

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

V.U., Appellant

and

**U.S. POSTAL SERVICE, ECKERT POST
OFFICE, Denver, CO, Employer**

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**Docket No. 19-0755
Issued: November 25, 2019**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On February 22, 2019 appellant filed a timely appeal from a November 7, 2018 merit decision and a February 7, 2019 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.

ISSUES

The issues are: (1) whether appellant has met her burden of proof to establish that her degenerative osteoarthritis is causally related to the accepted factors of her federal employment; 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).

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On May 10, 2018 appellant, then a 61-year-old regular rural carrier, filed an occupational disease claim (Form CA-2) alleging that she developed degenerative osteoarthritis due to constant repetitive motion, including twisting, turning, bending, lifting of her upper body, neck, arms, and legs, and continuous grasping of fingers, hands, and wrists as required by the duties of her federal employment.

On June 11, 2018 the employing establishment controverted the claim, contending that appellant may have a preexisting condition.

In a June 1, 2018 narrative statement, appellant indicated that she had been diagnosed with degenerative osteoarthritis due to implicated factors of her federal employment. She stated that she performed repetitive job duties eight hours per day, five days per week. Appellant reported that she subsequently had several surgeries on her back and knee after being diagnosed with degenerative osteoarthritis.

In a development letter dated June 14, 2018, OWCP informed appellant that the factual and medical evidence of record was insufficient to establish her claim. It advised her of the type of evidence necessary to establish her claim and afforded her 30 days to submit the requested evidence.

Appellant subsequently submitted a position description and an undated narrative statement reiterating the factors of federal employment to which she attributed her condition.

In reports dated May 3 and 24, 2018, Dr. John Ryan Marlin, a Board-certified family practitioner, diagnosed essential hypertension, digital mucous cyst, and degenerative joint disease involving multiple joints. He reported that the significant osteoarthritis in appellant's hands and back were beginning to limit her activities and that he counseled her on activities and her ability to continue at her job.

In a prescription note dated June 14, 2018, Dr. Marlin requested that appellant be excused from work until June 25, 2018 due to injury. He released appellant to work on July 16, 2018.

By decision dated July 16, 2018, OWCP denied the claim, finding that the evidence submitted was insufficient to establish that the claimed injury and/or medical condition arose during the course of employment and within the scope of compensable work factors. Thus, it found that appellant's injury did not occur in the performance of duty, as alleged.

On August 7, 2018 appellant requested a review of the written record before a representative of OWCP's Branch of Hearings and Review.

Appellant further submitted reports dated June 19 and July 12, 2018 from Dr. Michael D. Rooks, a Board-certified orthopedic hand surgeon. Dr. Rooks found that appellant had a left thumb painful digital mass, which was mildly painful. He indicated that there was no specific traumatic event in the etiology of this mass and it had been drained with recurrence. Dr. Rooks stated that on June 19, 2018 appellant presented with a new problems of severe hand, wrist, and forearm pain after a period of delivering 500 telephone books. He indicated that the pain was

severe and it was aggravated by any movement. Dr. Rooks related that the mucous cyst on the left thumb was drained in order to facilitate management of the right arm injuries and x-ray findings for arthritis in the right wrist were more indicative of tendinopathy, then arthritis.

By decision dated November 7, 2018, OWCP's hearing representative affirmed the July 16, 2018 decision, as modified. He found that appellant had established factors of her federal employment but that there was no rationalized medical evidence to establish that appellant's degenerative arthritis was causally related to the accepted employment factors.² OWCP's hearing representative reviewed the evidence of record and found that the accepted work exposure had occurred in the performance of duty, but the medical evidence was insufficient to establish a causal relationship between the accepted employment factors and appellant's diagnosed degenerative osteoarthritis condition. He noted that there was no discussion of specific work factors and how they contributed to the diagnosed condition.

On January 7, 2019 appellant requested reconsideration. She argued that she was not claiming that her job caused her disease, but that her disease had been aggravated by her job. Appellant indicated that she had additional evidence, but no additional evidence was received.

By decision dated February 7, 2019, OWCP denied appellant's request for reconsideration of the merits of her claim.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA³ 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.⁴ These are the essential elements of every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁵

² The hearing representative noted that appellant had four prior claims for traumatic injuries and occupational disease. Appellant's claim under File No. xxxxxx515, an occupational disease claim with a date of injury of March 1, 2015, claimed aggravation of degenerative osteoarthritis of various anatomical areas due to repetitive motions and that claim had been denied on causal relationship grounds. The denial was affirmed by the Board in a decision dated July 26, 2017. Appellant also had a claim, under File No. xxxxxx974, for a subsequent traumatic injury with a date of injury of May 29, 2018, which was accepted for left thumb mucous cyst and right wrist strain. OWCP's hearing representative returned the case record for routine handling after administratively combining the present claim with File No. xxxxxx515.

