

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

F.W., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Newhall, CA, Employer**

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**Docket No. 18-1421
Issued: February 22, 2019**

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 July 17, 2018 appellant filed a timely appeal from a February 23, 2018 merit decision and a June 28, 2018 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.

ISSUES

The issues are: (1) whether appellant has met his burden of proof to establish a left wrist condition in the performance of duty, as alleged; and (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 January 12, 2018 appellant, then a 60-year-old mail carrier, filed an occupational disease claim (Form CA-2) alleging that he developed left wrist osteoarthritis due to his repetitive

¹ 5 U.S.C. § 8101 *et seq.*

employment duties. He identified April 2, 2015 as the date he first realized that his condition was caused or aggravated by factors of his federal employment. On the reverse side of the claim form, a supervisor noted that appellant had not stopped work.

In an accident report dated January 11, 2018, a supervisor noted that appellant had been a mail carrier since July 19, 1999, and that he had stated that due to repetitive motion he had increasing pain in his left wrist commencing May 6, 2015.

By development letter dated January 22, 2018, OWCP informed appellant that the evidence received was insufficient to establish his claim. It notified him of the evidence needed to substantiate the factual and medical elements of his claim. OWCP noted that he had not identified the specific repetitive tasks that he believed caused his condition. It requested that he complete an attached questionnaire regarding his employment-related activities and provide a medical report from his physician which contained an opinion, supported by a medical explanation, as to how specific work activities caused or contributed to his medical condition. Appellant was afforded 30 days to submit the requested evidence.

In an attending physician's report (Form CA-20) dated February 6, 2018, Dr. Francisco Meza, Board-certified in family practice and occupational medicine, examined appellant for complaints of pain of the left upper extremity. He noted that appellant had been using his left hand repetitively for 20 years and casing mail approximately two hours per day with rapid use of gripping and grasping. Dr. Meza indicated that this activity caused repetitive use of the fingers and the carpometacarpal (CMC) joint. He noted that, after casing mail, appellant then lifted boxes and parcels into a truck, delivering them to their destinations. Dr. Meza reported that appellant gripped mail for six hours per day and worked five days per week and that he had been performing these activities for 20 years, causing left CMC joint arthritis. Appellant told him that he had noticed the pain five years prior and recently realized it was work related. Dr. Meza diagnosed arthritis of the left first CMC joint and trigger finger of the left index and middle fingers.

By decision dated February 23, 2018, OWCP denied appellant's claim finding that he had not established the factual component of fact of injury. It found that he had not responded to the development letter dated January 22, 2018. OWCP explained that appellant had not described in detail the employment-related activities that he believed caused or contributed to his condition, or stated how often he performed the activities described and for how long on each occasion. It further found that the medical evidence of record did not contain a diagnosed medical condition causally related to the claimed injury.

On June 25, 2018 appellant requested reconsideration of OWCP's February 23, 2018 decision. In support of his request, he submitted a supplementary medical report from Dr. Meza, dated February 26, 2018. This report contained diagnoses of osteoarthritis of the left first CMC joint and left trigger finger. Appellant also submitted a March 6, 2018 report of Dr. Meza in which he described appellant's employment duties and concluded that appellant's diagnoses of CMC joint arthritis and trigger finger were work related.

By decision dated June 28, 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,² 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.³ 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.⁴

OWCP regulations define the term “occupational disease or illness” as a condition produced by the work environment over a period longer than a single workday or shift.⁵

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 diagnosed condition is causally related to the employment factors identified by the claimant. The medical opinion 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.⁶

A claimant’s burden of proof includes the submission of a detailed description of the employment factors or conditions which he or she believes caused or adversely affected a condition for which compensation is claimed.⁷

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met his burden of proof to establish a left wrist condition in the performance of duty, as alleged.

² *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

³ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁴ *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).

⁵ 20 C.F.R. § 10.5(ee).

⁶ *Roy L. Humphrey*, 57 ECAB 238 (2005).

