

FACTUAL HISTORY

On November 13, 2015 appellant, then a 38-year-old cook, filed a traumatic injury claim (Form CA-1) alleging that he injured his left elbow on October 15, 2015 in the performance of duty. He filed a second Form CA-1 for the same injury on December 16, 2015. Appellant alleged that he was pulling a cart when his elbow began to hurt. He did not stop work.

Dr. Randall Jones, a family physician, provided an “initial visit” report on November 13, 2015. He described appellant’s report that he had a one-month history of left elbow pain that occurred when he pulled a very heavy food cart. Physical examination of the left elbow demonstrated mild tenderness over the lateral epicondyle and minimal tenderness over the medial epicondyle with full elbow range of motion and normal elbow strength. Resisted elbow extension test elicited pain. Tinel’s signs were negative at the ulnar nerve and the cubital tunnel. Dr. Jones reviewed a left wrist x-ray that demonstrated no acute bony abnormality and an area of distal humeral diaphysis that could be the result of old fracture or sessile osteochondroma.² He diagnosed left lateral and medial epicondylitis and advised that appellant could return to full duty without restrictions.

Dr. Christopher Rodriguez, an osteopath at the employing establishment, noted on November 13, 2015 that appellant could return to duty without restrictions with an elbow brace/wrap while on duty. Appellant began physical therapy on November 23, 2015.

On December 1, 2015 Dr. Jones noted appellant’s report that he was working full duty and that his elbow was not much better. He provided physical examination findings, again noting the painful resisted wrist extension. Dr. Jones diagnosed lateral epicondylitis and advised that appellant could return to full duty without restrictions.

Dr. Wendy E. Miklos, Board-certified in preventive medicine and an employing establishment physician, advised on December 4, 2015 that appellant could return to full duty without restrictions with an elbow brace/wrap while on duty.

On January 14, 2015 OWCP authorized three outpatient visits, an elastic covering, and 45 units of physical therapy. Dr. Jones reiterated his findings and conclusions on January 5, 2016. On a State of Colorado workers’ compensation form dated January 20, 2016, he noted appellant’s description of the injury. Dr. Jones diagnosed lateral and medial epicondylitis and checked a box marked “yes,” indicating that his findings were consistent with the history and/or work-related mechanism of the injury. He recommended physical therapy, medication, and a tennis elbow support.

In correspondence dated February 4, 2016, OWCP noted that appellant’s claim was initially administratively approved for payment of a limited amount of medical expenses. It explained that the merits of his claim had not been adjudicated and advised him of the medical evidence needed to establish further benefit entitlement, including his description of the claimed October 15, 2015 injury, a physician’s report explaining how the claimed injury caused a

² A copy of the x-ray report, done on November 13, 2015, is found in the case record.

diagnosed condition, and his completion of an attached questionnaire. Appellant was afforded 30 days to submit the requested information.

On February 11, 2016 Dr. Robert W. Weien, Board-certified in aerospace and occupational medicine and an employing establishment physician, advised that appellant could return to full duty without restrictions.

By decision dated March 11, 2016, OWCP denied the claim. It found that the employment incident of appellant pulling a food cart on October 15, 2015 occurred as alleged, but that the medical evidence of record was insufficient to establish that a medical condition occurred as a result of the accepted incident.

Appellant requested reconsideration on July 7, 2016. In support of his request, appellant submitted evidence previously of record including the November 13, 2015 x-ray report, Dr. Jones' November 13, 2015 and January 5, 2016 treatment notes, and physical therapy notes. On a May 4, 2016 State of Colorado workers' compensation form, Dr. Jones repeated the exact findings and conclusions made in his January 20, 2016 form report.

In a nonmerit decision dated August 11, 2016, OWCP denied appellant's request for reconsideration. It found that the evidence submitted was duplicative of evidence previously of record.

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. Regardless of whether the asserted claim involves a traumatic injury or occupational disease, an employee must satisfy this burden of proof.³

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 or she 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.⁴

Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical evidence.⁵ The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable

³ *Gary J. Watling*, 52 ECAB 278 (2001).

⁴ *T.H.*, 59 ECAB 388 (2008).

⁵ *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

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.⁶ 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 causal relationship.⁷

ANALYSIS -- ISSUE 1

There is no dispute that, while at work on October 15, 2015, appellant was pulling a cart filled with food trays. The Board, however, finds that the medical evidence of record is insufficient to establish that this accepted incident resulted in an employment injury.

