

properly denied appellant's request for reconsideration of the merits of the claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On July 21, 2014 appellant, then a 59-year-old clerk, filed a traumatic injury claim (Form CA-1) alleging that on July 17, 2014 she sustained injuries to her left shoulder and left knee when she tripped on a round plastic strap and fell on the workroom floor. She did not stop work.

Appellant provided a handwritten statement describing the July 17, 2014 employment incident. She related that she was sorting letter mail when she heard the truck carrying flat mail and went to the dock to help with staging equipment. Appellant indicated that she was stepping off the ledge of the sorting station when her feet suddenly got hooked on a plastic strap. She fell down and hit her left shoulder and left knee on the floor. Appellant reported that she informed her supervisor about her fall and showed her the plastic strap.

In a September 29, 2014 report, Kirsten Deeds, a certified physician assistant, noted appellant's complaints of left shoulder pain after a fall at work on July 17, 2014. Upon examination of appellant's shoulders, she observed mild tenderness to palpation of anterior shoulder joint. Range of motion was full, but caused discomfort in the anterior and posterior shoulder. Ms. Deeds diagnosed left shoulder injury.

Appellant underwent an x-ray examination of the left shoulder by Dr. Frank J. Welte, a Board-certified diagnostic radiologist, who noted in a September 29, 2014 x-ray scan report, that appellant had degenerative changes with no acute radiographic abnormality.

By letter dated February 12, 2015, OWCP advised appellant that the evidence submitted was insufficient to establish her claim. It requested that she respond to the attached questionnaire to establish that the July 17, 2014 incident occurred as alleged and provide additional medical evidence to establish that she sustained a diagnosed condition as a result of the alleged incident. Appellant was afforded 30 days to submit the requested information.

Dr. John R. Corsetti, a Board-certified orthopedic surgeon, treated appellant and related in a January 7, 2015 report that she complained of left shoulder and right knee pain dating back to a "work-related fall in July." He noted that appellant had a right knee arthroscopy and found to have grade IV two compartment arthritis. Dr. Corsetti reported that physical examination of appellant's left shoulder showed positive impingement sign, full motion, and good strength and good mechanics. He indicated that appellant's acromioclavicular (AC) joint was mildly irritable. Examination of appellant's right knee showed no deformity, no fluid, and full motion with diffuse anteromedial irritability. Dr. Corsetti related that a left shoulder x-ray scan revealed Type 2 acromion, no lytic or blastic lesions, and no chronic degenerative wear. He diagnosed left shoulder traumatic tendinitis and right knee arthritis. Dr. Corsetti completed a work status note, which recommended that appellant work light duty with restrictions of no frequent lifting over 5 pounds, no lifting or carrying over 10 pounds, and no lifting her left arm above horizontal level, and no repetitive use of her left upper extremity.

OWCP denied appellant's claim in a decision dated March 25, 2015. It accepted that the July 17, 2014 employment incident occurred as alleged and that appellant had been diagnosed with left shoulder tendinitis and right knee arthritis. OWCP denied the claim, because the medical evidence of record was insufficient to establish that appellant's diagnosed conditions were causally related to the accepted incident.

On April 14, 2015 appellant requested a review of the written record before an OWCP hearing representative. She resubmitted Dr. Corsetti's January 7, 2015 report and work status note.

Appellant also provided a statement dated April 8, 2015. She described that on July 17, 2014 she fell down and hit her left shoulder and left knee. Appellant explained that her primary doctor was not available to treat her, so she could only see the physician assistant. She noted that she had submitted a report from Dr. Corsetti, which included a request for therapy. Appellant requested approval for therapy for her left shoulder because she experienced left shoulder pain while sorting mail at work and at night. She noted that she was also waiting for knee replacement surgery. Appellant related that as a clerk, she sorted letters, magazines, and parcels. She explained that she started work at 3:00 a.m. and by 10:00 a.m. she was in pain. Appellant indicated that even though she was in pain, she kept working.

In a decision dated August 14, 2015, an OWCP hearing representative affirmed the March 25, 2015 decision. He found that the medical evidence of record failed to establish causal relationship between appellant's diagnosed left shoulder condition and the accepted July 17, 2014 employment incident.

On August 17, 2015 OWCP received a physical therapy note dated July 15, 2015.