³ *Id.*

⁴ *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).

⁵ *K.V.* and *M.E.*, *id.*; *Elaine Pendleton*, 40 ECAB 1143 (1989).

To establish that an injury was sustained in the performance of duty in an occupational disease claim, an employee must submit the following: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.⁶

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.⁷ A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background.⁸ 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(s).⁹

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met her burden of proof to establish that her degenerative osteoarthritis condition is causally related to the accepted factors of her federal employment.

In his June 19 and July 12, 2018 reports, Dr. Rooks noted that appellant presented with a left thumb digital mass, but there was no specific tragic event related to its etiology. He further indicated that appellant complained of new problems of severe pain in her hand, wrist, and forearm that was aggravated by any movement. Dr. Rooks also noted that x-ray findings were more indicative of tendinopathy than arthritis. However, he did not provide a firm diagnosis or render an opinion on causal relationship. The Board has held that where a medical report does not provide an opinion on the issue of causal relationship, the report is of no probative value and is insufficient to establish the claim.¹⁰

Similarly, Dr. Marlin, in his May 3 and 24, 2018 medical notes, indicated that the significant osteoarthritis in appellant's hands and back were beginning to limit her activities and that she may "look into getting disability through her work." However, as he did not directly attribute appellant's symptoms to her federal employment or address causal relationship, Dr. Marlin's report is insufficient to meet appellant's burden of proof.¹¹

⁶ *R.G.*, Docket No. 19-0233 (issued July 16, 2019). See also *Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁷ *T.H.*, 59 ECAB 388, 393 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

⁸ *M.V.*, Docket No. 18-0884 (issued December 28, 2018).

⁹ *Id.*; *Victor J. Woodhams*, *supra* note 6.

¹⁰ See *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, No. 17-1549 (issued July 6, 2018).

¹¹ See *T.R.*, Docket No. 18-1272 (issued February 15, 2019).

As appellant has not submitted any rationalized medical evidence to support her claim that she sustained an injury causally related to the accepted employment factors, the Board finds that she 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

Section 8128(a) of FECA does not entitle a claimant to review of an OWCP decision as a matter of right.¹² OWCP has discretionary authority in this regard and has imposed certain limitations in exercising its authority.¹³ 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.¹⁴ A timely request 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.¹⁵ When a timely request 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.¹⁶

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 support of her reconsideration request, appellant argued that she was not claiming that her job had caused her osteoarthritic condition, but that it had been aggravated by her job. However, this argument was previously considered by OWCP. The Board has held that the

¹² 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).

¹³ 20 C.F.R. § 10.607.

¹⁴ *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.

¹⁵ *Id.* at § 10.606(b)(3).

¹⁶ *Id.* at § 10.608(a), (b).

submission of evidence or argument which repeats or duplicates evidence or argument already in the case record does not constitute a basis for reopening a case.¹⁷

Appellant's timely request for reconsideration did not show that OWCP erroneously applied or interpreted a specific point of law, or advance a new and relevant legal argument not previously considered by OWCP. The underlying issue on appeal was whether her degenerative osteoarthritis condition was caused or aggravated by factors of her employment. This is a medical issue which must be determined by rationalized medical evidence.¹⁸ Consequently, appellant was not entitled to a review of the merits based on the first and second above-noted requirements under 20 C.F.R. § 10.606(b)(3).

Appellant further indicated on reconsideration that she had additional evidence; however, OWCP did not receive any additional relevant or pertinent new evidence in support of her request for reconsideration.¹⁹ Thus, she 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).²⁰

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 that her degenerative osteoarthritis is causally related to the accepted factors of her federal employment. 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).

¹⁷ *J.L.*, Docket No. 19-0586 (issued August 9, 2019) (where the Board found that the claimant had presented no new arguments, but rather reiterated arguments previously addressed by OWCP in its prior decision). *See also P.W.*, Docket No. 17-1911 (issued June 6, 2018) (where the claimant generally argued that OWCP's decision was confusing and provided his own understanding of the evidence required to establish his claim, but did not provide any support for his allegation regarding the deficiencies of OWCP's decision).

¹⁸ *See J.B.*, Docket No. 18-1531 (issued April 11, 2019); *E.D.*, Docket No. 18-0138 (issued May 14, 2018); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

¹⁹ *T.R.*, Docket No. 19-0427 (issued July 15, 2019).

²⁰ *H.H.*, Docket No. 18-1660 (issued March 14, 2019).

ORDER

IT IS HEREBY ORDERED THAT the February 7, 2019 and November 7, 2018 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: November 25, 2019
Washington, DC

Patricia H. Fitzgerald, Deputy 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