

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

_____)	
T.O., Appellant)	
)	
and)	Docket No. 19-1291
)	Issued: December 11, 2019
U.S. POSTAL SERVICE, POST OFFICE,)	
Cleveland, OH, Employer)	
_____)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On May 21, 2019 appellant filed a timely appeal from an April 15, 2019 merit decision and a May 9, 2019 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

ISSUES

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

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the May 9, 2019 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 his claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On February 21, 2019 appellant, then a 61-year-old mail handler, filed an occupational disease claim (Form CA-2) alleging left shoulder pain due to factors of his federal employment. He related that he underwent right shoulder surgery in April 2017 and did not return to work until January 2018. Pain in his left shoulder subsequently began to develop. Appellant noted that he first became aware of his condition and realized it was caused or aggravated by his federal employment on December 7, 2018. In a February 21, 2019 statement, he explained that he favored his right arm, and as a result, placed more strain on his left arm to perform his work. Appellant attributed his pain to repetitively throwing trays onto an Automatic Tray Un-sleever (ATU) for eight hours a day. He noted that he had received a cortisone injection on January 9, 2019, which was minimally helpful. Appellant did not stop work.

In a statement also dated February 21, 2019, appellant's supervisor, D.A., recounted that she was informed that day of appellant's left shoulder injury. She explained that his work on the ATU's consisted of placing letter trays of first class mail and standard mail onto a roller conveyor, getting jams out of the ATU machine, and moving boxes full of empty sleeves for the majority of his workday.

In a February 28, 2019 development letter, OWCP advised appellant that additional evidence was required in support of his claim for compensation benefits. It requested that he submit a comprehensive narrative medical report from a qualified physician that included a diagnosis and an opinion, supported by medical rationale, addressing how the claimed employment factors caused or aggravated a medical condition. OWCP afforded appellant 30 days to submit the requested medical evidence.

In response, appellant submitted a March 14, 2019 medical report from Dr. Reuben Gobezie, a Board-certified orthopedic surgeon. Dr. Gobezie indicated that appellant's left shoulder was aggravated by lifting and pushing and that he had been compensating for his right shoulder after a previous injury. Appellant had a left bicep tendon injections on January 9, 2019 in order to treat his condition. Dr. Gobezie also noted appellant's history of a left rotator cuff repair in 2010. He diagnosed a complete rotator cuff tear in the left shoulder and biceps tendinitis.

An unsigned March 29, 2019 medical report indicated that appellant received an injection in order to treat his left shoulder pain.

By decision dated April 15, 2019, OWCP denied appellant's occupational disease claim finding that the medical evidence of record was insufficient to establish a diagnosed condition causally related to the accepted factors of his federal employment.

On May 3, 2019 appellant requested reconsideration of the April 15, 2019 decision. He submitted a statement in support of his reconsideration request reiterating the history of injury to his left shoulder and asserting that his conditions were caused by his federal employment activities.

By decision dated May 9, 2019, OWCP denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

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, 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,⁴ 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.⁵ 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.⁶

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.⁷

Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical evidence.⁸ 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 employee.⁹ 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.¹⁰

In a case where a preexisting condition involving the same part of the body is present and the issue of causal relationship therefore involves aggravation, acceleration, or precipitation, the

³ *Supra* note 1.

⁴ *S.C.*, Docket No. 18-1242 (issued March 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).

⁵ *S.C.*, *id.*; *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ *S.C.*, *id.*; *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).

⁷ *C.D.*, Docket No. 17-2011 (issued November 6, 2018); *Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

⁸ *E.V.*, Docket No. 18-1617 (issued February 26, 2019); *A.M.*, Docket No. 18-0685 (issued October 26, 2018).

⁹ *E.V.*, *id.*

¹⁰ *B.J.*, Docket No. 19-0417 (issued July 11, 2019).

physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury and the preexisting condition.¹¹

ANALYSIS -- ISSUE 1

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

In his March 14, 2019 medical report, Dr. Gobezie noted that appellant's shoulder was aggravated by lifting and pushing, and that he had been compensating for his right shoulder after a previous injury at work. He also noted appellant's history of right rotator cuff repair in 2010. Dr. Gobezie diagnosed a complete rotator cuff tear in the left shoulder and biceps tendinitis. Although his opinion generally supported causal relationship between the accepted employment factors and appellant's diagnosed conditions, he did not provide sufficient rationale explaining these conclusions. A mere conclusion without the necessary rationale explaining how and why the physician believes that a claimant's accepted incident resulted in the diagnosed condition is insufficient to meet appellant's burden of proof.¹² Moreover, the need for a rationalized medical opinion based on medical rationale is especially important in this case as the evidence of record suggests that appellant had a preexisting medical condition.¹³ For this reason, Dr. Gobezie's report is insufficient to meet appellant's burden of proof.