Dr. Anne B. Shain, a Board-certified internist, examined appellant and in a November 9, 2015 progress note indicated that appellant sustained a knee injury which occurred at work on March 27, 2013. She noted that appellant underwent a total right knee replacement surgery a month prior and reported that she was doing well. Dr. Shain reviewed appellant's history and conducted an examination. She observed mild swelling of appellant's right knee and noted her ability to flex and extend without difficulty. Dr. Shain diagnosed status post total right knee replacement.

On March 7, 2016 appellant requested reconsideration and resubmitted Dr. Corsetti's January 7, 2015 report.

Appellant also submitted a January 8, 2016 report from Henry J. Casagrande, Jr., a certified physician assistant. Mr. Casagrande related that appellant returned to his office for complaints of severe pain through her shoulder. He related that appellant was last examined in January 2015 and diagnosed with left shoulder traumatic tendinopathy. Upon physical examination of appellant's shoulder, Mr. Casagrande observed moderate cuff weakness through scaption and forward elevation and resistance with moderate-to-significant pain. He reported that appellant demonstrated considerable guarding and restrictions with pain, trying to reach overhead about 140 degrees, and full passive arc of motion. Mr. Casagrande diagnosed left shoulder tendinopathy, but noted that there were concerns for possible attritional cuff tear.

In a February 29, 2016 report, Dr. Corsetti related appellant's complaints of ongoing left shoulder pain, which dated back to a work-related traumatic fall. He reported no deformity, full motion, good strength, and positive impingement upon examination. Dr. Corsetti diagnosed left shoulder traumatic tendinitis. He recommended a left shoulder magnetic resonance imaging (MRI) scan to rule out a possible rotator cuff tear based on appellant's trauma.

Dr. Amy Oliveira, a Board-certified diagnostic radiologist, conducted a left shoulder MRI scan and indicated in a March 13, 2016 report that appellant had a history of a fall in July 2014. She noted that appellant had complained of moderate posterior left shoulder pain for the past 1½ years. Dr. Oliveira reported full-thickness tear in the supraspinatus tendon, degenerative tearing of the superior labrum, mild AC degenerative change with bony proliferation and subchondral edema in the distal clavicle, and synovitis in the subscapularis recess. She diagnosed full-thickness tear of supraspinatus, mild myotendinous partial tear of the infraspinatus and a partial interest tear at its attachment, attenuated appearance of the intra-articular biceps tendon, suggesting partial tear, and mild acromioclavicular degenerative change.

In an April 11, 2016 report, Dr. Corsetti noted that the left shoulder MRI scan confirmed a large cuff tear with retraction beyond mild head, which dated back to a July 17, 2014 fall injury at work. Upon physical examination of appellant's shoulder, he observed full bulk pain for motion, two-point weakness, moderate-to-severe cuff irritability, and mildly irritable AC joint. Dr. Corsetti diagnosed left shoulder large cuff tear with AC joint arthropathy. He reported that "based on history taken, the injury of July 17, 2014 is the major cause of the diagnosis."

On April 19, 2016 OWCP received Dr. Welte's September 29, 2014 x-ray scan report and Mr. Casagrande's January 8, 2016 report, which were already of record.

In an undated statement received by OWCP on May 17, 2016, appellant related that in April 2016 her doctor had shown her the results of her MRI scan and informed her that she had a big tear of the left shoulder. She noted that her physician advised her that if she waited longer to get it repaired, he would not be able to fix it and she would continue to be in unbearable pain. Appellant requested that OWCP review her claim so that the tear could still be repaired.

Appellant resubmitted Mr. Casagrande's January 8, 2016 report and Dr. Corsetti's February 29, 2016 report.

In a July 22, 2016 statement, appellant indicated that she was enclosing the note from Dr. Corsetti regarding his findings about her left shoulder large cuff tear based on the results of the MRI scan. She noted that the last steroid injection that she had received on April 11, 2016 was wearing off and the pain was returning. Appellant pointed out that her claim originated in 2014 and it was now 2016. She requested that a decision be issued right away because she could not stand her left shoulder pain and was running out of pain medication. Appellant also noted that she needed to have surgery soon or else her doctor would not be able to fix it anymore. She resubmitted Dr. Corsetti's April 11, 2016 report.

