

On appeal, appellant contends that a physician's medical report she submitted in support of her request for reconsideration was not duplicative. She maintains that the physician used the same date for the report as his previously submitted report, but provided a different opinion on causal relationship.

FACTUAL HISTORY

On June 20, 2016 appellant, then a 56-year-old workers' compensation claims examiner, filed an occupational disease claim (Form CA-2) alleging that on June 2, 2016 she first became aware of her bilateral hand and right arm conditions and first realized that her conditions were caused by her federal employment. She claimed that the left little and middle fingers, and left thumb locked while typing at work and that a cyst had formed on the top of her left fourth finger. Appellant also noted problems with her right arm and hand.

By letter dated June 22, 2016, OWCP advised appellant of the deficiencies of her claim and afforded her 30 days to submit additional evidence and respond to its questionnaire.

On July 19, 2016 appellant responded to OWCP's development questionnaire. She indicated that she worked as a claims examiner for almost 18 years at the employing establishment and, over the years, she experienced problems with her hands due to performing repetitive motion activities which included typing more than eight hours a day, writing, and pushing and lifting case files. Appellant noted that, for the past year, the work volume was unusual and excessive for each examiner compared to previous years which caused her to excessively use her hands on a regular basis. She experienced sharp pain, cramping, and locking of both hands and forearms. Appellant ignored her symptoms and continued to work until her fingers locked while typing a decision. She related that her symptoms had existed for a few years, but had recently worsened. Appellant sought medical attention for her symptoms. She maintained that she had no prior left hand injury and her only activity outside of work was making crafts maybe once a year during winter months.

In a July 20, 2016 report, Dr. Michael G. Ward, an attending Board-certified family practitioner, noted that appellant had been under his care for many years. He saw her on July 12, 2016 when she complained of sharp shooting pain and paresthesias of her hands and fingers radiating to her forearms and the locking of her thumbs and third and fifth fingers for the past month. Dr. Ward noted appellant's initial treatment. He further noted that she described her work duties, which included manual typing and writing, and believed that her recent workload had increased significantly which contributed to her symptoms. Dr. Ward provided results on examination and diagnosed bilateral de Quervain's tenosynovitis and right third and fifth trigger fingers. He advised that these conditions could occur with the described work duties.

In a July 27, 2016 decision, OWCP denied appellant's occupational disease claim. It found that Dr. Ward's July 20, 2016 report failed to provide a rationalized medical opinion sufficient to establish causal relationship between her diagnosed hands and right finger conditions and the established factors of employment.

OWCP received a duplicate copy of Dr. Ward's July 20, 2016 report.

On September 6, 2016 appellant requested reconsideration.

By decision dated September 14, 2016, OWCP denied further merit review of appellant's claim. It found that her request for reconsideration neither raised substantive legal questions, nor included new and relevant evidence.

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, that an injury was sustained while 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.³ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁴

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish a causal relationship is rationalized medical opinion evidence. 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.⁵

ANALYSIS -- ISSUE 1

OWCP accepted as factual that appellant performed the work duties of a workers' compensation claims examiner, which involved typing, writing, and pushing and lifting case files. The Board finds, however, that the medical evidence of record is insufficient to establish bilateral hand, finger, and arm conditions caused or aggravated by the accepted work factors.

Dr. Ward's July 20, 2016 report noted appellant's description of her accepted work factors. He examined her and diagnosed bilateral de Quervain's tenosynovitis and right third and fifth trigger fingers. Dr. Ward maintained that the diagnosed conditions could occur with the work duties as described by appellant. However, he did not provide a probative, rationalized

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

⁴ *S.P.*, 59 ECAB 184 (2007); *Victor J. Woodhams*, 41 ECAB 345 (1989); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, *id.*

opinion regarding whether the accepted work factors caused a personal injury.⁶ Dr. Ward did not sufficiently explain the reasons why, medically, appellant would have sustained bilateral hand and right finger injuries due to typing, writing, and pushing and lifting case files at work. Furthermore, his opinion is not expressed to a reasonable degree of medical certainty, but rather is speculative in nature, and therefore cannot establish causal relationship.⁷

The Board finds that appellant has failed to submit rationalized medical evidence sufficient to establish that she sustained bilateral hands, fingers, and arms injuries causally related to the established employment factors. Appellant, therefore, did not meet her 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

Section 8128 of FECA vests OWCP with a 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.⁸ Section 10.608(b) of OWCP's regulations provide that a timely request for reconsideration may be granted if OWCP determines that the claimant has presented evidence and/or argument that meet at least one of the standards described in section 10.606(b)(3).⁹ 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.¹⁰ 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.¹¹

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied appellant's request for further merit review of her occupational disease claim. In support of her September 1, 2016 request for

⁶ See *George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

⁷ *Ricky S. Storms*, 52 ECAB 349 (2001) (while the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty).

⁸ 5 U.S.C. § 8128(a).

⁹ 20 C.F.R. § 10.608(a).

¹⁰ *Id.* at § 10.606(b)(3).

¹¹ *Id.* at § 10.608(b).

reconsideration, appellant resubmitted the previously reviewed July 20, 2016 report from Dr. Ward.

In its September 14, 2016 decision, OWCP denied appellant's request for further merit review, finding that her request did not raise any substantive legal questions or include new and relevant evidence. As appellant provided no argument suggesting that OWCP had erroneously applied or interrupted a specific point of law, advanced no new legal argument, or provided relevant or pertinent new evidence, the Board finds that OWCP properly denied a merit review under 5 U.S.C. § 8128(a).

CONCLUSION

The Board finds that appellant has failed to meet her burden of proof to establish bilateral hand, finger, and arm conditions causally related to factors of her federal employment. The Board further finds, that OWCP properly refused to reopen her case for further merit review of her claim pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the September 14 and July 27, 2016 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: May 24, 2017
Washington, DC

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

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board