

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

V.L., Appellant)	
)	
and)	
)	Docket No. 19-0069
DEPARTMENT OF COMMERCE, U.S.)	Issued: February 10, 2020
CENSUS BUREAU, LOS ANGELES)	
REGIONAL OFFICE, Los Angeles, CA,)	
Employer)	
)	

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
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On October 11, 2018 appellant filed a timely appeal from an April 27, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP)¹ and a May 15, 2018 nonmerit

¹ Appellant timely requested oral argument pursuant to section 501.5(b) of the Board's *Rules of Procedure*. 20 C.F.R. § 501.5(b). By order dated December 11, 2019, the Board exercised its discretion and denied the request, finding that the arguments on appeal could adequately be addressed in a decision based on the case record. *Order Denying Request for Oral Argument*, Docket No. 19-0069 (issued December 11, 2019).

decision.² Pursuant to the Federal Employees' Compensation Act³ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.

ISSUES

The issues are: (1) whether appellant has met her burden of proof to establish a head injury with consequential migraine headaches causally related to the accepted April 19, 2017 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 May 1, 2017 appellant, then a 72-year-old field representative in temporary status,⁴ filed a traumatic injury claim (Form CA-1) alleging that on April 19, 2017, when entering an interviewee's home while in the performance of duty, she tripped over a metal gate track and fell forward, sustaining injuries to her face, right cornea, right knee, right elbow, right hand, and left fifth finger. She stopped work on April 20, 2017 and did not return.

In support of her claim, appellant submitted an April 20, 2017 report by Dr. Steven Lampinen, a Board-certified family practitioner. Dr. Lampinen noted a history of the April 19, 2017 trip and fall in which appellant sustained scratches to her right elbow, knee, and eye. He related her complaints of photophobia without headache. On examination Dr. Lampinen found no trauma to the head and no abnormality of the cranial nerves. He diagnosed right eye and right hip pain, a right corneal abrasion, and right periorbital edema.⁵ Dr. Lampinen noted in a May 27, 2017 follow-up report that appellant continued to experience photophobia without headaches or migraines. He diagnosed chronic inflammatory demyelinating polyneuritis (CIDP), essential hypertension, and migraine.

Dr. Mouchir Harb, a Board-certified neurologist, noted in August 18, 2017 reports that appellant had a history of migraine headaches from childhood through menopause, and the onset of Guillain-Barre syndrome in 2008 with the most recent exacerbation in March 2016 and intravenous immunoglobulin (IVIG) infusions through September 2016. He also noted that she had fallen to the ground in April 2017 and sustained a probable small zygomatic fracture with subsequent chronic headache and photophobia. On examination Dr. Harb found no abnormalities

² The Board notes that, following the May 15, 2018 decision, OWCP received additional evidence. Appellant also 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.*

³ 5 U.S.C. § 8101 *et seq.*

⁴ Appellant was a temporary employee hired on December 27, 2016. The position terminated no later than September 30, 2017.

⁵ An April 22, 2017 computerized tomography (CT) scan of the temporal bones demonstrated bilateral exophthalmos and proptosis without periorbital fluid collection or significant edema.

of the cranial nerves.⁶ He diagnosed migraine headaches without aura, analgesic overuse headache, post-traumatic headache, and CIDP versus Guillain-Barre syndrome. Dr. Harb held appellant off from work through September 19, 2017.

In a September 19, 2017 development letter, OWCP notified appellant of the deficiencies in her claim. It advised her of the type of factual and medical evidence needed and provided a questionnaire for her completion. OWCP afforded appellant 30 days to respond.

In response, appellant provided a report of a September 9, 2017 magnetic resonance imaging (MRI) scan of her brain which demonstrated minimal chronic microvascular ischemic white matter changes, a small left mastoid effusion, and trace right mastoid effusion. She also submitted claims for wage-loss compensation from September 17 to October 14, 2017, and employing establishment correspondence regarding her pay rate.

