



## **ISSUES**

The issues are: (1) whether appellant has met her burden of proof to establish an injury causally related to her accepted employment exposure; 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 September 11, 2017 appellant, a 56-year-old contract specialist, filed an occupational disease claim (Form CA-2) alleging that she developed bilateral hand conditions due to factors of her federal employment, including using the computer to complete contract-related documents. She indicated that she first became aware of her condition on August 4, 2017 and first related it to her employment on August 30, 2017.

In a narrative statement, appellant indicated that she had worked in her current position at the employing establishment since July 2010 and that her duties required using a computer and performing some manual filing. She stated that she used the computer for six to eight hours per day.

In a September 14, 2017 development letter, OWCP advised appellant of the deficiencies of her claim and advised her as to the need to submit a comprehensive narrative medical report from a qualified physician that included a diagnosis and an opinion, supported by medical rationale, addressing how the work-related exposure resulted in the diagnosed condition(s). It afforded her 30 days to submit medical evidence in support of her claim. OWCP did not receive a response.

By decision dated October 16, 2017, OWCP accepted that the employment exposure occurred as alleged, but denied appellant's claim, finding that she had not submitted evidence containing a medical diagnosis in connection with the accepted employment exposure.

On October 24, 2017 appellant requested reconsideration and indicated that her medical provider had submitted reports electronically.

By decision dated October 27, 2017, OWCP denied appellant's request for reconsideration without conducting a merit review.

## **LEGAL PRECEDENT -- ISSUE 1**

An employee seeking benefits under FECA<sup>3</sup> 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 of FECA,<sup>4</sup> that an injury was sustained in the performance of duty as alleged, and

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<sup>3</sup> *Supra* note 1.

<sup>4</sup> *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *Joe D. Cameron*, 41 ECAB 153 (1989).

that any disability or medical condition for which compensation is claimed is causally related to the employment injury.<sup>5</sup> 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.<sup>6</sup>

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit: (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 identified employment factors.<sup>7</sup>

Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical evidence.<sup>8</sup> 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.<sup>9</sup> 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.<sup>10</sup>

### **ANALYSIS -- ISSUE 1**

The Board finds that appellant has not met her burden of proof to establish that she sustained an injury causally related to the accepted employment exposure.

On her claim form appellant stated that she had been diagnosed with bilateral hand conditions. In support of her claim, she submitted a narrative statement describing her various employment duties, which included performing some manual filing and using a computer for six to eight hours per day. In its September 14, 2017 development letter, OWCP specifically informed appellant of the need to submit a comprehensive narrative medical report from a qualified physician that included a diagnosis and an opinion, supported by medical rationale, addressing how the work-related exposure resulted in the diagnosed condition(s). No response was received.

Appellant must submit, as a part of her burden of proof, medical evidence establishing the presence or existence of a disease or condition for which compensation is claimed because she has

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<sup>5</sup> *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>6</sup> *R.R.*, Docket No. 19-0048 (issued April 25, 2019); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

<sup>7</sup> *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

<sup>8</sup> *L.D.*, Docket No. 17-1581 (issued January 23, 2018); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

<sup>9</sup> *L.D.*, *id.*; see also *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

<sup>10</sup> *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

not submitted competent medical evidence addressing how the accepted employment exposure caused or contributed to a diagnosed medical condition, the Board finds that she has not met her burden of proof.<sup>11</sup>

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 does not entitle a claimant to review of an OWCP decision as a matter of right.<sup>12</sup> OWCP has discretionary authority in this regard and has imposed certain limitations in exercising its authority.<sup>13</sup> One such limitation is that the request for reconsideration must be received by OWCP within one year of the date of the decision for which review is sought.<sup>14</sup> A timely application for reconsideration, including all supporting documents, must set forth arguments and contain evidence that either: (i) shows that OWCP erroneously applied or interpreted a specific point of law; (ii) advances a relevant legal argument not previously considered by OWCP; or (iii) constitutes relevant and pertinent new evidence not previously considered by OWCP.<sup>15</sup> 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.<sup>16</sup>

### **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 October 24, 2017 request for reconsideration neither alleged nor demonstrated that OWCP erroneously applied or interpreted a specific point of law. 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).

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<sup>11</sup> See *supra* note 2.

<sup>12</sup> 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).

<sup>13</sup> 20 C.F.R. § 10.607.

<sup>14</sup> *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 (iFECS). *Id.* at Chapter 2.1602.4b.

<sup>15</sup> 20 C.F.R. § 10.606(b)(3).

<sup>16</sup> *Id.* at § 10.608(a), (b).

In addition to her reconsideration request, appellant indicated that her medical provider had submitted reports electronically. However, the record does not contain medical evidence received prior to OWCP's October 27, 2017 decision.<sup>17</sup> As there was no relevant and pertinent new evidence submitted in conjunction with appellant's request for reconsideration, she has also failed to satisfy 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.<sup>18</sup>

### **CONCLUSION**

The Board finds that appellant has not met her burden of proof to establish an injury causally related to the accepted employment exposure. The Board further 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 October 27 and 16, 2017 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: May 24, 2019  
Washington, DC

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

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

Alec J. Koromilas, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>17</sup> See *supra* note 2.

<sup>18</sup> *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).