to provide sufficient medical evidence to establish that the diagnosed condition was causally related to the accepted March 26, 2016 employment incident. Appellant requested reconsideration.

The Board finds that appellant did not show that OWCP erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by OWCP, or provide relevant and pertinent new evidence not previously considered by OWCP.

Appellant’s reconsideration request consisted only of a checkmark on an appeal request form indicating that he wanted reconsideration. He did not offer any argument or submit any evidence in support of his request. Appellant suggested no reason for OWCP to reconsider the denial of his traumatic injury claim. Such a bare request is insufficient to warrant the reopening of his case.¹¹

The Board accordingly finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(3). Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

CONCLUSION

The Board finds that appellant failed to meet his burden of proof to establish that his back injury was causally related to the March 26, 2016 employment incident. The Board further finds that OWCP properly denied appellant’s request for reconsideration under 5 U.S.C. § 8128(a).

⁹ 20 C.F.R. § 10.606(b)(3).

¹⁰ *Id.* § 10.608(b).

¹¹ *See L.B.*, Docket No. 14-2064 (issued February 3, 2015); *J.A.*, Docket No. 14-1447 (issued October 21, 2014).

ORDER

IT IS HEREBY ORDERED THAT the June 9 and May 11, 2016 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: February 3, 2017
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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