Appellant also submitted an unsigned March 29, 2019 medical report providing that he received an injection of triamcinolone acetonide in order to treat his left shoulder pain. The Board has held that a report that is unsigned or bears an illegible signature lacks proper identification and cannot be considered probative medical evidence as the author cannot be identified as a physician.¹⁴ Consequently, the March 29, 2019 medical report is also insufficient to meet appellant's burden of proof.

As the record lacks rationalized medical evidence establishing causal relationship between the accepted employment duties and appellant's diagnosed medical conditions, the Board finds that appellant has not met his burden of proof.¹⁵

Appellant may submit new evidence 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.

¹¹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013).

¹² See *Y.T.*, Docket No. 17-1559 (issued March 20, 2018).

¹³ See *M.E.*, Docket No. 18-0940 (issued June 11, 2019); *E.V.*, Docket No. 17-0417 (issued September 13, 2017).

¹⁴ *K.C.*, Docket No. 18-1330 (issued March 11, 2019); *Thomas L. Agee*, 56 ECAB 465 (2005).

¹⁵ *M.H.*, Docket No. 18-1737 (issued March 13, 2019); see *J.S.*, Docket No. 17-0507 (issued August 11, 2017).

LEGAL PRECEDENT -- ISSUE 2

Section 8128(a) of FECA does not entitle a claimant to review of an OWCP decision as a matter of right.¹⁶ OWCP has discretionary authority in this regard and has imposed certain limitations in exercising its authority.¹⁷ 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.¹⁸ A timely request for reconsideration, including all supporting documents, must set forth arguments and contain evidence that either: (i) shows that OWCP erroneously applied or interpreted a specific point of law; (ii) advances a relevant legal argument not previously considered by OWCP; or (iii) constitutes relevant and pertinent new evidence not previously considered by OWCP.¹⁹ When a timely request for reconsideration does not meet at least one of the above-noted requirements, OWCP will deny the request for reconsideration without reopening the case for a review on the merits.²⁰

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).

Appellant's request for reconsideration did not show that OWCP erroneously applied or interpreted a specific point of law nor did it advance a new and relevant legal argument not previously considered. Accordingly, he is not entitled to a review of the merits of his claim based on the first and second above-noted requirements under 20 C.F.R. § 10.606(b)(3).

Furthermore, appellant failed to submit relevant and pertinent new evidence with his request for reconsideration.²¹ The underlying issue in this case is whether appellant submitted medical evidence sufficient to establish causal relationship between his accepted employment factors and his diagnosed medical condition. Appellant submitted an April 29, 2019 statement in which he recounted his history of injury relating to his left shoulder conditions and argued that his

¹⁶ This section provides in pertinent part: “[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application.” 5 U.S.C. § 8128(a).

¹⁷ 20 C.F.R. § 10.607.

¹⁸ *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 (iFECS). *Id.* at Chapter 2.1602.4b.

¹⁹ *Id.* at § 10.606(b)(3).

²⁰ *Id.* at § 10.608(a), (b).

²¹ *J.B.*, Docket No. 18-1531 (issued April 11, 2019); *see L.R.*, Docket No. 18-0400 (issued August 24, 2018); *Candace A. Karkoff*, 56 ECAB 622 (2005).

conditions were caused by his employment duties. As the underlying issue is medical in nature,²² his statement and opinion is of no relevance to the issue of causal relationship.²³ Therefore, appellant is not entitled to a review of the merits of his claim based on the third above-noted requirement under 20 C.F.R. § 10.606(b)(3).²⁴

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.²⁵

CONCLUSION

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

²² See *K.J.*, Docket No. 16-0611 (issued May 13, 2016); *Carol A. Lyles*, 57 ECAB 265 (2005) (causal relationship is a medical issue which must be resolved by competent medical opinion).

²³ *Id.*; *Joseph A. Brown, Jr.*, 55 ECAB 542 (2004).

²⁴ *C.R.*, Docket No. 18-1569 (issued March 7, 2019); *R.L.*, Docket No. 18-0175 (issued September 5, 2018).

²⁵ *C.C.*, Docket No. 18-0316 (issued March 14, 2019); *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 May 9 and April 15, 2019 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: December 11, 2019
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