

FACTUAL HISTORY

On November 2, 2017 appellant, then a 27-year-old basic agent trainee, filed a traumatic injury claim (Form CA-1) alleging that he experienced tunnel vision, near syncope, shortness of breath, and numbness of the arms and chin while running during a training program. The employing establishment did not controvert the claim.

By development letter dated November 8, 2017, OWCP requested that appellant submit additional factual and medical information in support of his claim, including a report from his attending physician addressing causal relationship between any diagnosed condition and the identified work factor. It afforded appellant 30 days to submit the necessary evidence.

Appellant received treatment at an emergency department on November 2, 2017. A physician assistant noted that he had a history of an upper respiratory illness over the prior week. Appellant began experiencing weakness and dyspnea while running. At the end of three miles he was “breathing very heavy, had tingling in both hands, and was near syncopal.” The physician assistant diagnosed near syncope, an abnormal electrocardiogram (EKG), an acute upper respiratory infection, and orthostasis. Dr. Coleen Rickabaugh, Board-certified in emergency medicine, reviewed and cosigned the report. She advised against strenuous activity pending evaluation by a cardiologist.

In a report dated November 8, 2017, Dr. Harish R. Chandra, a Board-certified internist, obtained a history of appellant nearly fainting while engaged in physical training at work, noting that his “work made him go to the [emergency department].” He had taken medication for a cold and suspected dehydration. Dr. Chandra diagnosed syncope and collapse. He found that the diagnosed conditions most likely resulted from dehydration due to his upper respiratory infection and the cold medication that he had taken for these symptoms. Dr. Chandra indicated that his EKG was slightly abnormal and recommended further testing, noting that appellant could not resume work “unless he can get unrestricted return to work clearance.”

By decision dated December 19, 2017, OWCP denied appellant’s traumatic injury claim. It found that the medical evidence of record was insufficient to show that he sustained a diagnosed condition causally related to the accepted work incident.

Subsequent to its decision, OWCP again received the November 2, 2017 report from the emergency department.

On March 21, 2018 appellant requested reconsideration. He asserted that he was submitting a report from his attending physician with a diagnosis and a report from the medical staff at the employing establishment.

By decision dated March 29, 2018, OWCP denied appellant’s request for reconsideration as he had not raised an argument or submitted evidence sufficient to warrant reopening his case for further review of the merits under section 8128(a).

On appeal appellant asserts that the emergency department physician diagnosed orthostasis and found that it was aggravated by his employment. He notes that he has submitted paperwork

from a physician at the employing establishment correlating her findings. Appellant requests payment of his medical expenses.

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 as alleged, 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 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.⁵ Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.⁶

Causal relationship is a medical question that generally requires rationalized medical opinion evidence to resolve the issue.⁷ A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background.⁸ Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and the specific employment factor(s).⁹

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met his burden of proof to establish an injury causally related to the accepted November 2, 2017 employment incident.

² 5 U.S.C. § 8101 *et seq.*

³ *Alvin V. Gadd*, 57 ECAB 172 (2005); *Anthony P. Silva*, 55 ECAB 179 (2003).

⁴ *See Elizabeth H. Kramm (Leonard O. Kramm)*, 57 ECAB 117 (2005); *Ellen L. Noble*, 55 ECAB 530 (2004).

⁵ *See Bonnie A. Contreras*, 57 ECAB 364 (2006); *Gary J. Watling*, 52 ECAB 278 (2001).

⁶ *See T.H.*, 59 ECAB 388 (2008); *Deborah L. Beatty*, 54 ECAB 340 (2003).

⁷ *Y.J.*, Docket No. 08-1167 (issued October 7, 2008); *A.D.*, 58 ECAB 2006.

⁸ *J.J.*, Docket No. 09-0027 (issued February 10, 2009); *Michael S. Mina*, 57 ECAB 379 (2006).

⁹ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

OWCP accepted that the November 2, 2017 employment incident occurred as alleged. However, it denied the claim because appellant had not submitted sufficient medical evidence supporting that he sustained a medical diagnosis in connection with the claimed November 2, 2017 employment injury.

