United States Department of Labor
Employees' Compensation Appeals Board

L.D., Appellant	)	
and	)	**Docket No. 18-1468**
	)	**Issued: February 11, 2019**
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Boston, MA, 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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On July 21, 2018 appellant filed a timely appeal from a January 22, 2018 merit decision,[1] and a March 16, 2018 nonmerit decision of the Office of Workers' Compensation

[1] Under the Board's *Rules of Procedure*, an appeal must be filed within 180 days from the date of issuance of an OWCP decision. An appeal is considered filed upon receipt by the Clerk of the Appellate Boards. *See* 20 C.F.R. § 501.3(e)-(f). One hundred and eighty days from January 22, 2018, the date of OWCP's last merit decision, was July 21, 2018. As this fell on a Saturday, appellant had until the next business day, Monday, July 23, 2018, to file the appeal. Because using July 27, 2018, the date the appeal was received by the Clerk of the Appellate Boards, would result in the loss of appeal rights with respect to the January 22, 2018 merit decision, the date of the postmark is considered the date of filing. The date of the U.S. Postal Service postmark is July 21, 2018, rendering the appeal timely filed. *See* 20 C.F.R. § 501.3(f)(1).

Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[3]

ISSUES

The issues are: (1) whether appellant has met her burden of proof to establish left shoulder and back conditions causally related to the accepted October 10, 2017 employment incident; and (2) whether 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 December 15, 2017 appellant, then a 48-year-old mail processing clerk, filed a traumatic injury claim (Form CA-1) alleging that on October 10, 2017 she sustained injury behind her left shoulder and throughout her back "sweeping pass 2 for 7 hours…."[4] She did not stop work following the alleged October 10, 2017 employment injury. On the reverse side of the claim form, the employing establishment controverted continuation of pay because appellant waited more than 30 days before reporting the alleged injury.

In a December 14, 2017 attending physician's report (Form CA-20), Dr. Augustus Colangelo, Board-certified in emergency medicine, noted that appellant had described lifting while working on a machine two months prior, which gradually developed into right back pain. On examination, he observed left mid- and upper-thoracic paraspinal muscle tenderness, diagnosing muscle strain. Dr. Colangelo noted that another physician had treated appellant and that she should follow up with that physician for further recommendations. He checked a box indicating that her condition was caused or aggravated by employment activity. In an accompanying duty status report (Form CA-17) of the same date, Dr. Colangelo recommended that appellant could return to work on December 14, 2017 with restrictions including: no climbing, reaching above the shoulder, driving a vehicle, or operating machinery; no lifting of over five pounds; and no pulling/pushing of over 25 pounds.

By development letter dated December 19, 2017, OWCP advised appellant that the evidence of record was insufficient to establish her claim. It noted that she had not submitted a physician's opinion as to how her injury resulted in a diagnosed condition. OWCP afforded appellant 30 days to submit additional evidence, including a narrative report from her treating physician, and to respond to its inquiries.

[2] 5 U.S.C. § 8101 *et seq.*

[3] The Board notes that, following the March 16, 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.*

[4] Appellant further noted that she was not allowed to feed the mail.

In a narrative statement dated December 27, 2017, appellant responded to OWCP's inquiries, noting that she had been working at a machine at the time of injury and had swept trays for seven hours. She stated that two coworkers had witnessed the event and that she had experienced back spasms that night. Appellant rested her back hoping that it would recover during time off from work, but developed severe back spasms and muscle strain. She noted no other injury or previous condition.

Additional medical evidence included December 14, 2017 emergency department treatment records. Dr. Colangelo examined appellant for complaints of left-sided back pain, which she had been experiencing for two months. Appellant stated that she did not know of a specific injury, but that her work involved a lot of bending and heavy lifting. She later told Dr. Colangelo that, approximately two months prior, while working on a machine at work and lifting above her shoulders, she developed moderately intense thoracic back pain, mainly on the left. On examination, Dr. Colangelo noted left mid-thoracic paraspinal muscle tenderness, reproducing appellant's symptoms. He noted that she had back pain and recommended that she continue to take medication for the pain. Dr. Colangelo recommended that appellant follow up with her treating physician.

On December 22, 2017 Dr. Brian Wainger, Board-certified in neurology and pain medicine, noted that he had evaluated appellant regarding her neck and shoulder pain. He noted that a procedure had been scheduled, but that he was unable to perform it due to insurance complications. Dr. Wainger requested that appellant be excused from work for the next five days.

By letter dated December 26, 2017, Dr. Ricardo Ribeiro, an internist, noted that appellant had been seen on October 26, 2017 and should be excused from work until January 2, 2018.

