

(FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.³

ISSUES

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

FACTUAL HISTORY

On May 17, 2016 appellant, then a 60-year-old medical technician, filed an occupational disease claim (Form CA-2) alleging that she developed right wrist carpal tunnel syndrome due to her employment duties of repetitive typing, dialing a microscope, and using centrifuge and other laboratory equipment.⁴ She alleged that she first became aware of the claimed condition on April 1, 2015 and realized its relationship to her federal employment on February 16, 2016. Appellant did not submit additional evidence.

By development letter dated June 14, 2016, OWCP advised appellant of the deficiencies in her claim. A questionnaire was provided for her completion regarding the circumstances of the injury. Appellant was also asked to provide a narrative medical report from her physician which contained a detailed description of findings and diagnoses, explaining how the claimed work activities caused, contributed to, or aggravated her medical condition. OWCP afforded her 30 days to submit the requested information. In a separate letter dated June 14, 2016, it also requested that the employing establishment provide additional information in response to appellant's allegations.

In a work capacity evaluation dated March 23, 2016, Dr. Bin Yang, an occupational medicine physician, provided diagnoses of neck strain and left shoulder sprain. In an employee health record dated April 25 and May 17, 2016, he noted appellant's right wrist complaints and April 26, 2016 right carpal tunnel release. Dr. Yang also noted that an electromyogram and nerve conduction velocity (EMG/NCV) study was performed on April 15, 2016.

Hospital records from Saint Barnabas Medical Center documented that appellant was evaluated in the emergency room for right arm paresthesia and muscular pain on March 28, 2016, that she was given discharge instructions following her evaluation on March 28, 2016, and that carpal tunnel release surgery was performed on April 26, 2016.

In reports dated April 15 and 26, and May 31, 2016, Dr. Alan Cooper, a Board-certified orthopedic surgeon, reported that he had examined appellant and diagnosed right carpal tunnel

³ Appellant submitted new evidence on appeal. The Board's jurisdiction, however, is limited to the evidence that was before OWCP at the time of its final decision. Therefore, the Board is precluded from reviewing this new evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c)(1).

⁴ OWCP assigned the claim File No. xxxxxx206.

syndrome. He performed right carpal tunnel release on April 26, 2016 to treat the diagnosed condition and subsequently released appellant to return to work on July 1, 2016.

The employing establishment, in a July 15, 2016 letter, responded to OWCP's June 14, 2016 development letter. It noted that it had not received a statement from appellant and therefore it had no comment. The employing establishment described her medical technician work duties, work area, and work equipment. It related that it first received notice about appellant's condition on March 25, 2016 and that she used sick leave on that day. On March 29, 2016 the employing establishment received a note from appellant's physician placing her off work through April 8, 2016. It noted that appellant had not returned to work. The employing establishment submitted a copy of her medical technician position.

By decision dated August 11, 2016, OWCP denied appellant's occupational disease claim. It found that the medical evidence of record was insufficient to establish diagnosed medical conditions causally related to the accepted work event(s).⁵

In additional reports dated April 11 and May 15, 2016, Dr. Cooper again examined appellant and reiterated his diagnosis of right wrist carpal tunnel syndrome. He also provided an impression of right shoulder calcific tendinitis.

In an April 21, 2016 letter, Dr. Dong W. Cho, a Board-certified physiatrist, performed an EMG/NCV based on a referral from Dr. Cooper. He reported findings suggestive of moderate-to-severe right carpal tunnel syndrome with axonal degeneration in abductor pollicis brevis. Dr. Cho found no electrophysiological abnormal findings to indicate tardy ulnar entrapment at the elbow or cervical radiculopathy.

On October 4, 2016 appellant, through counsel, requested reconsideration of the August 11, 2016 decision, contending that an accompanying September 20, 2016 letter from Dr. Cooper was sufficient to establish causal relationship between her shoulder and wrist conditions and her laboratory technician work duties. Dr. Cooper noted a history that she presented in the Saint Barnabas Medical Center emergency room on March 27, 2016 initially complaining about right dominant shoulder pain and experiencing right hand numbness for three weeks. He initially saw appellant on March 29, 2016 in his office. Appellant was diagnosed with rotator cuff tendinitis and carpal tunnel syndrome secondary to repetitive overuse of the right upper extremity associated with her occupation as a laboratory technician. Dr. Cooper noted that he

