

ISSUES

The issues are: (1) whether appellant met his burden of proof to establish an injury in the performance of duty on January 16, 2017, as alleged; and (2) whether OWCP properly denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On January 23, 2017 appellant, then a 31-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on January 16, 2017 he sustained unspecified injuries as a result of a motor vehicle accident. He noted that the incident occurred at 10:15 a.m., but he did not relate where the incident occurred. Appellant stopped work on January 16, 2017.

The employing establishment issued an authorization for examination and/or treatment (Form CA-16) on January 16, 2017. An attached report from Dr. Joseph Cherian, a family medicine physician, did not contain a diagnosis, but did note that appellant should limit standing/walking to two hours per day; that appellant should limit pushing and pulling to 25 pounds; and that appellant should not kneel, squat, or climb. In a work status report of the same date, Dr. Cherian diagnosed a right lower leg contusion; cervical strain; contusions of the left knee and lower leg; and contusion of the right forearm. He reported that appellant could return to modified-duty work.³

In a report dated January 23, 2017, Dr. Cherian noted a diagnosis of a right lower leg contusion and he related that appellant could return to work without restrictions as of March 9, 2017.

By development letter dated January 27, 2017, OWCP informed appellant of the evidence necessary to establish his claim. It noted that he had not submitted sufficient factual or medical evidence to establish his claim and requested that he respond to its inquiries including a detailed description of how the motor vehicle incident occurred. Appellant was afforded 30 days to submit the necessary evidence.

In a report dated January 23, 2017, Dr. Cherian noted that appellant felt 40 percent better since the motor vehicle incident. Appellant related his history of injury to Dr. Cherian, stating that he had been driving a postal vehicle when he lost control and hit the barrier on the inside of a bend.

By decision dated March 6, 2017, OWCP denied appellant's claim for compensation. It found that he had not established that the event of January 16, 2017 occurred in the performance of duty. OWCP found that appellant did not respond to its questionnaire and had failed to

³ The Board notes that on January 16, 2017, an authorization for examination and/or treatment form (Form CA-16) was completed by an employing establishment and authorized medical treatment. Where an employing establishment properly executes a Form CA-16 authorizing medical treatment related to a claim for a work injury, the form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination/treatment regardless of the action taken on the claim. *See Tracy P. Spillane*, 54 ECAB 608 (2003). The period for which treatment is authorized by a Form CA-16 is limited to 60 days from the date of issuance, unless terminated earlier by OWCP. *See* 20 C.F.R. § 10.300(c).

provide a detailed description of the incident to establish that it occurred at the time, place, and in the manner alleged.

On April 29, 2017 appellant requested reconsideration of OWCP's March 6, 2017 decision. With his request for reconsideration, he resubmitted the January 16 and 23, 2017 reports from Dr. Cherian.

By decision dated May 16, 2017, OWCP declined to review the merits of appellant's claim, noting that he had neither raised substantive legal questions nor included relevant and pertinent new evidence with his request for reconsideration.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA⁴ 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 timely filed within the applicable time limitation period of FECA, that an injury⁵ was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.⁶

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether fact of injury has been established. A fact of injury determination is based on two elements. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident at the time, place, and in the manner alleged. Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury. An employee may establish that the employment incident occurred as alleged, but fail to show that his or her condition relates to the employment incident.⁷

FECA provides for payment of compensation for the disability or death of an employee resulting from personal injury sustained while in the performance of duty.⁸ The phrase "while in the performance of duty" has been interpreted by the Board to be the equivalent of the commonly found prerequisite in workers' compensation law of "arising out of and in the course of employment." In addressing the issue, the Board has held that for an incident to occur in the course of employment, in general, an injury must occur: (1) at a time when the employee may

⁴ *Supra* note 2.

⁵ OWCP's regulations define a traumatic injury as a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected. 20 C.F.R. § 10.5(ee).

⁶ *T.H.*, 59 ECAB 388, 393 (2008); *see Steven S. Saleh*, 55 ECAB 169, 171-72 (2003); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁷ *Id.* *See Shirley A. Temple*, 48 ECAB 404, 407 (1997); *John J. Carlone* 41 ECAB 354, 356-57 (1989).

