



## **ISSUES**

The issues are: (1) whether appellant has met her burden of proof to establish a diagnosed medical condition causally related to the accepted February 11, 2019 employment incident; and (2) whether OWCP properly denied her request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

## **FACTUAL HISTORY**

On February 11, 2019 appellant, then a 44-year-old social worker, filed a traumatic injury claim (Form CA-1) alleging that on that date she injured her left shoulder, wrist, ankle, and arm when she slipped and fell on spilled coffee while in the performance of duty. She stopped work that day.

A February 11, 2019 emergency room treatment note from a nurse practitioner, noted the history of injury as a trip and fall at work. The nurse noted diagnoses of left shoulder, left wrist, right knee, and left ankle sprains.

X-rays of appellant's left ankle obtained on February 11, 2019 revealed degenerative changes and some diffuse swelling of the soft tissue. X-rays of the right knee showed mild degenerative changes and x-rays of the left wrist and left shoulder were unremarkable.

In an unsigned note dated February 13, 2019, Dr. Cassandra Patterson, a Board-certified internist, indicated that appellant had been seen in her clinic and requested that she be excused from work from February 11 to 17, 2019. On February 15, 2019 she requested that appellant be excused from work from February 15 to 24, 2019.

In a development letter dated March 8, 2019, OWCP informed appellant that the evidence submitted was insufficient to establish 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 submit the requested information. No additional evidence was received.

By decision dated April 10, 2019, OWCP denied appellant's traumatic injury claim finding that she had not submitted medical evidence containing a diagnosis in connection with the accepted February 11, 2019 employment incident, and thus had not met the requirements to establish an injury as defined by FECA.

On April 17, 2019 appellant requested reconsideration. She maintained that she had only received OWCP's denial of her claim and no other communication.

Along with her reconsideration request, appellant resubmitted the February 11, 2019 note from the nurse practitioner and the February 13 and 15, 2019 notes from Dr. Patterson.

Also received was a February 22, 2019 note by Dr. Patterson who evaluated appellant for left shoulder pain. Dr. Patterson advised that appellant should be excused from work from February 15 to March 10, 2019. In an unsigned note dated March 7, 2019, she excused appellant from work from March 7 through 12, 2019.

In an after-visit summary dated March 12, 2019, Dr. Kevin K. Nahigian, a Board-certified orthopedist, noted diagnoses of chronic left shoulder pain, subacromial impingement of the left

shoulder, and chronic frozen shoulder for which he administered an injection and prescribed medication. He advised that appellant should remain off work until March 28, 2019.

By decision dated April 22, 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<sup>4</sup> 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,<sup>5</sup> 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.<sup>6</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>7</sup>

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.<sup>8</sup> Generally, fact of injury consists of two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred.<sup>9</sup> The second component is whether employment incident caused a personal injury.<sup>10</sup> An employee may establish that an injury occurred in the performance of duty as alleged, but fail to establish that the disability or specific condition for which compensation is being claimed is causally related to the injury.<sup>11</sup>

Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical opinion evidence. 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 incident.<sup>12</sup>

---

<sup>4</sup> *Id.*

<sup>5</sup> *J.W.*, Docket No. 18-0678 (issued March 3, 2020); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>6</sup> *J.S.*, Docket No.18-0657 (issued February 26, 2020); *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>7</sup> *R.R.*, Docket No.18-0914 (issued February 24, 2020); *Delores C. Ellyett*, 41 ECAB 992 (1990).

<sup>8</sup> *S.S.*, Docket No. 18-1488 (issued March 11, 2019); *T.H.*, 59 ECAB 388 (2008).

<sup>9</sup> *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

<sup>10</sup> *Id.*

<sup>11</sup> *D.V.*, Docket No. 19-1642 (issued June 4, 2020); *Shirley A. Temple*, 48 ECAB 404 (1997).

<sup>12</sup> *See S.S.*, *supra* note 8; *H.B.*, Docket No. 18-0781 (issued September 5, 2018).

## ANALYSIS -- ISSUE 1

The Board finds that appellant has not met her burden of proof to establish a diagnosed medical condition causally related to the accepted February 11, 2019 employment incident.

In reports dated February 13 and 15, 2019, Dr. Patterson noted treatment of appellant and indicated that she was disabled from February 15 to 24, 2019. However, she provided no opinion regarding whether appellant sustained an injury causally related to her accepted employment incident. Medical evidence that does not offer an opinion regarding the cause of an employee's condition or disability is of no probative value on the issue of causal relationship.<sup>13</sup> Therefore, these reports are insufficient to establish appellant's claim.