By decision dated October 24, 2017, OWCP accepted that the April 19, 2017 employment incident occurred as alleged, but denied appellant's claim as causal relationship was not established. It concluded, therefore, that the requirements to establish an employment-related injury and/or a medical condition had not been met.

In a letter postmarked November 27, 2017, appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. By decision dated December 18, 2017, a hearing representative denied appellant's request for an oral hearing, finding that it was untimely filed as it was not postmarked within 30 days of the issuance of the October 24, 2017 decision. After exercising her discretion, the hearing representative further found that the issue in the case could equally well be addressed through the reconsideration process.

On January 4, 2018 appellant requested reconsideration. In a statement dated March 12, 2018, she contended that the April 19, 2017 employment incident had caused daily headaches and frequent, debilitating migraines. Appellant provided a December 18, 2017 report from Dr. Harb, who opined that her headaches were caused by the April 19, 2017 fall at work because she was asymptomatic before the incident. Dr. Harb explained that, although appellant had a history of migraine headaches, they had "subsided for years and the fall was responsible for the recurrence of her headache again."

By decision dated April 27, 2018, OWCP denied modification of the October 24, 2017 decision as the additional evidence submitted was insufficient to establish causal relationship.

On May 11, 2018 appellant requested reconsideration. She asserted that Dr. Harb's December 18, 2017 report was sufficiently rationalized to meet her burden of proof. Appellant enclosed a duplicate copy of Dr. Harb's December 18, 2017 report.

By decision dated May 15, 2018, OWCP denied reconsideration of the merits of appellant's claim. It found that she had not met the requirements of 5 U.S.C. § 8128(a) sufficient to warrant merit review as the evidence submitted was duplicative of evidence previously of record.

⁶ An April 22, 2017 CT scan of appellant's head showed no acute intracranial abnormality.

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,⁷ 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.⁸ 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.⁹ To determine whether a federal employee has sustained a traumatic injury in the performance of duty it must first be determined whether fact of injury has been established.¹⁰ 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.¹¹ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.¹²

Causal relationship is a medical issue, and rationalized medical opinion evidence is generally required to establish causal relationship.¹³ 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 a diagnosed condition and the specific employment incident identified by the claimant.¹⁴

In any case where a preexisting condition involving the same part of the body is present and the issue of causal relationship therefore involves aggravation, acceleration, or precipitation,

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

⁸ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁹ *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).

¹⁰ *R.B.*, Docket No. 17-2014 (issued February 14, 2019); *B.F.*, Docket No. 09-0060 (issued March 17, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

¹¹ *S.F.*, Docket No. 18-0296 (issued July 26, 2018); *D.B.*, 58 ECAB 464 (2007); *David Apgar*, 57 ECAB 137 (2005).

¹² *J.B.*, Docket No. 19-1101 (issued November 20, 2019); *A.D.*, Docket No. 17-1855 (issued February 26, 2018); *C.B.*, Docket No. 08-1583 (issued December 9, 2008); *D.G.*, 59 ECAB 734 (2008).

¹³ *J.B.*, *id.*; *L.D.*, Docket No. 17-1581 (issued January 23, 2018); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

¹⁴ *See B.J.*, Docket No. 18-1276 (issued February 4, 2019); *Victor J. Woodhams*, 41 ECAB 345 (1989).

the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.¹⁵

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met her burden of proof to establish a head injury with consequential migraine headaches causally related to the accepted April 19, 2017 employment incident.

In his April 20 and May 27, 2017 medical reports, Dr. Lampinen diagnosed a right corneal abrasion, right periorbital edema, CIDP, essential hypertension, and migraine headache following the accepted April 19, 2017 employment incident. However, he did not provide medical rationale supporting that the trip and fall had caused or contributed to the diagnosed conditions. 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.¹⁶ These reports, therefore, are insufficient to establish appellant's claim.

In an August 18, 2017 report, Dr. Harb diagnosed migraine headaches, analgesic overuse headache, post-traumatic headache, and CIDP. In his December 18, 2017 report, he opined that the accepted April 19, 2017 employment incident caused appellant's headaches as her preexisting migraine condition had been quiescent before the trip and fall. However, the Board has held that 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.¹⁷ Although Dr. Harb posited that appellant may have sustained a small zygomatic fracture competent to cause headaches, he did not identify objective findings or imaging studies to confirm this diagnosis.

