

FACTUAL HISTORY

On November 6, 2015 appellant, then a 53-year-old rural carrier associate, filed a traumatic injury claim (Form CA-1) alleging that on January 9, 2015 she sprained her left shoulder while lifting a large parcel. She stopped work on January 10, 2015 and returned on January 12, 2015. The claim form was signed by appellant's supervisor who indicated that the lost time was covered by leave, or continuation of pay.

By letter dated November 10, 2015, OWCP informed appellant of the evidence needed to support her claim. This was to include a narrative medical report from a physician who explained how the work incident caused or aggravated a medical condition. Appellant was given 30 days to respond.

Turkey Creek Medical Center emergency department records indicated that appellant was seen on January 9, 2015. The report noted that this was postal workers' compensation and that appellant's supervisor authorized treatment. Dr. Michael Phillips, Board-certified in emergency medicine, provided treatment. He noted appellant's complaint of left shoulder pain and that the problem resulted from lifting or carrying a heavy object at work. Examination demonstrated tenderness and limited active and passive left shoulder range of motion due to pain. A left shoulder x-ray was negative. The discharge diagnosis was shoulder sprain.

By decision dated December 17, 2015, OWCP denied the claim. It found that the January 9, 2015 incident occurred as alleged, but that the medical evidence submitted only diagnosed shoulder pain, which was not a sufficient diagnosis.

On February 24, 2016 appellant requested reconsideration. She reported that the January 9, 2015 injury occurred while she was delivering parcels when a heavy parcel fell, and as she reached to pick it up, she strained her left shoulder. In an addendum report dated February 11, 2016, Dr. Phillips indicated that the correct diagnosis was left trapezius strain.

In a merit decision dated March 21, 2016, OWCP denied modification of the December 17, 2015 decision. It found that, although Dr. Phillips had now made a firm diagnosis, his report did not contain an opinion explaining whether or why he believed the diagnosed condition was due to the claimed employment factor.

On April 22, 2016 appellant submitted an appeal request form on which she indicated by a check mark that she was requesting reconsideration.

In a nonmerit decision dated May 4, 2016, OWCP denied appellant's reconsideration request, noting that she did not raise a substantive legal question and did not submit new and relevant evidence.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking compensation under FECA has the burden of establishing the essential elements of his or her claim by the weight of reliable, probative, and substantial

evidence,² including that he or she is an “employee” within the meaning of FECA and that he or she filed his or her claim within the applicable time limitation.³ The employee must also establish that she sustained an injury in the performance of duty as alleged and that her disability for work, if any, was causally related to the employment injury.⁴

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 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.⁵

Causal relationship is a medical issue, and the medical evidence required to establish a causal relationship is rationalized medical evidence.⁶ 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 nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.⁷ 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.⁸

ANALYSIS -- ISSUE 1

There is no dispute that on January 9, 2015 appellant lifted a heavy parcel that had fallen while she was delivering mail. The Board, however, finds that the medical evidence submitted by appellant is insufficient to establish that this employment 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.⁹ No physician did so in this case.

Dr. Phillips, the emergency medicine physician who saw appellant on January 5, 2015 reported a history that she lifted or carried a heavy object at work. He found decreased left

² *J.P.*, 59 ECAB 178 (2007).

³ *R.C.*, 59 ECAB 427 (2008).

⁴ *Id.*; *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁵ *T.H.*, 59 ECAB 388 (2008).

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

⁷ *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

⁸ *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

⁹ *D.D.*, Docket No. 13-1517 (issued April 14, 2014).

shoulder range of motion on examination. At that time he diagnosed shoulder sprain.¹⁰ Dr. Phillips revised his diagnosis on February 11, 2016 to left trapezius strain. However, even though he reported a history that appellant lifted a heavy object at work, he did not link this to a diagnosed condition or provide a firm explanation regarding the cause of the left shoulder in either report.

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.¹¹ The opinion of a physician supporting causal relationship must be one of reasonable medical certainty that the condition for which compensation is claimed is causally related to a claimant's federal employment and such relationship must be supported with affirmative evidence, explained by medical rationale and be based upon a complete and accurate medical and factual background of the claimant.¹²

It is appellant's burden of proof to establish that a diagnosed condition is causally related to the January 9, 2015 employment incident. She submitted insufficient evidence to establish an injury caused by this employment incident. Thus appellant failed to meet her burden of proof.¹³

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.¹⁴ 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).¹⁵ This section provides that the application for reconsideration must be submitted in writing and set forth arguments and contain evidence that either: (i) shows that OWCP

¹⁰ The Board notes that this is contrary to OWCP's November 10, 2015 decision which indicated that the physician only diagnosed shoulder pain.

¹¹ *Willie M. Miller*, 53 ECAB 697 (2002).

¹² *A.D.*, 58 ECAB 149 (2006).

¹³ The Board notes that OWCP's implementing regulations allow for authorization of medical treatment in emergency circumstances. While 20 C.F.R. § 10.300 explains that authorization of emergency medical treatment is usually provided by issuance of a Form CA-16, section 10.304 allows for authorization of emergency treatment, in the absence of a Form CA-16, in cases involving emergencies or unusual circumstances. Upon return of the case record, OWCP should consider whether appellant's emergency room treatment at Turkey Creek Medical Center, was authorized by her supervisor and whether it should be authorized by OWCP. *See N.B.*, Docket No. 15-0708 (issued July 15, 2015); *K.J.*, Docket No. 13-271 (issued May 23, 2013).

¹⁴ 5 U.S.C. § 8128(a).

¹⁵ 20 C.F.R. § 10.608(a).

erroneously applied or interpreted a specific point of law; or (ii) advances a relevant legal argument not previously considered by OWCP; or (iii) constitutes relevant and pertinent new evidence not previously considered by OWCP.¹⁶ 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.¹⁷

ANALYSIS -- ISSUE 2

Appellant's April 22, 2016 reconsideration request consisted only of an appeal request form with a box checked to indicate that she was requesting reconsideration. She therefore has not shown that OWCP erroneously applied or interpreted a specific point of law or advance a relevant legal argument not previously considered by OWCP. Consequently, appellant 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).¹⁸ As to the third above-noted requirement under section 10.606(b)(3), appellant submitted no additional evidence with her reconsideration request.

As appellant did not show that OWCP erroneously applied a specific 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 her reconsideration request.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish an injury causally related to a January 9, 2015 employment incident, and that OWCP properly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

¹⁶ *Id.* at § 10.608(b)(3).

¹⁷ *Id.* at § 10.608(b).

¹⁸ *Id.* at § 10.606(b).

ORDER

IT IS HEREBY ORDERED THAT the May 4 and March 21, 2016 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: March 8, 2017
Washington, DC

Patricia H. Fitzgerald, Deputy 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