Medical evidence submitted to support a claim for compensation should reflect a correct history and the physician should offer a medically sound explanation of how the claimed work event caused or aggravated the claimed condition.⁸ No physician did so in this case.

The November 13, 2015 left elbow x-ray did not provide a cause of any diagnosed condition and medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.⁹ Likewise, employing establishment physicians Dr. Rodriguez, Dr. Miklos, and Dr. Weien did not describe a cause of any diagnosed medical condition. While Dr. Jones checked a form box marked "yes," indicating that his "findings were consistent with history that and/or work-related mechanism of injury/illness," the Board has long held that when a physician's opinion on causal relationship consists only of checking a box marked "yes" to a form question, that opinion has little probative value without medical rationale, and is insufficient to establish a causal relationship.¹⁰ He provided no additional explanation in support of his noted agreement on causation, his report lacks sufficient probative value to establish appellant's claim.

It is appellant's burden of proof to establish a diagnosed medical condition causally related to the October 15, 2015 work incident. The Board finds that he has submitted insufficient evidence to meet his burden of proof to establish his claim.¹¹

⁶ *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

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

⁸ *D.D.*, Docket No. 13-1517 (issued April 14, 2014).

⁹ *Willie M. Miller*, 53 ECAB 697 (2002).

¹⁰ *Supra* note 3.

¹¹ Where, as in this case, an employing establishment properly executes a Form CA-16, which authorizes medical treatment as a result of an employee's claim for an employment-related injury, the CA-16 form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. See *Tracy P. Spillane*, 54 ECAB 608 (2003). The period for which treatment is authorized by a Form CA-16 is limited to 60 days from the date of issuance, unless terminated earlier by OWCP. See 20 C.F.R. § 10.300(c). OWCP should further develop this aspect of the case.

As to appellant's assertions on appeal that his left elbow injury occurred over months of pulling the food cart, he retains the right to file an occupational disease claim.¹²

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 it will review an award for or against compensation, either under its own authority or on application by a claimant.¹³ Section 10.608(a) of OWCP's regulations provides that a timely request for reconsideration may be granted if OWCP determines that the employee has presented evidence and/or argument that meet at least one of the standards enumerated in section 10.606(b)(3).¹⁴ This section provides that the application for reconsideration must be submitted in writing and set forth arguments and contain evidence that either: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.¹⁵ Section 10.608(b) provides that when a request for reconsideration is timely, but fails to meet at least one of these three requirements, OWCP will deny the application for reconsideration without reopening the case for a review on the merits.¹⁶

ANALYSIS -- ISSUE 2

With his July 7, 2016 reconsideration request, appellant did not show that OWCP erroneously applied or interpreted a specific point of law or advance a relevant legal argument not previously considered by OWCP. Consequently, he was not entitled to a review of the merits of the claim based on the first and second above-noted requirements under section 10.606(b).¹⁷

As to the third above-noted requirement under section 10.606(b)(3), while appellant submitted a form report from Dr. Jones dated May 4, 2016, this was an exact duplicate of a form completed by the physician on January 20, 2016. Evidence or argument that repeats or

¹² Under FECA an occupational disease or illness is a condition produced by the work environment over a period longer than a single workday or shift. 20 C.F.R. § 10.5(q). A traumatic injury, as appellant claimed in the case at hand, is 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).

¹³ 5 U.S.C. § 8128(a).

¹⁴ 20 C.F.R. § 10.608(a).

¹⁵ *Id.* at § 10 608(b)(3).

¹⁶ *Id.* at § 10 608(b).

¹⁷ *Id.* at § 10.606(b).

duplicates evidence previously of record has no evidentiary value and does not constitute a basis for reopening a case.¹⁸

As appellant failed to show that OWCP erred in applying a point of law, advance a relevant legal argument not previously considered, or submit relevant and pertinent new evidence not previously considered by OWCP, OWCP properly denied his reconsideration request.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish an injury causally related to an October 15, 2015 employment incident, and that OWCP properly denied his request for reconsideration pursuant to 5 U.S.C. § 8128(a).

ORDER

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

Issued: January 27, 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

¹⁸ *J.P.*, 58 ECAB 289 (2007).