United States Department of Labor
Employees' Compensation Appeals Board

M.E., Appellant	)	
and	)	**Docket No. 18-0940**
	)	**Issued: June 11, 2019**
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Garden City, NY, 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
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On April 3, 2018 appellant filed a timely appeal from a November 3, 2017 merit decision and a January 30, 2018 nonmerit decision of the Office of Workers' Compensation Programs (OWCP).[1] 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]

[1] The Board notes that during the pendency of this appeal, OWCP issued a November 29, 2018 decision which denied reconsideration of the November 3, 2017 merit decision currently on appeal. OWCP's November 29, 2018 decision is null and void as the Board and OWCP may not simultaneously exercise jurisdiction over the same issue(s) in a case on appeal. 20 C.F.R. §§ 501.2(c)(3), 10.626; *see e.g., M.C.*, Docket No. 18-1278 (issued March 7, 2019); *Lawrence Sherman*, 55 ECAB 359, 360 n.4 (2004).

[2] 5 U.S.C. § 8101 *et seq.*

[3] The Board notes that following the January 30, 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.*

ISSUES

The issues are: (1) whether appellant has met her burden of proof to establish an injury causally related to her accepted November 25, 2011 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 3, 2011 appellant, then a 45-year-old mail handler, filed a notice of recurrence (Form CA-2a) of an August 6, 2006 injury. She alleged that, on November 25, 2011, she injured her neck, mid-back, and shoulders (mostly the right shoulder), while singling out pallets from a pile while in the performance of duty. On the same claim form, appellant also alleged that on the next day, November 26, 2011, "she injured the same body parts." At that time she noted that she was on a rehabilitative assignment. The employing establishment indicated that appellant was working an eight-hour limited-duty job offer. Appellant stopped work on November 29, 2011. OWCP converted the recurrence claim to a traumatic injury claim (Form CA-1) with an injury date of November 25, 2011.

A January 23, 2012 duty status report (Form CA-17) from Dr. Rajpaul Singh, a neurologist, noted that appellant was a mail handler and injured her neck, arm, and back "while working pallets" on November 26, 2011. In a February 21, 2012 report, Dr. Singh noted a "neck work-related injury."

In a November 29, 2011 statement, appellant indicated that on November 25, 2011, between the hours of 11:30 p.m. and 1:00 a.m., she was assigned to the empty equipment operation room to work by herself moving heavy pallets, stacking empty trays, and wrapping them with plastic. She related that, while performing these activities, she stressed her neck, back and shoulders. Appellant also indicated that she felt the same pain while performing similar tasks the evening of November 26, 2011 and later reported her injuries on November 29, 2011, when her pain and dizziness were too severe for her to function.

In a February 20, 2012 statement, A.H., a health and resource management specialist, indicated that appellant was working limited duty, had a history of depression and anxiety verified by her psychologist, and questioned the length of time it took appellant to report the injury. She noted that appellant called the unscheduled absence telephone line to claim stress on November 30, 2011, but had filed a Form CA-2a claiming she injured herself five days earlier.

In a development letter dated March 19, 2012, OWCP advised appellant that because her claim appeared to be a minor injury that resulted in minimal or no lost time from work, the employing establishment did not controvert continuation of pay (COP) or challenge the merits of the claim, and payment of a limited amount of medical expenses was administratively approved. It advised that the claim was reopened because the merits were not formally considered and a claim for wage loss was received. OWCP noted that appellant was working in a modified capacity and that the evidence was insufficient to establish that she actually experienced the incident or

employment factor alleged to have caused the injury.[4] It explained that additional factual and medical evidence was necessary to establish her claim and provided a questionnaire for completion. Appellant was afforded 30 days to submit the requested evidence.

OWCP received March 12 and April 9, 2012 duty status reports (Form CA-17) from Dr. Singh who indicated that "the employee stated [that] while working pallets [she] hurt [her] neck, arms and back."