By decision dated August 4, 2016, OWCP denied modification of the August 14, 2015 decision. It found that the medical evidence of record failed to establish causal relationship between appellant's diagnosed left shoulder condition and the accepted July 17, 2014

employment incident. OWCP noted that although Dr. Corsetti provided an affirmative opinion relating appellant's left shoulder condition to the accepted July 17, 2014 employment incident, he did not support his opinion with any medical rationale. It also noted that the evidence submitted pertinent to appellant's right shoulder condition was irrelevant to this claim.

On October 3, 2016 appellant requested reconsideration.

Appellant submitted a September 26, 2016 report of Dr. Andrew Lehman, a Board-certified orthopedic surgeon. Dr. Lehman indicated that appellant was one-year status post right total knee arthroplasty, was doing well in regards to her right knee replacement, and had reached maximum medical improvement (MMI). He reported that examination of appellant's right knee showed well-healed incision with no significant effusion. Neurovascular status was intact and strength was 5/5. Dr. Lehman opined that according to the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (2009) (hereinafter A.M.A., *Guides*) appellant had 25 percent permanent right lower extremity impairment.

By decision dated October 18, 2016, OWCP denied appellant's October 3, 2016 reconsideration request. It found that Dr. Lehman's September 26, 2016 report was irrelevant and immaterial to appellant's claim as she had not alleged a right knee injury related to the accepted July 17, 2014 employment incident.

On December 6, 2016 appellant again requested reconsideration.

In a November 16, 2016 report, Dr. Corsetti related that appellant had been under his care for ongoing left shoulder complaints after a work-related fall on July 17, 2014. He noted that appellant had complained of ongoing shoulder pain since that fall and a left shoulder MRI scan had shown a large rotator cuff tear with retraction. Dr. Corsetti opined that appellant's "diagnosis of left shoulder rotator cuff tear is, in my opinion, causally related to the fall of July 17, 2014." He explained that there was "no evidence of preexisting sympathology" in the shoulder. Dr. Corsetti also reported that "the mechanism of injury, a fall on the outstretched arm, was entirely consistent with the diagnosis."

By decision dated December 9, 2016, OWCP denied further merit review of appellant's claim. It found that appellant's reconsideration request neither raised substantive legal questions nor included new and relevant evidence.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA³ has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence⁴ including that he or she sustained an injury in the performance of duty and that any

³ 5 U.S.C. § 8101 *et seq.*

⁴ *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

specific condition or disability for work for which compensation is claimed is causally related to that employment injury.⁵

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.⁶ 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.⁷ Second, the employee must submit evidence, generally only in the form of probative medical evidence, to establish that the employment incident caused a personal injury.⁸ An employee may establish that the employment incident occurred as alleged but fail to show that his or her disability or condition relates to the employment incident.⁹

Whether an employee sustained an injury in the performance of duty requires the submission of rationalized medical opinion evidence.¹⁰ 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.¹¹ The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.¹²

ANALYSIS -- ISSUE 1

Appellant alleged that she sustained left shoulder and left knee conditions as a result of a July 17, 2014 fall at work. OWCP accepted that the July 17, 2014 incident occurred as alleged. However, it denied appellant's claim, finding insufficient medical evidence to establish that her diagnosed medical conditions were causally related to the accepted incident. The Board finds that appellant failed to establish that she sustained an injury causally related to the July 17, 2014 injury.

With regard to the left shoulder condition, appellant was primarily treated by Dr. Corsetti who provided reports dated January 7, 2015 to April 11, 2016. Dr. Corsetti related that appellant complained of left shoulder and right knee pain due to a work-related fall in July. He provided

⁵ *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁶ *S.P.*, 59 ECAB 184 (2007); *Alvin V. Gadd*, 57 ECAB 172 (2005).

⁷ *Bonnie A. Contreras*, 57 ECAB 364 (2006); *Edward C. Lawrence*, 19 ECAB 442 (1968).

⁸ *David Apgar*, 57 ECAB 137 (2005); *John J. Carlone*, 41 ECAB 354 (1989).

⁹ *T.H.*, 59 ECAB 388 (2008); *see also Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006).

¹⁰ *See J.Z.*, 58 ECAB 529 (2007); *Paul E. Thams*, 56 ECAB 503 (2005).

