

(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 April 30, 2018 appellant, then a 44-year-old motor vehicle operator, filed a traumatic injury claim (Form CA-1) alleging that on April 24, 2018 he injured his neck, back, and shoulder during a motor vehicle accident which occurred while in the performance of duty. On the reverse side of the claim form the employing establishment indicated that appellant stopped work on the date of injury.

In a development letter dated June 1, 2018, OWCP informed appellant that the evidence of record was insufficient to establish his claim. It advised him of the type of factual and medical evidence needed, and provided a questionnaire for completion. OWCP afforded appellant 30 days to submit the necessary evidence.

OWCP received an April 24, 2018 police report regarding the motor vehicle incident.

By decision dated July 13, 2018, OWCP denied appellant's claim finding that the evidence of record did not provide a firm medical diagnosis in connection with the accepted April 24, 2018 employment incident as no medical evidence had been submitted.

On October 19, 2018 OWCP received an employing establishment incident report which indicated that appellant had sustained shoulder and lower back/buttocks sprain/strain on April 24, 2018 when his vehicle was hit by an oncoming vehicle that ran a stop light and subsequently flipped.

On November 5, 2018 appellant requested reconsideration of OWCP's July 13, 2018 decision. He did not submit evidence with his request.

By decision dated November 14, 2018, OWCP denied appellant's request for reconsideration of the merits of his claim.

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 timely filed within the applicable time limitation period of FECA,³ that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related

³ *C.B.*, Docket No. 18-0071 (issued May 13, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

to the employment injury.⁴ These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁵

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.⁶ 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.⁷ Second, the employee must submit sufficient medical evidence to establish that the employment incident caused a personal injury.⁸

Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical opinion evidence.⁹ Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is causal relationship between the employee's diagnosed condition and the accepted employment incident. The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment incident identified by the employee.¹⁰

Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.¹¹

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met his burden of proof to establish a diagnosed medical condition causally related to the accepted April 24, 2018 employment incident.

⁴ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁵ *C.B.*, *supra* note 3; *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁶ *D.B.*, Docket No. 18-1348 (issued January 4, 2019); *T.H.*, 59 ECAB 388, 393-94 (2008).

⁷ *C.B.*, *supra* note 3; *D.S.*, Docket No. 17-1422 (issued November 9, 2017); *Elaine Pendleton*, 40 ECAB 1143.

⁸ *B.M.*, Docket No. 17-0796 (issued July 5, 2018); *John J. Carlone*, 41 ECAB 354 (1989).

⁹ *N.C.*, Docket No. 19-0299 (issued June 24, 2019); *M.B.*, Docket No. 17-1999 (issued November 13, 2018).

¹⁰ *N.C.*, *id.*; *M.L.*, Docket No. 18-1605 (issued February 26, 2019).

¹¹ *C.C.*, Docket No. 18-1099 (issued December 21, 2018).

In its June 1, 2018 development letter, OWCP advised appellant of the type of medical evidence necessary to establish his claim and afforded him 30 days to submit the requested evidence. However, appellant did not submit any medical evidence in support of his claim.¹²

The Board finds that, because the evidence of record at the time of OWCP's July 13, 2018 decision was devoid of medical evidence containing a specific diagnosis in connection with the accepted April 24, 2018 employment incident, appellant has not met his burden of proof to establish his claim.

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 (a) of FECA does not entitle a claimant the review of an OWCP decision as a matter of right.¹³ OWCP has discretionary authority in this regard and has imposed certain limitations in exercising its authority.¹⁴ One such limitation is that the request for reconsideration must be received by OWCP within one year of the date of the decision for which review is sought.¹⁵

A timely application for reconsideration, including all supporting documents, must set forth arguments and contain evidence that either: (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.¹⁶ 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.¹⁷

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).

¹² *Supra* note 8.

¹³ 5 U.S.C. § 8128(a).

¹⁴ 20 C.F.R. § 10.607.

¹⁵ *Id.* at § 10.607(a). For merit decisions issued on or after August 29, 2011, a request for reconsideration must be received by OWCP within one year of OWCP's decision for which review is sought. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (February 2016). Timeliness is determined by the document receipt date of the request for reconsideration as indicated by the received date in the integrated Federal Employees Compensation System. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4b.

¹⁶ *B.H.*, Docket No. 19-0169 (issued June 24, 2019); *D.K.*, 59 ECAB 141 (2007).

¹⁷ *P.H.*, Docket No. 18-1020 (issued November 1, 2018); *K.H.*, 59 ECAB 495 (2008).

The Board finds that appellant has not shown that OWCP erroneously applied or interpreted a specific point of law. Moreover, appellant has not advanced a relevant legal argument not previously considered. As such, he 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 underlying issue in this case is medical in nature. Following the July 13, 2018 decision, OWCP received an employing establishment incident report, but appellant did not submit any medical evidence along with his November 5, 2018 request for reconsideration. Because appellant has not submitted relevant and pertinent new evidence not previously considered by OWCP, he is not entitled to a review of the merits of his claim based on the third above-noted requirement under section 10.606(b)(3).

The Board accordingly finds that appellant has not met 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 not met his burden of proof to establish a diagnosed medical condition causally related to the accepted April 24, 2018 employment incident. The Board further finds that OWCP properly denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the November 14 and July 13, 2018 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: August 7, 2019
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board