

**United States Department of Labor  
Employees' Compensation Appeals Board**

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<b>D.M., Appellant</b>	)	
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<b>and</b>	)	<b>Docket No. 18-0844</b>
	)	<b>Issued: December 19, 2019</b>
<b>U.S. POSTAL SERVICE, POST OFFICE,</b>	)	
<b>Oakland, CA, Employer</b>	)	
	)	

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*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
CHRISTOPHER J. GODFREY, Chief Judge  
ALEC J. KOROMILAS, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On March 13, 2018 appellant filed a timely appeal from an October 24, 2017 merit decision and a March 1, 2018 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.<sup>2</sup>

**ISSUES**

The issues are: (1) whether appellant has met her burden of proof to establish a medical condition causally related to the accepted factors of her federal employment; and (2) whether

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that following the March 1, 2018 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal. 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

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

### **FACTUAL HISTORY**

On August 23, 2017 appellant, then a 35-year-old city carrier, filed an occupational disease claim (Form CA-2) alleging that she sustained muscle spasms, back and joint pain due to factors of her federal employment. She indicated that she first became aware of this condition on January 16, 2017 and that it was causally related to her federal employment on May 24, 2017. Appellant did not stop work.

In a development letter dated August 31, 2017, OWCP advised appellant that additional factual and medical evidence was needed to establish her claim and attached a questionnaire for her completion. It afforded her 30 days to submit the necessary evidence.

In a letter dated September 13, 2017, an employing establishment customer service support supervisor controverted the claim. She indicated that appellant had preexisting medical conditions and that she had not reported an injury to her supervisors.

In a September 8, 2017 report, Dr. Rodd Stockwell, a Board-certified family practitioner, noted that he examined appellant on April 28 and August 15, 2017. He further noted that appellant described stiffness or muscle soreness and pain in her legs, back, and shoulders due to her employment duties as a postal worker for the past two years. Dr. Stockwell diagnosed myofascial pain syndrome, primarily affecting her back, legs, and shoulders and opined that her pain was substantially and significantly impacted by her work as a postal worker. He recommended work restrictions.

In a September 15, 2017 statement and response to OWCP's questionnaire, appellant noted that her employment duties required walking, standing, lifting, pushing up to 70 pounds, and climbing hills and stairs while holding mail and carrying packages. She noted that she carried a satchel at her hip filled with packages of mail that was constantly swinging and banging at her hips and legs as she walked. Appellant explained that she was constantly bending down low to pick up mail packages which weighed up to 70 pounds and twisting and rotating her body to position mail or packages. She indicated that the activities were usually performed at least 8 hours per day for up to 13 hours and at least 5 days per week. Appellant also indicated that it was sometimes seven days per week, intermittently as needed per job assignment. She noted that she had been employed by the employing establishment for two years and two months.

By decision dated October 24, 2017, OWCP denied appellant's claim finding that the evidence submitted was insufficient to establish that her diagnosed medical condition was causally related to the accepted work events.

On December 1, 2017 appellant requested reconsideration.

In a November 3, 2017 report, Dr. Stockwell explained that appellant had myofascial pain syndrome, primarily affecting her back and also her legs and shoulders. He opined that her pain syndrome was caused by her work.

By decision dated March 1, 2018, OWCP denied appellant's request for reconsideration finding that the evidence submitted was insufficient to warrant review of its prior 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 timely filed within the applicable time limitation period of FECA,<sup>3</sup> 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 to the employment injury.<sup>4</sup> 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.<sup>5</sup> To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.<sup>6</sup>

The medical evidence required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, 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 factors identified by the claimant.<sup>7</sup>

### **ANALYSIS -- ISSUE 1**

The Board finds that appellant has not met her burden of proof to establish a medical condition causally related to the accepted factors of her federal employment.

In support of her claim, appellant provided a September 8, 2017 report from Dr. Stockwell, who noted that he examined appellant on April 28 and August 15, 2017. Dr. Stockwell indicated

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<sup>3</sup> *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

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

<sup>5</sup> *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).

