United States Department of Labor
Employees' Compensation Appeals Board

S.H., Appellant	)	
and	)	**Docket No. 19-1897**
	)	**Issued: April 21, 2020**
U.S. POSTAL SERVICE, COLLEGE PARK STATION, Detroit, MI, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
CHRISTOPHER J. GODFREY, Deputy Chief Judge
JANICE B. ASKIN, Judge

JURISDICTION

On September 14, 2019 appellant filed a timely appeal from an April 30, 2019 merit decision and an August 30, 2019 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 over the merits of this case.

ISSUES

The issues are: (1) whether appellant has met her burden of proof to establish a traumatic injury causally related to the accepted November 14, 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 March 11, 2019 appellant, then a 32-year-old mail carrier, filed a traumatic injury claim (Form CA-1) alleging that on November 14, 2018 she sustained an injury to her feet and toes due

[1] 5 U.S.C. § 8101 *et seq*.

to cold weather exposure while in the performance of duty. On the reverse side of the claim form, appellant's supervisor asserted that appellant was not injured in the performance of duty and that the employing establishment was controverting the claim. Appellant did not stop work.

In a March 6, 2019 narrative statement, appellant indicated that on November 14, 2018 she was walking while delivering mail when her feet started to get cold. She related that, after finishing the rest of the mail delivery, she went back to her postal truck to warm her feet. Appellant noted that her feet and socks were wet. She subsequently went to a gas station to get some foot warmers and resumed working. Appellant indicated that by the time she returned to her workstation her feet were cold again. She noted that when she got home, her feet started throbbing and tingling and she felt a burning sensation in her feet. Appellant treated her symptoms with over-the-counter medication, and put her feet by the heating vent. She asserted that the next day she notified her supervisor of the pain in her feet and suggested that she might have frostbite. Appellant explained that her feet began hurting again on the evening of November 15, 2018 and took additional over-the-counter pain medication, which helped mildly with her pain.

Appellant asserted that she told her supervisors multiple times that her feet were hurting and that she needed medical assistance. She noted that her supervisor gave her the following Saturday off and thereafter she took vacation time. Appellant indicated that during her vacation, the pain was coming and going and her feet were numb. She noted that she finally made a doctor's appointment during her vacation and when she returned to work on November 23, 2018, she notified her supervisor again of the pain in her feet and also spoke with her union steward. Appellant explained that she did not ask for claim forms until December when the temperature dropped and she started to feel pain again. She indicated that, upon her pain returning, she went to her manager, notified her of the pain, and ultimately went to see a doctor. Appellant's doctor recommended that she see a podiatrist after noting normal results from the examinations. She reported that she was diagnosed with first-degree frostbite.

A November 20, 2018 medical report from a primary care facility noted that appellant underwent an ankle brachial index (ABI) procedure and an arterial duplex scan of bilateral foot. Appellant was diagnosed with foot pain.

In a January 22, 2019 medical report/work note, Joshua A. Ruedisueli, a certified physician assistant (PA-C), noted that appellant was seen on that day for a complaint of bilateral foot pain. He excused her from work for the remainder of the day and released her to return to work the next day without restrictions.

A January 23, 2019 work note from a podiatry office noted that appellant was examined and treated at the clinic that day.

In a February 28, 2019 certificate of disability, Dr. Alan J. Schram, Board-certified in podiatric orthopedics and primary podiatric medicine, noted that appellant was treated for frostbite. He requested that appellant be excused from work from February 28 through March 5, 2019.

In a March 26, 2019 development letter, OWCP informed appellant of the deficiencies in her claim. It advised her of the type of factual and medical evidence necessary to establish her claim and provided a factual questionnaire for completion. OWCP afforded appellant 30 days to respond.

By decision dated April 30, 2019, OWCP denied appellant's claim finding that the medical evidence of record failed to establish a causal relationship between her diagnosed frostbite and the accepted November 14, 2018 employment incident.

On June 6, 2019 appellant requested reconsideration.

