

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

A.P., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Plainfield, CT, Employer**

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**Docket No. 19-0223
Issued: July 9, 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
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge

JURISDICTION

On November 8, 2018 appellant filed a timely appeal from a July 27, 2018 merit decision and an October 31, 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.²

ISSUES

The issues are: (1) whether appellant has met his burden of proof to establish left shoulder conditions 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 October 22, 2018 decision, OWCP received additional evidence. Furthermore, appellant submitted additional evidence on appeal. 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 June 11, 2018 appellant, then a 60-year-old rural carrier, filed an occupational disease claim (Form CA-2) alleging that on or before March 5, 2018 he sustained a partial left rotator cuff tear due to repetitive employment duties including reaching upward and backward and pulling forward to access parcels in his delivery vehicle. He did not stop work.

In a development letter dated June 21, 2018, OWCP informed appellant that the evidence submitted was insufficient to establish his claim. It advised him of the type of medical and factual evidence needed, including a narrative report from his physician diagnosing a condition causally related to the identified employment duties and explaining how and why those activities would cause the diagnosed condition. OWCP afforded appellant 30 days to respond.

In response, appellant provided an April 27, 2018 report by Dr. Kevin J. Reagan, a Board-certified orthopedic surgeon. Dr. Reagan diagnosed left bicipital tendinitis with synovial/bursal inflammation, a left anterior glenoid labrum lesion, and a possible biceps tendon and/or SLAP (superior labral tear from anterior to posterior) tear due to repetitive left upper extremity reaching, abduction, and extension while at work. Following a May 18, 2018 examination he revised appellant's diagnoses to localized primary osteoarthritis of the left shoulder, a partial left rotator cuff tendon tear, and left shoulder impingement/tendinitis. Dr. Reagan opined that repetitive reaching with the left upper extremity while at work had caused impingement syndrome, a partial rotator cuff tear, and chronic clavicular joint osteoarthritis.³

On June 26, 2018 Dr. Reagan performed an arthroscopic left distal clavicle resection. Appellant remained off work through July 9, 2018 and continuing.

By decision dated July 27, 2018, OWCP accepted appellant's duties as rural carrier and diagnoses of localized primary osteoarthritis of the left shoulder, partial left rotator cuff tear, and left shoulder tendinitis/impingement. However, it denied his occupational disease claim because the medical evidence of record failed to establish that his diagnosed conditions were causally related to the accepted employment duties.

On October 22, 2018 appellant requested reconsideration utilizing the appeal request form which accompanied OWCP's July 27, 2018 decision. He did not submit additional evidence or argument.

By decision dated October 31, 2018, OWCP denied appellant's request for reconsideration finding that the evidence submitted was insufficient to warrant review of its July 27, 2018 decision.

³ Dr. Reagan prescribed physical therapy treatments.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA⁴ has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence, 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, that an injury was sustained 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.⁵ These are the essential elements of every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁶

OWCP's 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."⁷ 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 employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.⁸ A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment factors must be based on a complete factual and medical background.⁹ Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factor.¹⁰

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met his burden of proof to establish left shoulder conditions causally related to the accepted factors of his federal employment.

⁴ *Supra* note 1.

⁵ *K.V.*, Docket No. 18-0947 (issued March 4, 2019); *M.E.*, Docket No. 18-1135 (issued January 4, 2019); *Kathryn Haggerty*, 45 ECAB 383, 388 (1994).

⁶ *K.V.*, *id.*; *M.E.*, *id.*; *K.B.*, Docket No. 17-1997 (issued July 27, 2018).

⁷ 20 C.F.R. § 10.5(q).

⁸ *K.V.*, *supra* note 5; *A.D.*, 58 ECAB 149 (2006); *D'Wayne Avila*, 57 ECAB 642 (2006).

⁹ *K.V.*, *supra* note 5; *Michael S. Mina*, 57 ECAB 379 (2006); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

¹⁰ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, *id.*

Dr. Reagan diagnosed localized primary osteoarthritis of the left shoulder, a partial left rotator cuff tear, and left shoulder tendinitis/impingement caused by repetitive reaching, abduction, and extension while at work. While he provided an affirmative opinion on causal relationship, his opinion is insufficiently rationalized. Dr. Reagan failed to explain the pathophysiologic mechanism by which the accepted employment duties caused, aggravated, or accelerated appellant's left shoulder conditions. Without explaining how the repetitive movements involved in retrieving parcels from appellant's delivery vehicle caused or contributed to localized primary osteoarthritis of the left shoulder, a partial left rotator cuff tear, and left shoulder tendinitis/impingement, Dr. Reagan's opinion on causal relationship is of limited probative value.¹¹ As such, his reports lack the specificity and detail needed to establish that appellant's left shoulder conditions are the result of the accepted employment duties.¹²

The fact that a condition manifests itself during a period of employment is insufficient to establish causal relationship.¹³ 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.¹⁴ Herein, the record lacks rationalized medical evidence establishing causal relationship between the accepted employment duties and appellant's left shoulder conditions.¹⁵ Thus, appellant has not met his burden of proof.

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.

LEGAL PRECEDENT -- ISSUE 2

To require OWCP to reopen a case for merit review under 5 U.S.C. § 8128(a), OWCP 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.¹⁶

A request for reconsideration must be received by OWCP within one year of the date of its decision for which review is sought.¹⁷ If it chooses to grant reconsideration, it reopens and reviews

¹¹ *K.V.*, *supra* note 5.

¹² *Id.*; *M.E.*, *supra* note 5.

¹³ *M.H.*, Docket No. 18-1737 (issued March 13, 2019); *Daniel O. Vasquez*, 57 ECAB 559 (2006).

¹⁴ *S.G.*, Docket No. 18-1373 (issued February 12, 2019); *D.D.*, 57 ECAB 734 (2006).

¹⁵ *M.H.*, *supra* note 13; *see J.S.*, Docket No. 17-0507 (issued August 11, 2017).

¹⁶ 20 C.F.R. § 10.608(b)(3); *see also H.H.*, Docket No. 18-1660 (issued March 14, 2019); *L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

¹⁷ *Id.* at § 10.607(a).

the case on its merits.¹⁸ 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.¹⁹

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).

In his application for reconsideration, appellant did not show that OWCP erroneously applied or interpreted a specific point of law, and he did not 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 section 10.606(b)(3).

Appellant also failed to submit relevant and pertinent new evidence not previously considered by OWCP. He provided only the appeal rights form which accompanied OWCP's July 27, 2018 decision, indicating his request for reconsideration. Therefore, OWCP was not required to reopen appellant's claim for reconsideration of the merits in accordance with the third above-noted requirement under section 10.606(b)(3).²⁰ Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.²¹

On appeal, appellant contends that he submitted new medical evidence with his request for reconsideration that would meet his burden of proof to establish causal relationship. However, the electronic case record as presented to the Board does not contain new evidence accompanying his request for reconsideration.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish left shoulder conditions 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).

¹⁸ *Id.* at § 10.608(a); *see also M.S.*, 59 ECAB 231 (2007).

¹⁹ *Id.* at § 10.608(b); *H.H.*, *supra* note 16; *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

²⁰ *C.R.*, Docket No. 18-1569 (issued March 7, 2019); *R.L.*, Docket No. 18-0175 (issued September 5, 2018).

²¹ *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 October 31 and July 27, 2018 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: July 9, 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