

On appeal appellant contends that she did not believe that, at the time of OWCP's decisions, all the information had been received.²

FACTUAL HISTORY

On January 14, 2017 appellant, then a 55-year-old rural carrier, filed an occupational disease claim (Form CA-2) alleging that she suffered from tennis elbow due to factors of her federal employment. She did not submit any evidence in support of her claim.

By development letter dated February 3, 2017, OWCP informed appellant that additional information was necessary to support her claim, including a detailed description of the employment-related activities that she believed contributed to her condition as well as medical evidence to establish causal relationship. It requested that she respond to an attached questionnaire in order to substantiate the factual elements of her claim. Appellant was afforded 30 days to submit the requested information.

In response, appellant submitted a note from Dr. Jeffrey W. Meincke-Reza, a Board-certified orthopedic surgeon, indicating that appellant suffered from left lateral epicondylitis.

By decision dated April 14, 2017, OWCP denied appellant's claim. It determined that she had not established that specific employment events occurred as alleged. Therefore, OWCP denied appellant's claim finding that she failed to establish the factual component of her claim. It further noted that she had not submitted medical evidence that established a diagnosed medical condition causally related to an employment injury or event.

OWCP thereafter received additional reports and notes from Dr. Meincke-Reza, dated from January 18 through May 16, 2017 regarding his ongoing medical treatment and his prescriptions for various medications. In a report dated May 3, 2017, Dr. Meincke-Reza presented a narrative regarding the history of appellant's diagnosed condition. He related that she was first seen on January 18, 2017 with a complaint of ongoing elbow pain along the lateral epicondylar ridge, which had been present for four to five months, and which worsened when she performed her work duties as a rural mail carrier. Dr. Meincke-Reza further explained that appellant performed a large amount of mail sorting, wherein she repetitively grasped the mail and inserted it into carrier devices, carried them to her vehicle, and then stuffed mailboxes from awkward positions while driving.

On June 12, 2017 appellant requested reconsideration.

By decision dated September 12, 2017, OWCP denied appellant's request for reconsideration of the merits of her claim. It noted that her claim was denied because she failed to describe the employment-related activities which she believed caused or contributed to her

² Appellant submitted new evidence to the Board on appeal. The Board's jurisdiction is limited to the evidence that was before OWCP at the time of its final decision. Therefore, the Board is precluded from considering this new evidence for the first time on appeal. 20 C.F.R. § 501.2(c)(1); *Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35, 36 n.2 (1952).

condition. Therefore, OWCP found that the medical evidence submitted was irrelevant or immaterial with regard to the underlying issue of the case.

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 evidence, including the fact that the individual is an employee of the United States within the meaning of FECA, that an injury was sustained in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.⁴

OWCP's regulations define an occupational disease as a condition produced by the work environment over a period longer than a single workday or shift.⁵ 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.⁶

Appellant's burden of proof includes the submission of a detailed description of the employment factors which he or she believes caused or adversely affected a condition for which compensation is claimed.⁷

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met her burden of proof.

Appellant did not identify specific employment factors alleged to have caused her injury on her claim form. In a February 3, 2017 development letter, OWCP informed her that the evidence of record was insufficient as she had not described the employment factors alleged to have caused her injury. Appellant was asked to describe those alleged work factors in detail, but she did not respond to OWCP's request for additional factual information. Accordingly, as she failed to present a clear factual statement identifying specific employment factors or conditions

³ *Supra* note 1.

⁴ *Kathryn Haggerty*, 45 ECAB 383, 388 (1994).

⁵ 20 C.F.R. § 10.5(q).

⁶ *T.C.*, Docket No. 17-0872 (issued October 5, 2017).

⁷ *S.J.*, Docket No. 17-1798 (issued February 23, 2018).

alleged to have caused or contributed to her claimed medical condition, she has not met her burden of proof.⁸

As appellant has not established the factual element of her claim, the Board will not address the medical evidence with respect to causal relationship.⁹

LEGAL PRECEDENT -- ISSUE 2

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,¹⁰ 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.¹¹ 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.¹²

ANALYSIS -- ISSUE 2

The Board finds that this case is not in posture for decision.

Appellant did not allege that OWCP erroneously applied or interpreted a specific point of law or advance a legal argument not previously considered by OWCP. 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).

Appellant submitted new medical reports from Dr. Meincke-Reza in support of her request for reconsideration. In his May 3, 2017 report, Dr. Meincke-Reza related a history of specific employment factors that she had related caused her elbow condition. To require merit review it is not necessary that the new evidence be sufficient to discharge appellant's burden of proof. Instead, the requirement pertaining to the submission of evidence in support of reconsideration only specifies that the evidence be relevant and pertinent and not previously considered by OWCP.¹³ If OWCP determines that the new evidence lacks probative value, it may deny modification of its prior decision, but only after the case has been reviewed on the merits.¹⁴ It denied appellant's claim as she had not submitted evidence which established the factual element of her claim.

⁸ *B.G.*, Docket No. 16-1454 (issued November 22, 2016); *D.D.*, 57 ECAB 734 (2006).

⁹ *See B.G.*, *id.*

¹⁰ 5 U.S.C. § 8128(a).

¹¹ 20 C.F.R. § 10.606(b)(3).

¹² *Id.* at § 10.608(b).

¹³ *See D.M.*, Docket No. 17-0038 (issued June 8, 2017).

¹⁴ *See D.W.*, Docket No. 15-1225 (issued February 22, 2016); *C.M.*, Docket No. 14-1887 (issued May 6, 2015).

Dr. Meincke-Reza's description of her employment factors, as related to him by her, is therefore relevant to the underlying issue. While the Board has previously noted that medical evidence is not relevant to an underlying factual issue if the facts of the case are in dispute between the employee and the employing establishment, a factual dispute did not exist in this case.¹⁵

The Board finds that appellant has submitted relevant and pertinent new evidence not previously considered by OWCP which requires OWCP to reopen her claim for consideration of the merits under 20 C.F.R. § 10.606(b)(3). Thus, OWCP's denial of appellant's request for review of the merits of her claim constituted an abuse of discretion. Consequently, the case must be remanded for OWCP to conduct an appropriate merit review of the claim. Following this and such other development as deemed necessary, OWCP shall issue a merit decision.

CONCLUSION

OWCP improperly denied appellant's request for reconsideration of the merits of her claim under 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 14, 2017 is affirmed and the decision dated September 12, 2017 is set aside and the case is remanded for further proceedings consistent with this opinion.

Issued: July 12, 2018
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

¹⁵ See *E.L.*, Docket No. 16-0371 (April 13, 2016).