In support of her request, appellant submitted a February 12, 2019 medical report by Dr. Schram which noted that appellant presented with a complaint of foot pain and indicated that she may have frostbite. Dr. Schram noted that appellant's pain started in November 2018 and that an x-ray of her feet revealed moderate hammertoe and mallet toe deformities. He concluded that the burning, pain, and clinical changes in her foot tissue were consistent with a history of first degree frostbite sustained three to four months prior.

In February 27 and 28, 2019 medical notes, Dr. Schram indicated that appellant was seen in the emergency room on February 27, 2019 due to continued pain in her feet and toes. He discussed treatment and noted that she should continue with over-the-counter medications and soaking her feet in warm water daily.

In an April 1, 2019 response to OWCP's questionnaire, received on June 6, 2019, appellant noted that she had no other injury between the accepted November 14, 2018 employment incident and the date she notified the employing establishment. She indicated that she had throbbing pain and a burning sensation in her toes, and that she frequently took Motrin for pain, which worsened every day. Appellant explained that she could not see her doctor on November 20, 2018 because the employing establishment ignored her request. She asserted that she had no other disability or symptoms prior to the accepted November 14, 2018 employment incident.

By decision dated August 30, 2019, OWCP denied appellant's request for reconsideration of the merits of her claim under 5 U.S.C. § 8128(a).

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA[2] 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,[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]

[2] *Id*.

[3] *F.H.*, Docket No. 18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

[4] *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[5] *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. 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. The second component is whether the employment incident caused a personal injury and can be established only by medical evidence.[6]

The medical evidence required to establish a causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.[7] The opinion of the physician must be based on a complete factual and medical background of the employee, 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 specific employment factors identified by the employee.[8]

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met her burden of proof to establish a traumatic injury causally related to the accepted November 14, 2018 employment incident.

In support of her claim, appellant submitted a January 23, 2019 work note from a podiatry clinic noting that she was examined and treated at the clinic that day. Lacking a firm diagnosis and rationalized medical opinion regarding causal relationship, this report is of no probative value.[9] Accordingly, this report is insufficient to satisfy appellant's burden of proof to establish her claim.[10]

In a February 28, 2019 certificate of disability, Dr. Schram diagnosed frostbite. However, he did not provide a medical opinion explaining why appellant's condition was due to the accepted November 14, 2018 employment incident. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.[11] Thus, the Board finds that the certificate of disability from Dr. Schram is insufficient to establish appellant's claim for compensation.

In addition, OWCP received an unsigned November 20, 2018 medical report from primary care facility which noted that appellant underwent an ABI procedure and an arterial duplex scan of bilateral foot. A report that is unsigned or bears an illegible signature, however, lacks proper

[6] *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

[7] *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

[8] *T.L.*, Docket No. 18-0778 (issued January 22, 2020); *Y.S.*, Docket No. 18-0366 (issued January 22, 2020); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[9] *P.C.*, Docket No. 18-0167 (issued May 7, 2019).

[10] *T.G.*, Docket No. 19-0904 (issued November 25, 2019); *L.D.*, Docket No. 17-1581 (issued January 23, 2018); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

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

identification and cannot be considered probative medical evidence as the author cannot be identified as a physician.[12]

Appellant also submitted a January 22, 2019 medical report from Joshua Ruedisueli, a certified physician assistant (PA-C), who noted that appellant was seen on that day for a complaint of bilateral foot pain. Certain healthcare providers such as physician assistants are not considered "physician[s]" as defined under FECA.[13] Consequently, the report of Mr. Ruedisueli's opinion will not suffice for purposes of establishing entitlement to FECA benefits.[14]

As appellant has not submitted a rationalized medical opinion supporting that she sustained a traumatic injury causally related to the accepted November 14, 2018 employment incident, she has not met her burden of proof to establish an employment-related traumatic injury.