In an emergency department report dated November 2, 2017, a physician assistant discussed appellant's history of dyspnea, weakness, shortness of breath, ringing in his hands, and near syncope during a training run. She noted that for the week prior he had suffered from an upper respiratory infection. The physician assistant diagnosed near syncope, an abnormal EKG, an acute upper respiratory infection, and osteostasis. Dr. Rickabaugh cosigned the report. She did not, however, address the cause of the diagnosed conditions. Medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.¹⁰

On November 8, 2017 Dr. Chandra indicated that appellant had near syncope while performing physical training, noting that he had taken medication for a cold. He diagnosed syncope and collapse most likely due to dehydration from his upper respiratory infection and use of medication. Dr. Chandra also found that appellant had an abnormal EKG and recommended additional testing. He did not attribute a specific diagnosed condition to the accepted November 2, 2017 work activity of running during a training program, and thus his opinion is insufficient to meet appellant's burden of proof.

Appellant has the burden of proof to submit rationalized medical evidence establishing that he sustained an injury causally related to the accepted November 2, 2017 employment incident.¹¹ He failed to submit such evidence and thus has not met his burden of proof.¹²

On appeal appellant requests payment of medical expenses. The Board notes that OWCP's implementing regulations allow for authorization of medical treatment in emergency circumstances. While 20 C.F.R. § 10.300 explains that authorization of emergency medical treatment is usually provided by issuance of a Form CA-16, section 10.304 allows for authorization of emergency treatment, in the absence of a Form CA-16, in cases involving emergencies or unusual circumstances.¹³ While there was no Form CA-16 issued in this case, Dr. Chandra noted that "work made him go to the [emergency department]." Upon return of the case record, after such development deemed necessary, OWCP shall adjudicate whether his treatment on November 2, 2017 should be authorized due to an emergency or unusual circumstances.¹⁴

¹⁰ See *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹¹ See *D.T.*, docket No. 17-1734 (issued January 18, 2018).

¹² See *D.S.*, Docket No. 18-0061 (issued May 29, 2018).

¹³ 20 C.F.R. § 10.304; *N.B.*, Docket No. 15-0708 (issued July 15, 2015); *K.J.*, Docket No. 13-271 (issued May 23, 2013).

¹⁴ See *S.D.*, Docket No. 16-1394 (issued January 26, 2017).

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 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.¹⁵

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or an argument that: (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.¹⁶

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.¹⁷ If OWCP chooses to grant reconsideration, it reopens and reviews the case on its merits.¹⁸ 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.¹⁹

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied appellant's timely request for reconsideration of the merits of his claim pursuant to section 8128(a). The underlying issue is whether he submitted sufficient medical evidence to establish an injury causally related to the accepted November 2, 2017 employment incident.

In support of his request for reconsideration, appellant did not contend that OWCP erroneously applied or interpreted a specific point of law or advance a relevant legal argument not previously considered. He asserted that he was submitting a report from the medical staff at the employing establishment, but such medical evidence is not contained in the case record. Appellant resubmitted the November 2, 2017 emergency department report. Evidence which repeats or duplicates evidence already of record has no evidentiary value and does not constitute a basis for reopening a case.²⁰

¹⁵ 5 U.S.C. § 8128(a).

¹⁶ 20 C.F.R. § 10.606(b)(3); *see also L.G.*, Docket No. 09-1517 (issued March 3, 2010).

¹⁷ *Id.* at § 10.607(a).

¹⁸ *Id.* at § 10.608(a); *see also M.S.*, 59 ECAB 231 (2007).

¹⁹ *Id.* at § 10.608(b); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

²⁰ *See J.P.*, 58 ECAB 289 (2007); *Richard Yadron*, 57 ECAB 207 (2005).

The Board accordingly finds that appellant's request for reconsideration 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 his burden of proof to establish an injury causally related to the accepted November 2, 2017 employment incident. 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 March 29, 2018 and December 19, 2017 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: October 25, 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

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)(2), OWCP will deny the application for reconsideration without reopening the case for a review on the merits).