⁷ *T.B.*, Docket No. 17-0444 (issued May 5, 2017).

On his claim form, appellant alleged that repetitive duties of his federal employment had caused osteoarthritis of the left first wrist joint. However, he did not present a clear factual statement identifying specific employment factors or conditions alleged to have caused or contributed to the presence or occurrence of the claimed medical condition. Appellant also failed to explain how a specific work factor caused or aggravated the claimed condition. By letter dated January 22, 2018, OWCP informed him that the evidence it had received was insufficient to establish that he experienced any employment factors alleged to have caused an injury. Appellant was asked to complete an attached questionnaire describing his employment-related activities and explain how these activities caused or contributed to the claimed conditions. OWCP did not receive a response to the January 22, 2018 letter and questionnaire. Because appellant has not provided a factual statement describing in detail the repetitive employment duties alleged to have caused his left wrist condition, he has not met his burden of proof.⁸

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

To be entitled to a merit review of an OWCP decision denying or terminating a benefit, a claimant must file his or her application for review within one year of the date of that decision.⁹ Section 8128(a) of FECA vests OWCP with discretionary authority to determine whether to review an award for or against compensation. OWCP may review an award for or against payment of compensation at any time based on its own motion or on application.¹⁰ To require OWCP to reopen a case for merit review under section 8128(a) of FECA, OWCP's regulations provide that the evidence or argument submitted by a claimant must: (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.¹¹ 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.¹²

⁸ See *S.S.*, Docket No. 18-0242 (issued June 11, 2018); *S.J.*, Docket No. 17-1798 (issued February 23, 2018); *P.G.*, Docket No. 15-1345 (issued August 23, 2016).

⁹ 20 C.F.R. § 10.607(a).

¹⁰ 5 U.S.C. § 8128(a); *A.D.*, Docket No. 18-0497 (issued July 25, 2018).

¹¹ 20 C.F.R. § 10.606(b)(3); see also *L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

¹² *Id.* at § 10.608(b); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

When reviewing an OWCP decision denying merit review, the function of the Board is to determine whether OWCP properly applied the standards set for at section 10.606(b)(3) to the claimant's application for reconsideration and any evidence submitted in support thereof.¹³

The Board has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case. While the reopening of a case may be predicated solely on a legal premise not previously considered, such reopening is not required where the legal contention does not have a reasonable color of validity.¹⁴

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, or advance a new and relevant legal argument not previously considered by OWCP. Consequently, the Board finds that he was not entitled to a review of the merits based on the first and second above-noted requirements under 20 C.F.R. § 10.606(b)(3).

The Board further finds that appellant failed to submit relevant and pertinent new evidence in support of reconsideration. Appellant submitted a supplementary medical report from Dr. Meza, dated February 26, 2018. This report contained diagnoses of osteoarthritis of the left first CMC joint and left trigger finger. Appellant also submitted a March 6, 2018 report of Dr. Meza who described his employment duties and concluded that his diagnoses of CMC joint arthritis and trigger finger were work related. While appellant submitted additional medical evidence, this evidence was not relevant to the reason that OWCP denied his claim.¹⁵ The issue in his claim was that he had not submitted a narrative statement outlining, in detail, the employment factors alleged to have caused or aggravated his claimed condition. This factual evidence is part of appellant's burden of proof.¹⁶ As noted above, the submission of evidence that does not address the particular issue involved does not constitute a basis for reopening a case.¹⁷ Thus he is also not entitled to a review of the merits based on the third above-noted requirement under 20 C.F.R. § 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).

¹³ *C.F., id.*; *Annette Louise*, 54 ECAB 783 (2003).

¹⁴ *M.E.*, 58 ECAB 694 (2007).

¹⁵ *See L.S.*, Docket No. 18-0811 (issued November 13, 2018).

¹⁶ *Supra* note 10.

¹⁷ *See Bobbie F. Cowart*, 55 ECAB 746 (2004).

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a left wrist condition in the performance of duty, as alleged. 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 June 28 and February 23, 2018 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: February 22, 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