⁵ On September 21, 2016 appellant filed a second occupational disease claim (Form CA 2), alleging that she sustained bilateral wrist carpal tunnel syndrome and bilateral shoulder tendinitis due to her federal employment duties. She noted her April 26, 2016 right wrist surgery. OWCP assigned the claim File No. xxxxxx009. Appellant filed a third occupational disease claim dated September 6, 2016, assigned OWCP File No. xxxxxx009, again alleging that she sustained bilateral wrist carpal tunnel syndrome and a bilateral shoulder injury due to her federal employment. OWCP, in a May 8, 2017 letter, advised counsel that, although she was claiming additional conditions, she attributed these conditions to the same factors of employment listed in her May 17, 2016 Form CA-2. OWCP recommended that appellant appeal from the December 30, 2016 decision. By decision dated May 16, 2017, OWCP determined that her September 6 and 21, 2016 claims assigned OWCP File No. xxxxxx009 were duplicates of the instant claim assigned OWCP File No. xxxxxx206. It related that it was unnecessary to formally adjudicate the September 6 and 21, 2016 claims under File No. xxxxxx009. OWCP again advised appellant that she should pursue her appeal rights associated with the December 30, 2016 decision.

placed her on an oral steroid. He saw appellant again on April 15, 2016 and related that her right shoulder pain had subsided, however, she continued to complain about symptoms related to her carpal tunnel syndrome. Dr. Cooper ordered an EMG/NCV study which revealed neurologic evidence of carpal tunnel syndrome. He noted that he performed right carpal tunnel release on May 6, 2016 and that postoperatively, appellant developed complex regional pain syndrome and significant swelling and loss of hand motion, which precluded her from returning to her laboratory technician position and required extensive occupational therapy. Dr. Cooper related that her complaints of numbness and tingling in her left hand were consistent with a clinical diagnosis of carpal tunnel syndrome. He further related that appellant's symptoms had improved upon his follow-up evaluations on May 13 and 27, July 13, and August 17, 2016, but she was still not capable of returning to full-duty work involving keying, typing, dialing a microscope, and using a centrifuge and lifting equipment which had contributed to the development of her right upper extremity symptoms. Dr. Cooper concluded that, within a reasonable degree of medical certainty, all of her bilateral upper extremity symptoms (*i.e.*, shoulder tendinitis and carpal tunnel syndrome) were related to repetitious overload associated with her occupation as a laboratory technician.

By decision dated December 30, 2016, OWCP modified its August 11, 2016 decision to reflect that appellant's claim was denied based on both fact of injury and lack of causal relationship. It found the evidence insufficient to establish the factors of her federal employment as alleged, as she had not responded to its June 14, 2016 development questionnaire and failed to provide a detailed description of the employment-related activities she attributed to her diagnosed medical conditions. OWCP further noted that the medical evidence of record remained insufficient to establish causal relationship between the claimed work factors and appellant's diagnosed conditions.

On May 17, 2017 counsel requested reconsideration of the December 30, 2016 decision. He submitted appellant's May 11, 2017 narrative statement in which she described her medical laboratory technician duties. Appellant related that she worked in this position for 29 years. She sorted specimens, opened bottles and cups, logged specimens, drew blood, and ran specimens in different types of instruments and especially operated a computer. Appellant spent a great deal of time on the computer using the keyboard. She claimed that she first developed carpal tunnel syndrome in her right hand and then in both hands. Appellant indicated that she performed a significant amount of keying and typing. She also performed repetitive work and bent her wrists all the time. Appellant used equipment, including microscopes and other equipment. She attributed her hand problems to her repetitive work duties. Appellant retired from the employing establishment in March 2016. Counsel resubmitted Dr. Cooper's September 20, 2016 letter.

By decision dated August 15, 2017, OWCP modified its December 30, 2016 decision to find that the evidence of record was sufficient to establish that the claimed employment factors occurred, as alleged. The claim remained denied, however, as the medical evidence submitted did not contain a well-rationalized medical opinion explaining how the diagnosed conditions were causally related to the accepted work-related activities.

On October 11, 2017 appellant, through counsel, again requested reconsideration. Counsel contended that Dr. Cooper's September 20, 2016 letter established that her right rotator cuff tendinitis and carpal tunnel syndrome were due to overuse of her right arm in her laboratory technician job. He resubmitted appellant's May 11, 2017 narrative statement.

By decision dated January 2, 2018, OWCP denied further merit review of appellant's claim. It found that the evidence submitted was repetitious and insufficient to warrant review of the August 15, 2017 decision.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA 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 and/or specific condition for which compensation is claimed are causally related to the employment injury.⁶ 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.⁷

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. The medical evidence required to establish a causal relationship is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable certainty, and must be supported by medial rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.⁸

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met her burden of proof to establish bilateral wrist and shoulder conditions causally related to the accepted factors of her federal employment.