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 vests OWCP with discretionary authority to determine whether to review an award for or against compensation. The Secretary of Labor may review an award for or against compensation at any time on his own motion or on application.[15]

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or an argument which: (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.[16]

[12] *See I.M.*, Docket No. 19-1038 (issued January 23, 2020); *Thomas L. Agee*, 56 ECAB 465, 468 (2005).

[13] 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t).

[14] Section 8101(2) of FECA provides that physician "includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law." 5 U.S.C. § 8101(2). *See also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA); *K.W.*, 59 ECAB 271, 279 (2007).

[15] 5 U.S.C. § 8128(a); *see M.S.*, Docket No. 19-1001 (issued December 9, 2019); *L.D.*, Docket No. 18-1468 (issued February 11, 2019); *see also V.P.*, Docket No. 17-1287 (issued October 10, 2017); *W.C.*, 59 ECAB 372 (2008).

[16] 20 C.F.R. § 10.606(b)(3); *see also E.W.*, Docket No. 19-1393 (issued January 29, 2020); *L.D., id.*; *B.W.*, Docket No. 18-1259 (issued January 25, 2019).

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.[17] If it chooses to grant reconsideration, it reopens and reviews the case on its merits.[18] 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.[19]

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

The Board finds that appellant has not alleged or demonstrated that OWCP erroneously applied or interpreted a specific point of law. Moreover, appellant has not advanced a relevant legal argument not previously considered. Consequently, she is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under 20 C.F.R. § 10.606(b)(3).[20]

The Board further finds that appellant has not provided relevant and pertinent new evidence in support of her request for reconsideration. The underlying issue in this case is the medical question of whether appellant sustained a frostbite injury causally related to her accepted November 14, 2018 employment incident. That is a medical issue which must be addressed by relevant medical evidence not previously considered. On reconsideration appellant submitted medical reports from Dr. Schram dated February 12, 27, and 28, 2019 diagnosing frostbite and noting her symptoms of pain and numbness that began in November 2018. While these reports are new, they are not relevant as they are substantially similar to Dr. Schram's prior reports already of record and previously reviewed. Providing additional evidence that either duplicates or is substantially similar to evidence already in the case record does not constitute a basis for reopening a case.[21] Additionally, while Dr. Schram noted that appellant's pain began in November 2018, he still failed to address how appellant sustained a frostbite injury causally related to her accepted November 14, 2018 employment incident. She also submitted her response to the development letter, received on June 6, 2019, in which she restated her symptoms, noted that she had no previous symptoms prior to her claimed injury, and explained how her injury had occurred. However, the response to the development letter does not contain a physician's opinion as to the issue of causal relationship and is therefore not relevant evidence. The Board has held that the submission of

[17] *Id*. at § 10.607(a). The one-year period begins on the next day after the date of the original contested decision. 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.

[18] *Id*. at § 10.608(a); *see also Y.H.*, Docket No. 18-1618 (issued January 21, 2020); *R.W.*, Docket No. 18-1324 (issued January 21, 2020); *M.S.*, 59 ECAB 231 (2007).

[19] *Id*. at § 10.608(b); *D.C.*, Docket No. 19-0873 (issued January 27, 2020); *M.S.*, Docket No. 19-0291 (issued June 21, 2019).

[20] *M.O.*, Docket No. 19-1677 (issued February 25, 2020); *C.B.*, Docket No. 18-1108 (issued January 22, 2019).

[21] *See V.Q.*, Docket No. 19-1309 (issued January 3, 2020).

evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.[22]

As appellant did not provide relevant and pertinent new evidence, she is not entitled to a merit review based on the third requirement under 20 C.F.R. § 10.606(b)(3).[23]

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.[24]

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a traumatic injury causally related to the accepted November 14, 2018 employment incident. 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 August 30 and April 30, 2019 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: April 21, 2020
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

[22] *M.K.*, Docket No. 18-1623 (issued April 10, 2019); *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

[23] 20 C.F.R. § 10.606(b)(3)(iii); *T.W.*, Docket No. 18-0821 (issued January 13, 2020).

[24] *D.G.*, Docket No. 19-1348 (issued December 2, 2019).