

**United States Department of Labor
Employees' Compensation Appeals Board**

S.J., Appellant

and

**U.S. POSTAL SERVICE, MANAGER
PROCESSING & DISTRIBUTION CENTER,
Tallahassee, FL, Employer**

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**Docket No. 17-1798
Issued: February 23, 2018**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 21, 2017 appellant filed a timely appeal from a May 22, 2017 merit decision and an August 2, 2017 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant met her burden of proof to establish a back condition causally related to factors of her federal employment; and (2) whether OWCP properly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C § 8128(a).

¹ 5 U.S.C. § 8101 *et seq.*

On appeal appellant contends that she submitted the proper documentation to establish an employment-related back injury that resulted in her resignation from the employing establishment and need for surgery.

FACTUAL HISTORY

On April 14, 2017 appellant, then a 54-year-old mail handler assistant, filed an occupational disease claim (Form CA-2) alleging that she sustained a strain caused or aggravated by factors of her federal employment. She noted that she first became aware of her condition on March 30, 2017 and realized its relationship to her federal employment on April 11, 2017. On the reverse side of the claim form the employing establishment noted that appellant stopped work on April 12, 2017, but did not report her claimed injury to a supervisor until April 14, 2017.

OWCP, by letter dated April 19, 2017, advised appellant that it required additional factual and medical evidence to determine whether she was eligible for FECA benefits. It noted that it had not received any other documentation with appellant's claim form. OWCP attached a development questionnaire, asking appellant to provide a detailed description of the employment-related activities she believed contributed to her condition, as well as to provide information regarding the frequency and duration of the activities. It afforded appellant 30 days to submit the requested information.

In a May 1, 2017 letter, the employing establishment controverted appellant's claim, contending that she did not sustain an injury while performing repetitive motion at work. It asserted that, during an initial investigation of her claim, she could not determine when her injury occurred and supposed that it occurred on March 30, 2017. The employing establishment further asserted that appellant waited approximately 11 days before seeking medical care and reporting her claimed injury. It noted that, during its investigation, she reported having preexisting sciatica, which she sustained while serving in the United States Coast Guard.

On May 8, 2017 appellant submitted an April 14, 2017 letter describing the development of her back condition. She claimed that she experienced swelling, stiffness, and pain in her back while working as a mail handler assistant. Appellant related that she told her coworkers about her back pain and continued to work. She maintained that, after work, her pain worsened, she purchased over-the-counter medication and other treatment products for her condition. Appellant noted that she was treated at the Veterans Affairs (VA) Medical Center with injections in her backside, prescribed medication, and placed off work until April 14, 2017.

Appellant submitted a letter dated April 14, 2017 in which the employing establishment advised her of the type of medical documentation needed to support her claim. She also submitted the fifth page of a document entitled "Employee Rights and Responsibilities for Occupational Disease/Form CA-2" dated April 14, 2017.

An April 11, 2017 note from the Lake City, Florida VA Medical Center, containing an illegible signature, noted that appellant was placed off work for two days through April 13, 2017 due to an injury.

In a May 2, 2017 attending physician's report (Form CA-20), Dr. Adamar Munoz, an attending emergency medicine, noted the date of injury as March 30, 2017. Under history of the employment injury, she reported that appellant had back pain exacerbation. Dr. Munoz checked a box marked "yes" indicating that she had a history or evidence of concurrent or preexisting injury or disease or physical impairment. She diagnosed chronic back pain and checked a box marked "yes" indicating that the diagnosed condition was caused or aggravated by the described employment activity. Dr. Munoz noted pushing and lifting heavy boxes as appellant's employment activities. She further noted that appellant was totally disabled from work from March 30 to April 14, 2017. Dr. Munoz released her to return to regular work on April 14, 2017.

An unsigned letter dated May 2, 2017 from the Department of Veterans Affairs, North Florida/South Georgia Veterans Health System informed appellant that a lower back x-ray showed mild degenerative disc disease with small osteophyte formation at T10-T11, T11-T12, and L2-L3 levels. The letter also indicated that the x-ray showed mild facet joint arthropathy at L3-L4 and L4-L5 levels and mild degenerative arthritic changes in bilateral sacroiliac joints.

By decision dated May 22, 2017, OWCP denied appellant's claim for an occupational disease because she failed to establish the factual component of fact of injury. It noted that she had not identified the direct cause of her claimed injury. Additionally, OWCP found that appellant failed to submit medical evidence containing a medical diagnosis in connection with work events.

On July 5, 2017 appellant requested reconsideration. She contended that Dr. Munoz's May 2, 2017 Form CA-20 report established that her preexisting back sciatica was aggravated by her work duties. Appellant submitted letters dated April 10 and 12, 2017 in which the employing establishment addressed her request for leave under the Family Medical Leave Act (FMLA) and its denial of her request. She also submitted a June 9, 2017 letter from the employing establishment, which advised her to request light-duty work if she was unable to perform her full, regular duties.