⁸ *Supra* note 2.

reasonably be stated to be engaged in his or her master's business; (2) at a place where he or she may reasonably be expected to be in connection with the employment; and (3) while he or she was reasonably fulfilling the duties of his or her employment or engaged in doing something incidental thereto.⁹

There are four categories of off-premises employees recognized by OWCP in its procedures: (1) Messengers, letter carriers and chauffeurs who, by the nature of their work, perform service away from the employing establishment's premises; (2) traveling auditors and inspectors whose work requires them to be in a travel status; (3) workers having a fixed place of employment who are sent on errands or special missions by the employing establishment; and (4) workers who perform services at home for their employing establishment.¹⁰

ANALYSIS -- ISSUE 1

Appellant alleged that on January 16, 2017 he sustained injury as a result of an employment-related motor vehicle accident which occurred at 10:15 a.m. As part of his burden of proof, he must establish all the essential elements of his claim, including that the January 16, 2017 incident occurred in the performance of duty at the time, place, and in the manner alleged.¹¹ OWCP denied appellant's claim finding that he did not provide sufficient details describing the incident to establish that it occurred in the performance of duty.

The Board finds that appellant failed to establish that he sustained an injury in the performance of duty on January 16, 2017.

Appellant's duties as a letter carrier require that he perform employment duties in a vehicle, off the employing establishment's premises.¹² While the record reflects that the incident occurred during his work hours, appellant has not sufficiently described the alleged January 16, 2017 incident to establish that it occurred in the performance of duty.¹³ Other than reporting the time of the incident, appellant has not provided sufficient details to establish that he was at a place where he was reasonably expected to be and at a time when he was fulfilling duties of his federal employment. The only other account of the incident comes from the reports of Dr. Cherian, who stated that appellant reported driving an employing establishment vehicle when he lost control and hit a barrier on the inside of a bend. Appellant failed to describe where the accident occurred, the purpose of his trip, or describe why he was on the specific route at the time of the accident.¹⁴

⁹ *J.E.*, 59 ECAB 119 (2007).

¹⁰ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Performance of Duty*, Chapter 2.804.5(a) (August 1992); see also *N.B.*, Docket No. 14-1092 (issued February 26, 2015).

¹¹ *Id.*

¹² *Supra* note 9.

¹³ *M.H.*, Docket No. 11-0644 (issued September 30, 2011).

¹⁴ *Id.*

In a letter dated January 27, 2017, OWCP advised him of the deficiencies of his claim and requested additional factual evidence to establish that the alleged vehicle accident occurred in the performance of duty. Appellant did not submit any additional statements to OWCP describing the alleged January 16, 2017 incident or providing additional details. Thus, he did not submit sufficient evidence to establish that the January 16, 2017 incident occurred in the performance of duty, as alleged.

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

To require OWCP to reopen a case for merit review under section 8128(a), OWCP's regulations provide that the evidence or argument submitted by a claimant must: (1) show that OWCP erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by OWCP; or (3) constitute relevant and pertinent new evidence not previously considered by OWCP.¹⁵ Section 10.608(b) of OWCP's regulations provide that, 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.¹⁶

ANALYSIS -- ISSUE 2

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

The issue is whether appellant met any of the requirements of 20 C.F.R. § 10.606(b)(3), requiring OWCP to reopen the case for review of the merits of the claim.

In his request for reconsideration, appellant did not show that OWCP erroneously applied or interpreted a specific point of law, nor did he advance a new and relevant legal argument not previously considered by OWCP. The Board therefore finds that appellant is not entitled to a review of the merits of his 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 or pertinent new evidence not previously considered by OWCP. In his April 12, 2017 request for reconsideration, appellant merely requested that OWCP review the medical evidence submitted. He resubmitted the January 16 and 23, 2017 reports from Dr. Cherian, which had already been considered in

¹⁵ 20 C.F.R. § 10.606(b)(3); *D.K.*, 59 ECAB 141, 146 (2007).

¹⁶ *Id.* at § 10.608(b); *see K.H.*, 59 ECAB 495, 499 (2008).

OWCP's March 6, 2017 decision. Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.¹⁷

The Board accordingly finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(3). Appellant did not show that OWCP erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by OWCP, or submit relevant and pertinent new evidence not previously considered. Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish an injury in the performance of duty on January 16, 2017, as alleged. The Board further finds that OWCP properly denied his request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated May 16 and March 6, 2017 are affirmed.

Issued: February 6, 2018
Washington, DC

Christopher J. Godfrey, 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

¹⁷ *J.J.*, Docket No. 17-0614 (issued June 13, 2017).