United States Department of Labor
Employees' Compensation Appeals Board

J.P., Appellant	)	
and	)	**Docket No. 19-0197**
	)	**Issued: June 21, 2019**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS HEALTH ADMINISTRATION, Bedford, 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
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On November 6, 2018 appellant filed a timely appeal from a June 12, 2018 merit decision and a July 11, 2018 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.[2]

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that 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.*

ISSUES

The issues are: (1) whether appellant has met her burden of proof to establish a medical condition causally related to the accepted April 24, 2018 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 April 30, 2018 appellant, then a 36-year-old pharmacy technician, filed a notice of traumatic injury (Form CA-1) alleging that on April 24, 2018 she was lifting a sealed box of water when the box dropped and she twisted her back while in the performance of duty. She did not immediately stop work. A.G., a supervisor, controverted the claim noting that appellant hade not reported the incident until two days later.

OWCP received treatment notes dated April 30, 2018 from a physician assistant and physical therapist.

In a development letter dated May 8, 2018, OWCP informed appellant that additional factual and medical evidence was necessary to establish her claim. It noted that physician assistants and physical therapists do not qualify as physicians under FECA, unless the reports are countersigned by a physician. OWCP afforded appellant 30 days to provide the necessary factual information and medical evidence.

OWCP continued to receive series of physician assistant and physical therapy progress reports dated from April 26 to May 18, 2018. It also received a May 11, 2018 duty status report (Form CA-17) with an illegible signature.

By decision dated June 12, 2018, OWCP found that the April 24, 2018 employment incident occurred as alleged, but denied the claim finding that the medical evidence submitted did not establish a diagnosed medical condition causally related to the accepted employment incident. It concluded, therefore, that she had not met the requirements to establish an injury as defined by FECA.

On July 2, 2018 OWCP received appellant's request for reconsideration. It received copies of physician assistant and physical therapy reports dated from April 26 through May 18, 2018.

By decision dated July 11, 2018, OWCP denied appellant's request for reconsideration.

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,[3] 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.[4] 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.[5]

In order to determine whether a federal employee has sustained a traumatic injury in the performance of duty, OWCP must first determine whether fact of injury has been established.[6] There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged.[7] Second, the employee must submit evidence, to establish that the employment incident caused a personal injury.[8]

Rationalized medical opinion evidence is required to establish causal relationship. The opinion of the physician must be based on a complete factual and medical background, 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 incident.[9]

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met her burden of proof to establish a diagnosed medical condition causally related to the accepted April 24, 2018 employment incident.

Appellant submitted treatment notes from a physician assistant and physical therapy notes from April 26 to May 18, 2018. Neither physician assistants nor physical therapists are considered physicians as defined under FECA.[10] A report from a physician assistant or physical therapist will

[3] *See M.C.*, Docket No. 18-1278 (issued March 7, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

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

[5] *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).

[6] *S.P.*, 59 ECAB 184 (2007); *Alvin V. Gadd*, 57 ECAB 172 (2005).

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

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

[9] *D.B.*, Docket No. 18-1359 (issued May 14, 2019); *S.S.*, Docket No. 18-1488 (issued March 11, 2019).

[10] The term physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by state law. *See* 5 U.S.C. § 8102(2); *see M.H.*, Docket No. 18-1737 (issued March 13, 2019); *M.M.*, Docket No. 16-1617 (issued January 24, 2017) (lay individuals such as physician assistants and physical therapists are not competent to render a medical opinion under FECA). *See also Gloria J. McPherson*, 51 ECAB 441 (2000); *Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (a medical issue such as causal relationship can only be resolved through the submission of probative medical evidence from a physician).

be considered medical evidence if countersigned by a qualified physician.[11] Thus, as there is no countersignature by a qualified physician, their opinions do not constitute competent medical evidence and have no probative value.[12] As such, this evidence is insufficient to meet appellant's burden of proof.

Appellant also submitted a May 11, 2018 duty status report (Form CA-17) with an illegible signature. The Board notes that reports that bear illegible signatures cannot be considered probative medical evidence because they lack proper identification that the author is a physician.[13]

The record lacks medical evidence establishing a causal relationship between the April 24, 2018 employment incident and any diagnosed medical condition. Thus, appellant has not met her burden of proof.

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 require OWCP to reopen a case for merit review under FECA section 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.[14]

A request for reconsideration must be received by OWCP within one year of the date of its decision for which review is sought.[15] 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.[16]

[11] *See D.B.*, Docket No. 18-1359 (issued May 14, 2019); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013).

[12] *D.F.*, Docket No. 19-0108 (issued April 16, 2019); *see also T.H.*, Docket No. 18-1736 (issued March 13, 2019).

[13] *See L.D.*, Docket No. 18-1468 (issued February 11, 2019); *see R.M.*, 59 ECAB 690 (2008); *D.D.*, 57 ECAB 734 (2006); *Richard J. Charot*, 43 ECAB 357 (1991).

[14] 20 C.F.R. § 10.606(b)(3); *see H.H.*, Docket No. 18-1660 (issued March 14, 2019); *see also L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

[15] *Id.* at § 10.607(a).

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

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).

In her application for reconsideration, appellant did not show that OWCP erroneously applied or interpreted a specific point of law, and did not advance a new and relevant legal argument not previously considered. Accordingly, appellant is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(3).

With her reconsideration request, appellant resubmitted copies of physician assistant treatment notes and physical therapy reports dated from April 26 to May 18, 2018. The Board has held that material which is duplicative of evidence already contained in the record does not constitute a basis for reopening a case.[17] The Board further finds that while some new reports were submitted from physician assistants and physical therapists, as previously noted their reports do not constitute probative medical evidence, as they are not physicians as defined by FECA. Because this evidence is irrelevant, the Board finds that appellant has not met any of the necessary requirements.[18] Thus, appellant also is not entitled to a review of the merits of her claim based on the third above-noted requirement under section 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). 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 a medical condition causally related to the accepted April 24, 2018 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).

[17] *A.M.*, Docket No. 18-1033 (issued January 8, 2019); *see Kenneth R. Mroczkowski*, 40 ECAB 855 (1989).

[18] *See C.C.*, Docket No. 17-0043 (issued June 15, 2018); *L.H.*, 59 ECAB 253 (2007).

ORDER

IT IS HEREBY ORDERED THAT the July 11 and June 12, 2018 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: June 21, 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