On a Florida Workers' Compensation form with a partial date, Markira Stewart, a physician assistant, noted July 22, 2017 as the date of accident and that appellant was seen on July 25, 2017. She advised that appellant could return to activities with restrictions related to her back and right shoulder. Ms. Stewart indicated that no clinical services were indicated at that time.

Appellant resubmitted the May 2, 2017 letter from the Department of Veterans Affairs, and April 11, 2017 excuse note from the Lake City, FL, VA Medical Center. She also resubmitted her April 14, 2017 letter, Dr. Munoz's May 2, 2017 Form CA-20 report, and the employing establishment's April 14, 2017 letter.

By decision dated August 2, 2017, OWCP denied reconsideration of the merits of appellant's claim. It found that she did not submit a pertinent new and relevant argument and did not show that OWCP erroneously applied or interpreted a point of law not previously considered by OWCP.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA² 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, and that any disability or specific condition for which compensation is claimed is 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.

Appellant's burden of proof includes the submission of a detailed description of the employment factors or conditions which he believes caused or adversely affected a condition for which compensation is claimed.⁵

ANALYSIS -- ISSUE 1

The Board finds that appellant failed to meet her burden of proof to establish a back condition causally related to factors of her federal employment.

Appellant's claim form generally stated that she sustained a strain caused or aggravated by factors of her federal employment. However, she did not present a clear factual statement identifying specific employment factors or conditions alleged to have caused or contributed to the presence or occurrence of her claimed medical condition, nor has she explained how those work factors caused or aggravated her claimed condition.

On April 19, 2017 OWCP informed appellant that the evidence received was insufficient to establish that she experienced any employment factors that were alleged to have caused an injury. Appellant was asked to provide a detailed description of the employment-related activities she believed contributed to her condition and how often she performed the described activities. OWCP received an April 14, 2017 letter from appellant which described the back symptoms she experienced while working as a mail handler assistant and the medical treatment

² *Id.*

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 *T.B.*, Docket No. 17-0444 (issued May 5, 2017).

she received. However, appellant still did not clearly identify any specific work duties as the cause of her claimed condition or explain how work duties caused or aggravated her condition. The Board notes that, while Dr. Munoz, in her May 2, 2017 Form CA-20 report, attributed appellant's diagnosed chronic back pain to pushing and lifting heavy boxes at work, there is no evidence that she had direct knowledge of appellant's employment duties. Under history of injury, Dr. Munoz only related appellant's account of an exacerbation of back pain. As appellant did not provide a factual statement describing in detail the events that caused the claimed injury and the circumstances surrounding the injury, she has not met her burden of proof.⁶

As appellant has not established the factual component of her claim, the Board will not address the medical evidence with respect to causal relationship.⁷

On appeal appellant contends that she submitted the proper documentation to establish an employment-related back injury that resulted in her resignation from the employing establishment and need for surgery. As found above, she did not submit sufficient evidence to establish employment factors that caused or contributed to her claimed back condition. Accordingly, appellant failed to establish fact of injury in the performance of duty.

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

⁶ *D.D.*, 57 ECAB 734 (2006); *P.G.*, Docket No. 15-1345 (issued August 23, 2016).

⁷ *See B.G.*, Docket No. 16-1454 (issued November 22, 2016).

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).

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).

On July 5, 2017 appellant requested reconsideration of OWCP's May 22, 2017 decision which denied her occupational disease claim. The underlying issue on reconsideration is factual in nature - whether appellant established factors of her federal employment that caused or contributed to her claimed back condition.

In her June 23, 2015 request for reconsideration, appellant did not show that OWCP erroneously applied or interpreted a specific point of law, or advance a new and relevant legal argument not previously considered. Thus, she is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(3).

The Board further finds that appellant did not submit relevant and pertinent new evidence in support of reconsideration. The new letters from the employing establishment regarding appellant's FMLA leave request and work assignment are not relevant to the underlying factual issue. These documents do not address the factual issue of whether appellant established factors of her federal employment that caused or contributed to her claimed back condition. Similarly, appellant submitted a new medical report from a physician assistant, which does not address the factual issue of whether she established work duties that caused or contributed to her claimed back condition. Evidence which does not address the particular issue under consideration does not constitute a basis for reopening a case.¹²

Appellant resubmitted the May 2, 2017 letter from the Department of Veterans Affairs, an April 11, 2017 excuse note from the Lake City, FL, VA Medical Center, her April 14, 2017 letter, Dr. Munoz's May 2, 2017 Form CA-20 report, and the employing establishment's April 14, 2017 letter. Evidence or argument that repeats or duplicates evidence previously of record has no evidentiary value and does not constitute a basis for reopening a case.¹³

The Board accordingly finds that appellant failed to 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.

CONCLUSION

The Board finds that appellant has failed to meet her burden of proof to establish a back condition causally related to factors of her federal employment. The Board further finds that OWCP properly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

¹² See *K.T.*, Docket No. 15-1916 (issued February 1, 2016).

¹³ *D.K.*, 59 ECAB 141 (2007).

ORDER

IT IS HEREBY ORDERED THAT the August 2 and May 22, 2017 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: February 23, 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