Appellant submitted a series of reports from Dr. Cooper dated April 15 through September 20, 2016. In the September 20, 2016 report, Dr. Cooper discussed examination findings, diagnosed right rotator cuff tendinitis and carpal tunnel syndrome, and noted that the latter condition required surgery. He also noted that, following surgery, appellant developed complex regional pain syndrome which prevented her from returning to her laboratory technician duties. Dr. Cooper opined that the diagnosed conditions were secondary to her repetitive work duties. However, he did not provide a probative, rationalized opinion regarding how the accepted

⁶ C.S., Docket No. 08-1585 (issued March 3, 2009); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁷ *S.P.*, 59 ECAB 184 (2007); *Victor J. Woodhams*, 41 ECAB 345 (1989); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁸ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, *id.*

work duties caused the claimed conditions.⁹ Dr. Cooper only generally described appellant's repetitive work activities and he did not sufficiently explain the reasons why, medically, she would have sustained a right shoulder and right wrist conditions due to these work duties. The Board has held that a mere conclusion without the necessary rationale explaining how her specific accepted work duties could result in the diagnosed condition is insufficient for the employee to meet her burden of proof.¹⁰ While Dr. Cooper's remaining reports dated April 15 through May 31, 2016 noted that appellant had right wrist carpal tunnel syndrome that, required surgery, he failed to provide a specific opinion as to whether the diagnosed condition and resultant surgery were caused or aggravated by the accepted employment factors.¹¹ As such, the Board finds that his reports are insufficient to meet her burden of proof.

Similarly, the March 28, 2016 hospital records, and Dr. Yang's March 23, 2016 work capacity evaluation and April 25 and May 17, 2016 treatment notes relative to appellant's left shoulder and right wrist conditions are of diminished probative value on the issue of causal relationship. This evidence did not offer any medical opinion finding that the diagnosed conditions were caused by the established employment duties.¹²

OWCP also received diagnostic reports. The Board has held that reports of diagnostic tests are of limited probative value as they do not provide an opinion on causal relationship between appellant's employment duties and the diagnosed conditions.¹³

The Board finds that appellant has not submitted rationalized, probative medical evidence sufficient to establish that she sustained bilateral wrist and shoulder conditions causally related to the accepted factors of her federal employment. Appellant therefore has not met her burden of proof.

On appeal, counsel contends that Dr. Cooper's September 20, 2016 report is sufficient to establish that appellant's shoulder tendinitis and carpal tunnel syndrome are due to her federal employment. However, for the reasons noted above, Dr. Cooper failed to explain with medical rationale how the established employment factors caused or aggravated her right shoulder and right wrist conditions.¹⁴ Thus, his opinion is insufficient to establish that appellant's conditions were caused by the established work activities.

⁹ See *George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

¹⁰ See *J.S.*, Docket No. 18-0477 (issued August 28, 2018).

¹¹ *A.D.*, 58 ECAB 159 (2006) (medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

¹² *Id.*

¹³ See *R.T.*, Docket No. 17-2019 (issued August 24, 2018).

¹⁴ See *supra* note 9.

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.¹⁵ 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).¹⁶ 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.¹⁷ 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.¹⁸

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).

Appellant's October 11, 2017 request for reconsideration, 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. Counsel reiterated his contention that Dr. Cooper's September 20, 2016 report established that appellant sustained shoulder and wrist conditions due to her employment duties. This allegation was previously considered by OWCP in its December 30, 2016 decision. 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.¹⁹ As such, appellant 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 or pertinent new evidence not previously considered with her October 11, 2017 request for reconsideration. Appellant resubmitted her May 11, 2017 narrative statement which described her work duties. The Board finds that the submission of this evidence did not require reopening her case for merit review

¹⁵ 5 U.S.C. § 8128(a).

¹⁶ 20 C.F.R. § 10.608(a).

¹⁷ *Id.* at § 10.606(b)(3).

¹⁸ *Id.* at § 10.608(b).

¹⁹ *See D.K.*, 59 ECAB 141 (2007).

because she had submitted duplicative evidence, which was previously reviewed by OWCP in its August 15, 2017 decision. As appellant's narrative statement repeats evidence already of record, it is duplicative, and does not constitute relevant and pertinent new evidence.²⁰ Because appellant did not provide any probative relevant and pertinent new evidence, she is not entitled to a review of the merits based on the third requirement under section 10.606(b)(3).²¹

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.²²

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish bilateral wrist and bilateral shoulder conditions causally related to the accepted factors of her federal employment. 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).

²⁰ *Id.*

²¹ 20 C.F.R. § 10.606(b)(3).

²² *See A.R.*, Docket No. 16-1416 (issued April 10, 2017); *A.M.*, Docket No. 16-0499 (issued June 28, 2016); *A.K.*, Docket No. 09-2032 (issued August 3, 2010); *M.E.*, 58 ECAB 694 (2007); *Susan A. Filkins*, 57 ECAB 630 (2006); (when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b), OWCP will deny the application for reconsideration without reopening the case for a review on the merits).

ORDER

IT IS HEREBY ORDERED THAT the January 2, 2018 and August 15, 2017 merit decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: October 17, 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