Appellant responded in an April 16, 2012 letter describing the alleged employment incident.

OWCP received March 12 and April 9, 2012 reports from Dr. Farshad Hannanian, a neurologist, who indicated that appellant sustained injuries to her neck, back, and shoulders on November 25, 2011, and was in good health prior to the injury. Dr. Hannanian diagnosed: traumatic cervical myofascitis, with radiculopathy; traumatic lumbar myofascitis, with radiculopathy, rule out disc herniation, post-traumatic, rule out lumbar disc herniation, post-traumatic; and right and left post-traumatic internal shoulder derangement, rule out tear of rotator cuff muscles. He opined that the diagnosed conditions were the result of the employment incident.

By decision dated April 27, 2012, OWCP denied appellant's claim, finding that fact of injury had not been established.

On June 4, 2012 OWCP received appellant's request for reconsideration. Appellant reiterated the facts and circumstances surrounding the alleged employment injury.

OWCP received physical therapy notes from March 1 to June 21, 2012; a report from Dr. Hannanian, dated May 14, 2012, indicating that appellant sustained an injury to her neck, back, and shoulders on November 25, 2011; and a report from Dr. Molook Ali, a psychiatrist, dated May 14, 2012, indicating that appellant had a history of anxiety attack and depression after the November 25, 2011 injury.

By decision dated December 26, 2012, OWCP denied modification of its prior decision.

On July 22, 2015 OWCP received appellant's request for reconsideration. Appellant explained that the December 26, 2012 decision was mistakenly sent to her old address and she did not receive it until on or about June 2, 2015. She enclosed copies of previously received and considered medical reports.

By decision dated November 13, 2015, OWCP denied modification of the prior decision.[5]

[4] The record reflects that appellant has a prior accepted claim for a traumatic injury on August 30, 2011, under OWCP File No. xxxxxx307.

[5] OWCP explained that the evidence supported a review of the merits even though the request was not made within a year, because appellant did not receive the prior decision based on an error by it. It noted that despite appellant informing them of her new address, it was not updated in the system and she did not receive the decision in time to exercise her appeal rights.

On November 15, 2016 OWCP received appellant's request for reconsideration.

OWCP received magnetic resonance imaging (MRI) scans dated January 3 and February 15, 2017.

By decision dated June 23, 2017, OWCP modified the November 13, 2015 decision. It found that appellant established the employment incident as alleged and that a medical condition was diagnosed. OWCP further found, however, that the evidence submitted was insufficient to establish causal relationship between the accepted incident and a diagnosed medical condition because it had not received an opinion from a physician explaining how the claimed employment activity caused or contributed to the diagnosed conditions.

On August 7, 2017 appellant again requested reconsideration. She also provided a report from Dr. Ellen Edgar, a neurologist.

In a July 26, 2017 report, Dr. Edgar noted that appellant was examined for injuries sustained in a work-related accident on November 25, 2011, and that appellant had a prior history of injury on August 6, 2006. She diagnosed: paracervical myofascitis (increased); cervical disc bulges and herniations; lumbar disc bulges with impingement on the thecal sac, post-traumatic; dizziness; cervicalgia; and cervical radiculopathy. Dr. Edgar explained that she compared the MRI scan results from the 2006 accepted injury and the 2011 injury and opined that "it is evident that my patient indeed suffered injuries to both her neck and lower back. The 2011 injuries were caused by bending, twisting, pulling, lifting, and pushing action while moving heavy pallets during the course of her work." Dr. Edgar opined that "with a reasonable degree of medical certainty … [t]he diagnosed condition is causally related to the injuries sustained on [November 25, 2011]."

By decision dated November 3, 2017, OWCP denied modification of its June 23, 2017 decision. It explained that the medical evidence did not establish causal relationship.

On January 9, 2018 appellant requested reconsideration. She argued that on November 25, 2011, when she bent and twisted her body to lift, pull, and push heavy pallets from the pile to a single pallet, she felt pain, dizziness, and weakness to her neck, back, and arms, and she was certain this work incident caused her injuries. Appellant enclosed a new report from Dr. Edgar dated November 22, 2017.