¹¹ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

¹² *James Mack*, 43 ECAB 321 (1991).

physical examination findings and diagnosed left shoulder tendinitis. In an April 11, 2016 report, Dr. Corsetti indicated that a left shoulder MRI scan confirmed a large cuff tear, which dated back to a July 17, 2014 fall injury at work. He diagnosed left shoulder large cuff tear with AC joint arthropathy. Dr. Corsetti reported that the July 17, 2014 injury was the primary cause of the diagnosis, based upon appellant's medical history. Although he provided an affirmative opinion which supported causal relationship, Dr. Corsetti did not offer any rationalized medical explanation to support his opinion. He appears to have relied heavily on appellant's reported lack of prior symptoms, but the Board has held that the fact that a condition manifests itself or worsens during a period of employment,¹³ or that a work incident produced symptoms revelatory of an underlying condition does not raise an inference of causal relationship between a claimed condition and the employment incident.¹⁴ He did not explain the physiologic mechanism that would have caused appellant's diagnosed condition. 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.¹⁵

The Board has found that a physician must provide a narrative description of the identified employment incident and a reasoned opinion on whether the employment incident described caused or contributed to appellant's diagnosed medical condition.¹⁶ For these reasons, Dr. Corsetti's reports fail to establish appellant's claim.

Appellant also submitted a series of diagnostic examination testing. In a September 29, 2014 left shoulder x-ray scan report, Dr. Welte noted degenerative changes with no acute radiographic abnormality. In a March 13, 2016 left shoulder MRI scan, Dr. Oliveira diagnosed full-thickness tear in the supraspinatus tendon and degenerative tearing of the AC joint. While these physicians provided medical diagnoses, they did not provide an opinion on the cause of appellant's left shoulder condition.¹⁷ The Board has held that 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.¹⁸

Dr. Shain's November 9, 2015 progress note related appellant's right knee injury of March 27, 2013 and her current right knee complaints. The Board notes that appellant's current claim was for left, not right knee injury. Dr. Shain did not treat appellant for left knee complaints and did not provide an opinion on causal relationship between the alleged left knee

¹³ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

¹⁴ *J.D.*, Docket No. 06-1773 (issued January 29, 2007).

¹⁵ *S.E.*, Docket No. 08-2214 (issued May 6, 2009); *T.M.*, Docket No. 08-975 (issued February 6, 2009).

¹⁶ *John W. Montoya*, 54 ECAB 306 (2003).

¹⁷ *See L.A.*, Docket No. 16-1352 (issued August 28, 2017) (diagnostic testing reports, including MRI scan reports, are of limited probative value as they do not specifically address causal relationship).

¹⁸ *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *A.D.*, 58 ECAB 149 (2006).

condition to the accepted July 17, 2014 employment incident. Her report is therefore of limited probative value¹⁹

The medical reports dated September 29, 2014 and January 8, 2016 by physician assistants, Ms. Deeds and Mr. Casagrande also fail to establish appellant's traumatic injury claim because physician assistants are not considered physicians as defined under FECA and their medical opinions regarding diagnosis and causal relationship are of no probative value.²⁰

The Board therefore finds that appellant has not met her burden of proof to establish an injury causally related to the July 17, 2014 employment incident.

On appeal appellant explained that OWCP's decisions were based on x-ray results, which would not show a rotator cuff tear. She noted that only an MRI scan would show that kind of injury. Appellant related that she was enclosing a recent November 16, 2016 doctor's statement. The Board's jurisdiction, however, is limited to evidence that was before OWCP at the time it issued its final decision. Accordingly, it may not consider this evidence for the first time on appeal.²¹ The issue of causal relationship is a medical question that must be established by probative medical opinion from a physician.²² As appellant has not submitted such probative medical evidence in this case, the Board finds that she has not met her burden of proof to establish her claim.

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 to review an award for or against compensation. The Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application.²³

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or an argument that: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by

¹⁹ *R.E.*, Docket No. 10-0679 (issued November 16, 2010); *K.W.*, 59 ECAB 271 (2007).

²⁰ 5 U.S.C. § 8101(2); *Roy L. Humphrey*, 57 ECAB 238 (2005). Section 8102(2) of FECA provides that the term "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. *R.H.*, Docket No. 16-1802 (issued February 1, 2017) a physician assistant is not a physician under FECA.

²¹ See 20 C.F.R. § 501.2(c)(1); *Sandra D. Pruitt*, 57 ECAB 126 (2005).