<sup>6</sup> *See W.L.*, Docket No. 19-0774 (issued November 26, 2019); *see also Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>7</sup> *Id.*

that appellant's symptoms were dependent upon the activity she was performing and worsened on workdays. He diagnosed myofascial pain syndrome, primarily affecting her back, legs, and shoulders and opined that her pain was "substantially and significantly impacted by her duties as a postal worker." However, Dr. Stockwell did not explain how appellant's activities as a city carrier caused the diagnosed condition. He offered no rationalized medical opinion relating how appellant's repetitive work duties would have physiologically caused the diagnosed conditions.<sup>8</sup> As such, the Board finds that Dr. Stockwell's opinion on causation is conclusory in nature and his September 8, 2017 report is therefore insufficient to establish causal relationship.<sup>9</sup>

The Board finds that appellant has failed to submit rationalized, probative medical evidence sufficient to establish that her medical condition was causally related to the accepted factors of her federal employment. Appellant, therefore, has not met her burden of proof to establish her 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 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. It may review an award for or against payment of compensation at any time based on its own motion or on application.<sup>10</sup>

A claimant seeking reconsideration of a final decision must present arguments or provide evidence which: (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.<sup>11</sup> If OWCP determines that at least one of these requirements is met, it reopens and reviews the case on its merits.<sup>12</sup> 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.<sup>13</sup>

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<sup>8</sup> *D.W.*, Docket No. 19-0968 (issued October 9, 2019); *B.A.*, Docket No. 15-1277 (issued September 7, 2016).

<sup>9</sup> *See K.B.*, Docket No. 19-0411 (issued July 19, 2019); *S.S.*, Docket No. 17-1256 (issued December 13, 2018); *T.M.*, Docket No. 08-0975 (issued February 6, 2009) (a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).

<sup>10</sup> 5 U.S.C. § 8128(a).

<sup>11</sup> 20 C.F.R. § 10.606(b)(3); *see also M.S.*, Docket No. 18-1041 (issued October 25, 2018); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

<sup>12</sup> *Id.* at § 10.608(a); *see also C.K.*, Docket No. 18-1019 (issued October 24, 2018).

<sup>13</sup> *Id.* at § 10.608(b); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

## 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).

In her timely application for reconsideration, appellant did not show that OWCP erroneously applied or interpreted a specific point of law, nor did she advance a relevant legal argument not previously considered by OWCP.<sup>14</sup> Consequently, she is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under 20 C.F.R. § 10.606(b)(3).<sup>15</sup>

With her request for reconsideration dated December 1, 2017, appellant submitted a November 3, 2017 letter from Dr. Stockwell. In that letter he merely repeated that appellant had myofascial pain syndrome and that the diagnosed condition was caused by her employment duties as a postal worker. However, the Board finds that while this report is new, it provides the same conclusory opinion Dr. Stockwell provided in his September 8, 2017 report. Therefore, it does not constitute pertinent new and relevant evidence not previously considered. Material which is cumulative or duplicative of that already in the record has no evidentiary value in establishing the claim and does not constitute a basis for reopening a case for further merit review.<sup>16</sup> Because appellant's request for reconsideration did not include relevant and pertinent new evidence not previously considered by OWCP she is not entitled to a review of the merits based on the third requirement under section 10.606(b)(3).<sup>17</sup>

The Board accordingly finds that, as 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.<sup>18</sup>

## CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a medical condition causally related to the accepted factors of her federal employment. The Board also finds that OWCP properly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

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<sup>14</sup> *T.B.*, Docket No. 18-1214 (issued January 29, 2019); *C.B.*, Docket No. 08-1583 (issued December 9, 2008).

<sup>15</sup> *Id.*

<sup>16</sup> *See A.G.*, Docket No. 19-0113 (issued July 12, 2019); *L.R.*, Docket No. 18-0400 (issued August 24, 2018).

<sup>17</sup> 20 C.F.R. § 10.606(b)(3)(iii); *see D.P.*, Docket No. 17-0290 (issued May 14, 2018).

<sup>18</sup> *See S.M.*, Docket No. 18-0673 (issued January 25, 2019); *A.R.*, Docket No. 16-1416 (issued April 10, 2017); *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)(2), OWCP will deny the application for reconsideration without reopening the case for a review on the merits).

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 1, 2018 and October 24, 2017 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: December 19, 2019  
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