In a duty status report (Form CA-17) dated January 12, 2018, Dr. Ribeiro diagnosed thoracic back pain and muscle spasm and recommended restrictions of no bending/stooping, twisting, pulling/pushing, reaching above the shoulder, or operating machinery; no more than one hour per day of fine manipulation; no more than two hours per day of sitting with a supportive chair; no more than four hours per day of standing or lifting/carrying; and no more than five hours per day of walking. Additionally, he noted that appellant should not lift/carry more than two and a half pounds on an intermittent basis for up to four hours per day; should perform simple grasping up to eight hours per day with her right hand only; and should not be exposed to temperature extremes outside the range of 65 to 80 degrees Fahrenheit.

By letter dated January 12, 2018, Dr. Stephanie Quamo, a Board-certified internist, noted that appellant had been seen on that date and that she should be excused from work for the period January 10 through 12, 2018, returning on January 13, 2018.

On January 16, 2018 appellant noted that her physician had been on vacation until January 12, 2018 and that she could not obtain an appointment before that date.

By decision dated January 22, 2018, OWCP denied appellant's claim, finding that the evidence of record was insufficient to establish that her diagnosed left paraspinal muscle sprain was causally related to the accepted October 10, 2017 employment incident.

Appellant resubmitted the December 14, 2017 report of Dr. Colangelo. She also submitted an excuse note dated November 26, 2017 with an illegible signature, in which it was noted that she reported a work-related injury, that she should not lift over 10 pounds, and that she could return to work on December 2, 2017.

By letter dated January 17, 2018, Dr. Quamo noted that appellant had been seen on that date and returned to light-duty work on January 13, 2018. She noted that appellant was unable to continue work due to her pain and would defer completion of forms regarding light duty until she was able to receive injections at a clinic.

On February 5, 2018 Dr. Wainger noted that appellant had been seen on that date and recommended that she be afforded a chair with lumbar support and arm rests in order to have better posture as part of her recovery process.

By letter dated February 6, 2018, Dr. Quamo noted that appellant had been seen on that date and that she had trigger point injections the previous day to treat her back pain. She noted that appellant should be seated in a comfortable chair and could return to light duty on February 10, 2018.

On March 7, 2018 appellant requested reconsideration.

By decision dated March 16, 2018, OWCP denied appellant's request for reconsideration of the merits of her claim.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA[5] 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.[6] 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.[7]

In order to determine whether an employee actually sustained an injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.[8] The second component is whether the

[5] *Supra* note 2.

[6] *D.B.*, Docket No. 18-0537 (issued September 12, 2018); *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Gary J. Watling*, 52 ECAB 278 (2001); *Elaine Pendleton*, 40 ECAB 1143, 1154 (1989).

[7] *J.R.*, Docket No. 18-1079 (issued January 15, 2019); *S.P.*, 59 ECAB 184 (2007); *Michael E. Smith*, 50 ECAB 313 (1999).

[8] *Elaine Pendleton*, *supra* note 6.

employment incident caused a personal injury and generally can be established only by medical evidence.

To establish causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence supporting such causal relationship.[9] 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. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.[10]

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met her burden of proof to establish left shoulder and back conditions causally related to the accepted October 10, 2017 employment incident.

In a December 14, 2017 duty status report, Dr. Colangelo recommended work restrictions. On December 22, 2017 Dr. Wainger noted that he had evaluated appellant regarding her neck and shoulder pain. By letter dated December 26, 2017, Dr. Ribeiro noted that appellant had been seen on October 26, 2017 and should be excused from work until January 2, 2018. In a duty status report dated January 12, 2018, he recommended work restrictions. By letter dated January 12, 2018, Dr. Quamo noted that appellant had been seen on that date and that she should be excused from work for the period January 10 through 12, 2018. While these reports and letters noted that appellant had been seen for treatment, recommended work restrictions, or requested that she be excused from work, they did not provide findings and opinions regarding the cause of her condition. Medical evidence that does not offer an opinion regarding the cause of an employee's condition or disability is of no probative value on the issue of causal relationship. As such, these reports are of no probative value on the issue of causal relationship, and are insufficient to establish appellant's traumatic injury claim.[11]

In an attending physician's report dated December 14, 2017, Dr. Colangelo noted that appellant had described lifting while working on a machine two months prior, which gradually developed into right back pain. He checked a box indicating that her condition was caused or aggravated by employment activity. In another report dated December 14, 2017 from Dr. Colangelo, appellant was noted to state that she did not know of a specific injury, but that her work involved a lot of bending and heavy lifting. Appellant later told him that approximately two months prior, while working on a machine at work and lifting above her shoulders, she developed moderately intense thoracic back pain, mainly on the left. Though Dr. Colangelo checked a box marked "yes" to the question of whether the diagnosis was a result of the employment incident,

[9] *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

[10] *R.S.*, Docket No. 18-0120 (issued August 8, 2018); *James Mack*, 43 ECAB 321 (1991).