OWCP also received several imaging study reports of the head and brain. The Board has held that reports of diagnostic tests lack probative value as they do not provide an opinion on causal relationship between his employment incident and a diagnosed condition.¹⁸ The pay rate correspondence and claims for wage loss are irrelevant to the claim.¹⁹

¹⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013); *K.G.*, Docket No. 18-1598 (issued January 7, 2020); *M.S.*, Docket No. 19-0913 (issued November 25, 2019).

¹⁶ *J.B.*, *supra* note 12; *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹⁷ *J.B.*, *id.*; *see J.L.*, Docket No. 18-1804 (issued April 12, 2019).

¹⁸ *See C.F.*, Docket No. 18-1156 (issued January 22, 2019); *M.M.*, Docket No. 19-0061 (issued November 21, 2019).

¹⁹ *C.S.*, Docket No. 19-0999 (issued October 10, 2019).

As appellant has not submitted rationalized medical evidence sufficient to establish an injury causally related to the accepted employment incident, the Board finds that she has not met her burden of proof.

On appeal appellant contends that the April 19, 2017 employment incident caused chronic migraine headaches that continue to disable her from work. As explained above, she did not submit sufficient medical evidence explaining how and why the April 19, 2017 trip and fall at work would cause the diagnosed conditions.

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.²⁰

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or an argument that: (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.²¹

A request for reconsideration must also be received by OWCP within one year of the date of OWCP's decision for which review is sought.²² If OWCP chooses to grant reconsideration, it reopens and reviews the case on its merits.²³ 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.²⁴

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 has not established that OWCP erroneously applied or interpreted a specific point of law or advanced a new and relevant legal argument not previously considered. Thus, she

²⁰ 5 U.S.C. § 8128(a); *see also D.L.*, Docket No. 09-1549 (issued February 23, 2010); *W.C.*, 59 ECAB 372 (2008).

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

²² 20 C.F.R. § 10.607(a).

²³ *Id.* at § 10.608(a); *see also M.S.*, 59 ECAB 231 (2007).

²⁴ *Id.* at § 10.608(b); *L.C.*, Docket No. 18-0787 (issued September 26, 2019); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

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).

With her May 11, 2018 request for reconsideration, appellant provided a duplicate copy of Dr. Harb's December 18, 2017 report, which was of record as of December 28, 2017 and reviewed by OWCP in its April 27, 2018 decision. Evidence which repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.²⁵ Appellant has not submitted relevant and pertinent new evidence regarding causal relationship.²⁶ Thus, she is not entitled to a review of the merits of her claim based on the third requirement under 20 C.F.R. § 10.606(b)(3).²⁷

Accordingly, 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.²⁸

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a head injury with consequential migraine headaches causally related to the accepted April 19, 2017 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).

²⁵ A.K., Docket No. 19-1210 (issued November 20, 2019); R.S., Docket No. 19-0312 (issued June 18, 2019); *Richard Yadron*, 57 ECAB 207 (2005).

²⁶ A.K., *id.*, P.C., Docket No. 18-1703 (issued March 22, 2019).

²⁷ *Id.*

²⁸ A.K., *supra* note 25; A.F., Docket No. 18-1154 (issued January 17, 2019); *see* A.R., Docket No. 16-1416 (issued April 10, 2017); A.M., Docket No. 16-0499 (issued June 28, 2016); A.K., Docket No. 09-2032 (issued August 3, 2010); M.E., 58 ECAB 694 (2007); *Susan A. Filkins*, 57 ECAB 630 (2006) (when a request for reconsideration does not meet at least one of the three requirements enumerated under 20 C.F.R. § 10.606(b), OWCP will deny the request for reconsideration without reopening the case for a review on the merits).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated May 15 and April 27, 2018 are affirmed.

Issued: February 10, 2020
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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