²² *W.W.*, Docket No. 09-1619 (issued June 2, 2010); *David Apgar*, 57 ECAB 137 (2005).

²³ 5 U.S.C. § 8128(a).

OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.²⁴

A request for reconsideration must also be received by OWCP within one year of the date of OWCP's decision for which review is sought.²⁵ If OWCP chooses to grant reconsideration, it reopens and reviews the case on its merits.²⁶ If the request is timely but fails to meet at least one of the requirements for reconsideration, OWCP will deny the request for reconsideration without reopening the case for review on the merits.²⁷

ANALYSIS -- ISSUE 2

In a decision dated August 4, 2016, OWCP denied modification of the August 14, 2015 denial decision, which found that the medical evidence of record failed to establish that appellant's left shoulder condition was causally related to the accepted July 17, 2014 employment incident. On October 3, 2016 OWCP received her request for reconsideration. In a decision dated October 18, 2016, it denied further merit review of appellant's case pursuant to 5 U.S.C. § 8128(a).

The Board finds that OWCP appropriately denied further merit review as appellant did not submit any evidence with her reconsideration request to warrant merit review under 5 U.S.C. § 8128(a).

Appellant did not attempt to show that OWCP erroneously applied or interpreted a specific point of law, or advance a relevant legal argument not previously considered by OWCP.

Along with her reconsideration request, appellant submitted a September 26, 2016 report by Dr. Lehman who noted that appellant was one-year status post right total knee arthroplasty and was doing well. Dr. Lehman provided examination findings and indicated that appellant had reached maximum medical improvement. The issue on which OWCP denied appellant's traumatic injury claim, however, was causal relationship between appellant's diagnosed left shoulder condition and the accepted July 17, 2014 employment incident. The Board notes that Dr. Lehman's September 26, 2016 report did not address appellant's left shoulder condition. The Board has found that the submission of evidence that does not address the particular issue involved does not constitute a basis for reopening a case.²⁸ As Dr. Lehman's medical report is insufficient to require further merit review of appellant's claim, OWCP properly denied further merit review of appellant's claim in its October 18, 2016 decision.

²⁴ 20 C.F.R. § 10.606(b)(3); *see also* *L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

²⁵ 20 C.F.R. § 10.607(a).

²⁶ *Id.* at § 10.608(a); *see also* *M.S.*, 59 ECAB 231 (2007).

²⁷ *Id.* at § 10.608(b); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

²⁸ *Alan G. Williams*, 52 ECAB 180 (2000); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

On December 6, 2016 appellant again requested reconsideration. In a decision dated December 9, 2016, OWCP again denied further merit review of appellant's case because the evidence submitted on reconsideration neither raised a substantive legal question nor constituted new and relevant pertinent evidence sufficient to warrant merit review.

The Board finds that OWCP appropriately denied further merit review as appellant did not submit any evidence with her reconsideration request to warrant merit review under 5 U.S.C. § 8128(a). In support of her reconsideration request, appellant submitted a November 16, 2016 report by Dr. Corsetti, who described the July 17, 2014 incident at work and noted the diagnosis of left shoulder rotator cuff tear. Dr. Corsetti opined that appellant's diagnosed left shoulder condition was consistent with the July 17, 2014 fall at work on the outstretched arm. The Board notes that Dr. Corsetti had provided similar affirmative statements regarding causal relationship in his February 29 and April 11, 2016 medical reports. The Board has found that the submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.²⁹ Accordingly, OWCP properly denied further merit review of appellant's case.

Appellant did not submit any evidence along with her request for reconsideration to show that OWCP erroneously applied or interpreted a specific point of law, or advances a relevant legal argument not previously considered by OWCP. Appellant also did not submit new and relevant pertinent evidence in support of her request for reconsideration. Because she did not meet any of the necessary requirements, the Board finds that OWCP properly refused to reopen her case for further consideration of the merits of her claim under 5 U.S.C. § 8128.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a traumatic injury causally related to the accepted July 17, 2014 employment incident. The Board also finds that OWCP properly denied reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

²⁹ *E.M.*, Docket No. 09-39 (issued March 3, 2009); *D.K.*, 59 ECAB 141 (2007).

ORDER

IT IS HEREBY ORDERED THAT the August 4, 2016 merit decision and October 18 and December 9, 2016 nonmerit decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: September 13, 2017
Washington, DC

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

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

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board