In a November 22, 2017 report, Dr. Edgar repeated the opinions she provided in her previous July 26, 2017 report.

By decision dated January 30, 2018, OWCP denied appellant's request for reconsideration without a review of the merits.

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,[6] 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.[7] 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.[8]

To determine if an employee has sustained a traumatic 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 that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred.[9] The second component is whether the employment incident caused a personal injury.[10]

Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical evidence.[11] 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.[12] 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.[13]

In any 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 physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.[14]

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

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

[8] *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).

[9] *Elaine Pendleton*, 40 ECAB 1143 (1989).

[10] *M.H.*, Docket No. 18-1737 (issued March 13, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

[11] *L.D.*, Docket No. 17-1581 (issued January 23, 2018); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[12] *L.D., id.; see also Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

[13] *T.H.*, Docket No. 18-1736 (issued March 13, 2019); *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

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

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met her burden of proof to establish an injury causally related to the accepted November 25, 2011 employment incident.

The medical evidence of record contains no reasoned explanation of how the specific employment incident on November 25, 2011, caused or aggravated appellant's claimed neck, back, and shoulder conditions.[15] This is especially important as appellant has preexisting conditions and was working on a rehabilitative assignment.[16]

Dr. Singh completed a January 23, 2012 duty status report indicating that appellant injured her neck, arm, and back while working pallets on November 26, 2011. However, he did not provide a diagnosis or an opinion as to the cause of her injury.[17] Likewise, Dr. Singh's February 21, 2012 report does not contain a diagnosis and merely indicates "neck – work[-]related injury" and "while working pallets hurt neck, arms and back." The Board has held that medical reports are of no probative value if they do not provide medical reasoning, or rationale, explaining how appellant's work activity caused or aggravated a particular diagnosed condition.[18] As Dr. Singh did not provide an opinion and explanation as to how appellant's employment incident caused a diagnosed condition, his reports are therefore of no probative value.[19]

OWCP received March 12, April 9, and May 14, 2012 reports from Dr. Hannanian who indicated that appellant sustained an injury to her neck, back, and shoulders on November 25, 2011, and diagnosed traumatic cervical myofascitis, with radiculopathy; traumatic lumbar myofascitis, with radiculopathy. Dr. Hannanian opined that the conditions were a result of the work incident, but he did not provide medical reasoning or rationale explaining how the work activity caused or aggravated any diagnosed condition.[20] Medical evidence that states a conclusion, but does not offer a rationalized medical explanation regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[21] The need for rationalized medical opinion based on medical rationale is especially important in this case as the evidence suggests that appellant had preexisting conditions.[22] As Dr. Hannanian did not

[15] *See George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

[16] The records indicated that she had a prior history of injury on August 6, 2006, when she sustained injuries to her neck, back, and arms when she was pulling heavy mail with a hook, and received treatment.

[17] *Supra* note 13; *see also Ceferino L. Gonzales*, 32 ECAB 1591 (1981).

[18] *Supra* note 13.

[19] *See A.M.*, Docket No. 10-0205 (issued October 5, 2010) (a physician's opinion must be independent from a claimant's belief regarding causal relationship).

[20] *Id.*

[21] *S.H.*, Docket No. 17-1447 (issued January 11, 2018).