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

the Board has held that a report addressing causal relationship with an affirmative checkmark, without medical rationale explaining how the work condition caused the alleged injury, is of diminished probative value and insufficient to establish causal relationship.[12] Regarding the discussion of appellant's medical history, he merely repeated what she told him regarding the cause of her conditions without offering his own opinion, supported by medical rationale. Such generalized statements do not establish causal relationship because they merely repeat her allegations and are unsupported by adequate medical rationale explaining how the physical activity actually caused the diagnosed conditions.[13] As such, the reports of Dr. Colangelo dated December 14, 2017 are insufficient to meet appellant's burden of proof.

The fact that a condition manifests itself during a period of employment is insufficient to establish causal relationship.[14] Temporal relationship alone will not suffice. Entitlement to FECA benefits may not be based on surmise, conjecture, speculation, or on the employee's own belief of a causal relationship.[15] Herein, the record lacks rationalized medical evidence establishing causal relationship between the accepted October 10, 2017 employment incident and appellant's diagnosed back and left shoulder conditions.[16] Thus, appellant has not met her burden of proof.[17]

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 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 compensation at any time on his own motion or on application.[18]

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or an argument which: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by

[12] *See Calvin E. King, Jr.*, 51 ECAB 394 (2000); *see also Frederick E. Howard, Jr.*, 41 ECAB 843 (1990).

[13] *K.W.*, Docket No. 10-0098 (issued September 10, 2010).

[14] *Daniel O. Vasquez*, 57 ECAB 559 (2006).

[15] *D.D.*, 57 ECAB 734 (2006).

[16] *See J.S.*, Docket No. 17-0507 (issued August 11, 2017).

[17] *See K.L.*, Docket No. 18-1029 (issued January 9, 2019).

[18] 5 U.S.C. § 8128(a); *see also V.P.*, Docket No. 17-1287 (issued October 10, 2017); *D.L.*, Docket No. 09-1549 (issued February 23, 2010); *W.C.*, 59 ECAB 372 (2008).

OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.[19]

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.[20] If it chooses to grant reconsideration, it reopens and reviews the case on its merits.[21] 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.[22]

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).

With her timely request 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.[23] Consequently, she is not entitled to 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).

Additionally, appellant has not submitted relevant and pertinent new evidence not previously considered by OWCP. The underlying issue in this case is whether she submitted sufficient evidence that her diagnosed medical condition was causally related to the accepted employment incident.[24]

In support of her request for reconsideration, appellant submitted a November 26, 2017 note with an illegible signature and work excuse notes dated January 17 through February 6, 2018 from Drs. Quamo and Wainger, referencing back pain and the necessity of a comfortable chair for her recovery. The Board notes that unsigned reports and reports that bear illegible signatures cannot be considered probative medical evidence because they lack proper identification.[25] Moreover, while this evidence was new, it did not address the relevant issue in this claim as to causal relationship by providing an opinion regarding the cause of appellant's diagnosed conditions. For these reasons, the November 26, 2017 note and work excuse notes dated

[19] 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).

[20] *Id*. at § 10.607(a).

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

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

[23] *See J.F.*, Docket No. 16-1233 (issued November 23, 2016).

[24] *See R.B.*, Docket No. 18-0898 (issued January 15, 2019).

[25] *See R.M.*, 59 ECAB 690 (2008); *D.D.*, 57 ECAB 734 (2006); *Richard J. Charot*, 43 ECAB 357 (1991).

January 17 through February 6, 2018 were irrelevant to the underlying issue in this case, and as such insufficient to warrant merit review.[26]

Appellant also resubmitted the December 14, 2017 report of Dr. Colangelo on reconsideration. As the report repeats evidence already in the case record, it is duplicative and does not constitute relevant and pertinent new evidence sufficient to warrant merit review.[27]

The Board accordingly finds that appellant has not met any of the requirements of 20 C.F.R. § 10.606(b)(3). Appellant did not show that OWCP erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by OWCP, or submit relevant and pertinent new evidence not previously considered. Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish left shoulder and back conditions causally related to the accepted October 10, 2017 employment incident. The Board further finds that OWCP properly denied her request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

[26] *M.C.*, Docket No. 14-0021 (issued March 11, 2014); *M.H.*, Docket No. 13-2051 (issued February 21, 2014).

[27] *See D.K.*, 59 ECAB 141 (2007).

ORDER

IT IS HEREBY ORDERED THAT the March 16 and January 22, 2018 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: February 11, 2019
Washington, DC

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

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board