

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

FACTUAL HISTORY

On January 18, 2018 appellant, then a 26-year-old soil scientist, filed a traumatic injury claim (Form CA-1) alleging that, on July 17, 2017, she experienced swelling of her upper lip and face when an unidentified insect stung or bit her while she was performing field work. She did not stop work. The employing establishment did not controvert the claim.

By development letter dated February 1, 2018, OWCP requested that appellant submit additional factual and medical evidence in support of her claim, including a detailed description of how her injury occurred and a report from her attending physician addressing causal relationship between any diagnosed condition and the identified work incident.

Thereafter, appellant submitted a July 18, 2017 report from a physician assistant. The physician assistant noted appellant's history of upper lip swelling after she was stung by an insect. She found that appellant had sustained an acute bite of the upper lip at work on July 17, 2017.

By decision dated March 1, 2018, OWCP denied appellant's traumatic injury claim. It found that she had not submitted sufficient medical evidence to establish that she sustained a diagnosed condition causally related to the accepted July 17, 2017 work incident. OWCP also noted that a physician assistant was not considered a physician under FECA.

Appellant, on March 15, 2018, requested reconsideration and resubmitted the July 18, 2017 report with an additional signature at the bottom of the report.

By decision dated April 23, 2018, OWCP denied appellant's request for reconsideration under section 8128(a). It found that she had not raised a relevant legal argument or submitted relevant and pertinent new evidence sufficient to warrant reopening her case for further merit review. OWCP noted that the July 18, 2017 report was repetitious and that the added signature on the report was illegible.

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, 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 or specific condition for which compensation is claimed is causally related to the

³ *Supra* note 1.

employment injury.⁴ 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.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. 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.⁶ Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.⁷

Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical opinion evidence. 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 claimant.⁸

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met her burden of proof to establish an injury causally related to the accepted July 17, 2017 work incident.

Appellant submitted a July 18, 2017 report from a physician assistant. Physician assistants, however, are not considered physicians as defined under FECA. Thus this report is of no probative value on the issue of whether appellant sustained an injury causally related to the accepted July 17, 2017 employment incident.⁹

As discussed, causal relationship is a medical question that must be established by a probative medical opinion from a physician.¹⁰ In order to establish causal relationship, appellant must provide an opinion from a physician based on a complete and accurate factual and medical background finding that the claimed condition is causally related to the identified work incident

⁴ See *E.B.*, Docket No. 17-0164 (issued June 14, 2018); *Alvin V. Gadd*, 57 ECAB 172 (2005).

⁵ See *P.S.*, Docket No. 17-0939 (issued June 15, 2018); *Ellen L. Noble*, 55 ECAB 530 (2004).

⁶ See *V.J.*, Docket No. 18-0452 (issued July 3, 2018); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

⁷ *Id.*

⁸ See *H.B.*, Docket No. 18-0781 (issued September 5, 2018).

⁹ 5 U.S.C. 8101(2) (this subsection defines a physician as surgeons, podiatrist, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law); see also *P.S.*, *supra* note 5.

¹⁰ See *C.W.*, Docket No. 17-0399 (issued June 19, 2017).

and supporting such causation finding with affirmative evidence and medical rationale.¹¹ She failed to submit such evidence in support of her claim and thus did not meet her burden of proof.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 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.¹³

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or an argument which: (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.¹⁴

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.¹⁵ If OWCP chooses to grant reconsideration, it reopens and reviews the case on its merits.¹⁶ 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.¹⁷

ANALYSIS -- ISSUE 2

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

In its April 23, 2018 decision, OWCP denied appellant's traumatic injury claim, finding that the medical evidence of record did not establish a diagnosed condition causally related to the

¹¹ See *J.W.*, Docket No. 17-0870 (issued July 12, 2017).

¹² See *E.P.*, Docket No. 17-1544 (issued April 10, 2018).

¹³ 5 U.S.C. § 8128(a).

¹⁴ 20 C.F.R. § 10.606(b)(3); see also *G.C.*, Docket No. 18-0506 (issued August 15, 2018).

¹⁵ *Id.* at § 10.607(a). For merit decisions issued on or after August 29, 2011, a request for reconsideration must be received by OWCP within one year of OWCP's decision for which review is sought. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (February 2016). Timeliness is determined by the document receipt date of the request for reconsideration as indicated by the received date in the Integrated Federal Employees Compensation System (iFECS). *Id.* at Chapter 2.1602.4b.

¹⁶ *Id.* at § 10.608(a); see also *K.M.*, Docket No. 18-0479 (issued September 17, 2018).

¹⁷ *Id.* at § 10.608(b); *A.M.*, Docket No. 17-1192 (issued September 19, 2018).

accepted July 17, 2017 employment incident. On March 15, 2018 appellant requested reconsideration. Her request was timely filed as it was received within one year of OWCP's merit decision.¹⁸

Appellant, however, did not show that OWCP erroneously applied or interpreted a specific point of law or raise a relevant legal argument not previously considered. Rather, she resubmitted the July 18, 2017 report with the addition of an illegible signature. A report with an illegible signature is of no probative value regarding appellant's claim for a July 17, 2017 employment injury as the author cannot be identified as a physician within the meaning of FECA.¹⁹ As this evidence is irrelevant to the underlying issue of causal relationship, it is insufficient to constitute a basis for reopening the case.²⁰

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.²¹

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish an injury causally related to the accepted July 17, 2017 employment incident. The Board further finds that OWCP properly denied her request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

¹⁸ See *supra* note 15.

¹⁹ See also *V.J.*, *supra* note 6.

²⁰ See *G.C.*, Docket No. 18-0506 (issued August 15, 2018).

²¹ See *R.C.*, Docket No. 17-1314 (issued November 3, 2017) (when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(3), OWCP will deny the application for reconsideration without reopening the case for a review on the merits).

ORDER

IT IS HEREBY ORDERED THAT the April 23 and March 1, 2018 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: December 6, 2018
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