

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

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| C.C., Appellant |) | |
| |) | |
| and |) | Docket No. 20-0451 |
| |) | Issued: August 24, 2020 |
| U.S. POSTAL SERVICE, POST OFFICE, |) | |
| Chicago, IL, Employer |) | |
| |) | |

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| <i>Appearances:</i> Alan J. Shapiro, Esq., for the appellant ¹ Office of Solicitor, for the Director | <i>Case Submitted on the Record</i> |
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DECISION AND ORDER

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

JURISDICTION

On December 26, 2019 appellant, through counsel, filed a timely appeal from an October 4, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has met her burden of proof to establish a right hip condition causally related to the accepted factors of her federal employment.

FACTUAL HISTORY

On May 28, 2016, under OWCP File No. xxxxxx163, appellant, then a 46-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that, on that date, she sprained her right shoulder while in the performance of duty. She stopped work on the date of injury. OWCP accepted appellant's claim for right shoulder contusion and right rotator cuff tear. It paid her wage-loss compensation on the supplemental rolls beginning July 16, 2016 and on the periodic rolls, effective June 24, 2018. On March 16, 2019 appellant returned to modified-duty work.

On March 6, 2019 appellant filed an occupational disease claim (Form CA-2) in the present case, OWCP File No. xxxxxx367, alleging that she developed a contusion with skin intact when she fell at work on May 28, 2016. She indicated that she fell onto her right side, causing severe pain in her right shoulder, lower back, right hip, neck, and knee. Appellant noted that she first became aware of her condition on May 28, 2016 and realized that it resulted from her federal employment on March 8, 2019. On the reverse side of the claim form, the employing establishment noted that she stopped work on May 28, 2016 and was last exposed to conditions alleged to have caused the illness on March 8, 2019.

In an undated statement, appellant related that, at 10:00 a.m. on May 28, 2019, she was finishing her assignment when she turned around and tripped over a tub. She reported that she fell on her right side and bruised her right knee, lower back, and right shoulder.

OWCP received a January 8, 2019 right hip x-ray scan report, which revealed findings suggestive of femoral acetabular impingement syndrome without fracture or dislocation.

In duty status report forms (Form CA-17) dated January 25 and February 22, 2019, a physician with an illegible signature noted a May 28, 2016, date of injury and described the history of injury as "fall on right arm/shoulder." Appellant was diagnosed with right shoulder, neck, and right hip pain.

In a March 6, 2019 note, Dr. Joseph Thometz, a Board-certified orthopedic surgeon, related that appellant was currently under his care for a work-related injury occurring on May 28, 2016. He noted that she was permanently and totally incapacitated and completed a work capacity evaluation form (Form OWCP-5c).

In an April 2, 2019 development letter, OWCP informed appellant that the evidence of record was insufficient to establish her claim. It advised her of the type of medical and factual evidence necessary to support her claim and provided a questionnaire for her completion. In a separate letter of even date, OWCP requested additional information from the employing establishment. It afforded both parties 30 days to submit the requested information.

By decision dated May 6, 2019, OWCP accepted appellant's duties as a city carrier and that a medical condition was diagnosed. However, it denied her occupational disease claim finding

that the medical evidence of record was insufficient to establish that her medical condition was causally related to the accepted employment factors.

On May 20, 2019 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review. During the telephonic hearing held on August 27, 2019 counsel argued that the current case was not a claim for a new occupational disease, but was a continuation of her previous claim. He stated that appellant should have filed a Form CA-2a for a recurrence of disability. Appellant also testified that she was seeking compensation for a right hip injury that she sustained on May 28, 2016 as part of the original injury. She explained that she was instructed to wait until her shoulder treatment was completed before seeking medical treatment for her hip contusion. Appellant related that she went back to work for only a week following her original injury before she was taken off work again due to disability.

In a decision dated October 4, 2019, an OWCP hearing representative affirmed the May 6, 2019 decision.³

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ has the burden of proof to establish the essential elements of his or her claim, including 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,⁵ 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.⁶ 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.⁷

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit: (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

³ The hearing representative also found that the current case file under OWCP File No. xxxxxx367 should be administratively combined with appellant's previously accepted traumatic injury claim under OWCP File No. xxxxxx163.