[22] *E.V.*, Docket No. 17-0417 (issued September 13, 2017).

provide a rationalized medical opinion regarding causal relationship, his reports are of limited probative value.[23]

A May 14, 2012 report from Dr. Ali advised that appellant had anxiety and depression after the November 25, 2011 injury. However, this report is inaccurate as appellant had a history of depression prior to the injury. It is well established that medical opinions based on an incomplete or inaccurate history are of little probative value.[24]

In a July 26, 2017 report, Dr. Edgar compared appellant's MRI scan results from the 2006 and 2011 accepted work injuries and opined that "it is evident that my patient indeed suffered injuries to both her neck and lower back. The 2011 injuries were caused by bending, twisting, pulling, lifting, and pushing action while moving heavy pallets during the course of her work." Dr. Edgar added that her conclusion was "with a reasonable degree of medical certainty"; however, she did not explain how the work activity caused the diagnosed conditions. For conditions not accepted by OWCP as being employment related, it is appellant's burden to provide rationalized medical evidence sufficient to establish causal relationship. To be of probative medical value, a medical opinion must explain how physiologically the movements involved in the employment incident caused or contributed to the diagnosed conditions.[25] Therefore, Dr. Edgar's opinion is insufficient to establish appellant's claim.

OWCP also received January 3 and February 15, 2017 MRI scans. However, diagnostic reports are of limited probative value as they do provide an opinion as to whether the employment incident caused any of the diagnosed conditions.[26]

Because the medical reports submitted by appellant do not sufficiently address how appellant's November 25, 2011 work activities caused or aggravated a neck, arm, back, or other condition, she has not met her burden of proof to establish that an employment incident caused or aggravated a specific injury.[27]

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 does not entitle a claimant to review of an OWCP decision as a matter of right.[28] OWCP has discretionary authority in this regard and has imposed certain

[23] *S.H., supra* note 21.

[24] *See T.D.,* Docket No. 18-1190 (issued March 11, 2019); *Douglas M. McQuaid*, 52 ECAB 382 (2001).

[25] *W.M.*, Docket No. 19-0013 (issued April 11, 2019).

[26] *See J.S.*, Docket No. 17-1039 (issued October 6, 2017).

[27] *See Linda I. Sprague*, 48 ECAB 386, 389-90 (1997).

[28] 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).

limitations in exercising its authority.[29] One such limitation is that the request for reconsideration must be received by it within one year of the date of the decision for which review is sought.[30]

A timely application for reconsideration, including all supporting documents, must set forth arguments and contain evidence that either: (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.[31] When a timely application 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.[32]

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).

Appellant's January 9, 2018 request for reconsideration neither alleged nor demonstrated that OWCP erroneously applied or interpreted a specific point of law. She merely reiterated that she was injured on November 25, 2011, and that she was submitting new medical evidence. Additionally, the Board finds that she did not advance a relevant legal argument not previously considered by OWCP. Consequently, appellant is not entitled to further review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(3).[33]

Appellant submitted a November 22, 2017 report from Dr. Edgar and argued that the report was new medical evidence. However, the Board finds that this report reiterated the prior opinion from her previous July 26, 2017 report. The Board has held that evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.[34] Consequently, the evidence submitted by appellant on reconsideration does not satisfy the third criterion for reopening a claim for merit review.[35]

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[29] 20 C.F.R. § 10.607.

[30] *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. *Id.* at Chapter 2.1602.4b.

[31] *Id.* at § 10.606(b)(3).

[32] *Id.* at § 10.608(a),(b); *C.C.*, Docket No. 18-0136 (issued March 14, 2019); *see also E.R.*, Docket No. 09-1655 (issued March 18, 2010).

[33] *Id*. at § 10.606(b)(3)(i), (ii).

[34] *See J.B.*, Docket No. 18-1531 (issued April 11, 2019); *D.K.*, 59 ECAB 141 (2007).

[35] 20 C.F.R. § 10.606(b)(3)(iii).

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.[36]

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish an injury causally related to the accepted November 25, 2011 employment incident. 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).

ORDER

IT IS HEREBY ORDERED THAT the January 30, 2018 and November 3, 2017 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: June 11, 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

[36] *D.R.*, Docket No. 18-0357 (issued July 2, 2018); *A.K.*, Docket No. 09-2032 (issued August 3, 2010); *M.E.*, 58 ECAB 694 (2007); *Susan A. Filkins*, 57 ECAB 630 (2006).