⁴ *Id.*

⁵ *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁶ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁷ *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).

compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.⁸

A recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which resulted from a previous compensable injury or illness and without an intervening injury or new exposure in the work environment.⁹

ANALYSIS

The Board finds that this case is not in posture for a decision.

OWCP's procedures provide the proper steps required for the conversion of a claim for FECA benefits when it determines that a claimant has filed an improper claim form.¹⁰ It notes that if upon review of an incorrect form that was filed, the actual benefits claimed by the claimant can be determined, OWCP should convert the claim to the correct type and notify the claimant and employing establishment (and any representative, if applicable) *via* letter that the claim has been converted to a different type of injury than what was originally claimed.¹¹ Likewise, if OWCP cannot determine the actual benefits claimed, it is instructed to develop the claim based upon the claim form filed and direct questions to the claimant to determine the type of benefits claimed.¹²

In this case, appellant filed a Form CA-2 on March 6, 2019. However, based upon the description of injury in the Form CA-2 and subsequent statements by appellant, she is claiming that she sustained an additional right hip injury due to her accepted May 28, 2016, employment injury under OWCP File No. xxxxxx163. Furthermore, counsel testified during the August 27, 2019, telephonic hearing that appellant should have filed a notice of recurrence. As appellant and counsel have repeatedly asserted that appellant is not claiming a new occupational disease claim, OWCP should have further developed the claim to determine whether she is claiming a new injury resulting from new workplace exposure, an expansion of her accepted conditions or a recurrence of disability under OWCP File No. xxxxxx163.¹³

⁸ *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *R.H.*, 59 ECAB 382 (2008).

⁹ 20 C.F.R. § 10.5(x); *see S.F.*, 59 ECAB 525 (2008). *See* 20 C.F.R. § 10.5(y) (defines recurrence of a medical condition as a documented need for medical treatment after release from treatment for the accepted condition).

¹⁰ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Development of Claims*, Chapter 2.800.3(c)(2) (June 2011); *Richard D. Wray*, 45 ECAB 758 (issued July 8, 1994) (if the actual benefits claimed by the claimant cannot be determined from review of the form, OWCP should develop the claim based upon the claim form filed and direct questions to the claimant to determine the type of benefits claimed. Based upon the response to the development letter, it should make a determination as to whether the correct claim was established and, if not, OWCP should convert the claim to the proper type of claim and notify the claimant and employing establishment of the conversion).

¹¹ *Id.*

¹² *Id.*

¹³ *See T.H.*, Docket No. 19-0685 (issued September 9, 2019); *see also J.S.*, Docket No. 11-1772 (issued March 21, 2012).

It is well established that proceedings under FECA are not adversarial in nature, and while appellant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.¹⁴ OWCP has an obligation to see that justice is done.¹⁵ Consequently, the Board will remand the case for OWCP to properly develop the case in order to determine the actual benefits claimed by appellant. On remand, OWCP shall follow its procedures and issue a development letter to her with direct questions in order to determine the type of benefits claimed.¹⁶ After this and such further development as may be deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that this case is not in posture for a decision.

¹⁴ See *e.g.*, *M.G.*, Docket No. 18-1310 (issued April 16, 2019); *Walter A. Fundinger, Jr.*, 37 ECAB 200, 204 (1985); *Michael Gallo*, 29 ECAB 159, 161 (1978); *William N. Saathoff*, 8 ECAB 769-71; *Dorothy L. Sidwell*, 36 ECAB 699, 707 (1985).

¹⁵ See *A.J.*, Docket No. 18-0905 (issued December 10, 2018); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983); *Gertrude E. Evans*, 26 ECAB 195 (1974).

¹⁶ *Supra* note 12.

ORDER

IT IS HEREBY ORDERED THAT the October 4, 2019 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: August 24, 2020
Washington, DC

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

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board