Appellant submitted emergency room notes and a work excuse note dated February 11, 2019 from a nurse practitioner. While the nurse practitioner did provide diagnoses of left shoulder, left wrist, right knee, and left ankle sprains, the Board has held that medical reports signed solely by a nurse practitioner are of no probative value as such healthcare providers are not considered "physician[s]" as defined under FECA.<sup>14</sup> Consequently, this evidence is insufficient to establish appellant's claim.<sup>15</sup>

Appellant also submitted several diagnostic studies of the knee, ankle, shoulder, and wrists. The Board has explained, however, that diagnostic studies, standing alone, lack probative value as they do not address whether the employment incident caused any of the diagnosed conditions.<sup>16</sup>

As the medical evidence of record was insufficient to establish a medical condition in relation to the accepted February 11, 2019 employment incident, the Board finds that she has not met her burden of proof to establish her claim.<sup>17</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.

---

<sup>13</sup> See *A.S.*, Docket No. 19-0915 (issued November 22, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

<sup>14</sup> 5 U.S.C. § 8102(2) of FECA provides that the term 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 *S.L.*, Docket No. 19-0607 (issued January 28, 2020); *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); *M.C.*, Docket No 19-1074 (issued June 12, 2020) (nurse practitioners are not considered physicians under FECA).

<sup>15</sup> *M.F.*, Docket No. 19-1573 (issued March 16, 2020); *N.B.*, Docket No. 19-0221 (issued July 15, 2019).

<sup>16</sup> *T.S.*, Docket No. 18-0150 (issued April 12, 2019).

<sup>17</sup> *H.A.*, Docket No. 18-1253 (issued April 23, 2020).

## 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 payment of compensation at any time on his own motion or on application.<sup>18</sup>

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.<sup>19</sup>

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.<sup>20</sup> If OWCP chooses to grant reconsideration, it reopens and reviews the case on its merits.<sup>21</sup> 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.<sup>22</sup>

## ANALYSIS -- ISSUE 2

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

In her April 17, 2019 request for reconsideration, appellant contended that she had not received any correspondence from OWCP other than its decision denying her claim. However, the March 8, 2019 development letter from OWCP was properly addressed to her. Absent evidence to the contrary, a letter properly addressed and mailed in the ordinary course of business is presumed to have been received. This is known as the mailbox rule.<sup>23</sup> Appellant has not submitted evidence of non-delivery of OWCP's development letter such that the presumption would be rebutted.<sup>24</sup> The Board therefore finds that on reconsideration, appellant did not show that OWCP erroneously applied or interpreted a specific point of law, nor did she advance a new and relevant legal argument not previously considered. Accordingly, she is not entitled to a review of the merits of her claim based on the first or second above-noted requirements under 20 C.F.R. § 10.606(b)(3).

---

<sup>18</sup> 5 U.S.C. § 8128(a).

<sup>19</sup> 20 C.F.R. § 10.606(b)(3); *see also* *B.W.*, Docket No. 18-1259 (issued January 25, 2019).

<sup>20</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>21</sup> *Id.* at § 10.608(a); *see also* *A.P.*, Docket No 19-0224 (issued July 11, 2019).

<sup>22</sup> *Id.* at § 10.608(b); *A.G.*, Docket No 19-0113 (issued July 12, 2019).

<sup>23</sup> *See* *C.Y.*, Docket No. 18-0263 (issued September 14, 2018).

<sup>24</sup> *See* *D.R.*, Docket No. 19-1899 (issued April 15, 2020).

However, with respect to the third above-noted requirement under 20 C.F.R. § 10.606(b)(3), appellant submitted an after-visit summary dated March 12, 2019 from Dr. Nahigian. In this report Dr. Nahigian noted diagnoses of chronic left shoulder pain, subacromial impingement of the left shoulder, and chronic frozen shoulder for which he administered an injection and prescribed medication. He advised that appellant should remain off work until March 28, 2019. OWCP denied her claim as the medical evidence did not provide a diagnosis of a medical condition in connection with the accepted employment injury. This report from Dr. Nahigian does in fact provide medical evidence of a diagnosis.

The Board, thus, finds that OWCP improperly denied appellant's request for reconsideration of the merits, as the evidence she submitted in support of her reconsideration request is relevant and pertinent new evidence not previously considered.<sup>25</sup>

As appellant has submitted relevant and pertinent new evidence not previously considered by OWCP, she is entitled to a review of the merits of her claim pursuant to 20 C.F.R. § 10.606(b)(3) of OWCP's regulations.<sup>26</sup> Following such further development as may be deemed necessary, OWCP shall issue an appropriate merit decision on her claim for disability compensation.

### **CONCLUSION**

The Board finds that appellant has not met her burden of proof to establish a medical condition causally related to the accepted February 11, 2019 employment incident. The Board further finds that OWCP improperly denied her request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

---

<sup>25</sup> 20 C.F.R. § 10.606(b)(3); *P.M.*, Docket No. 19-1253 (issued January 23, 2020).

<sup>26</sup> *T.P.*, Docket No. 18-0608 (issued August 2, 2018). *See L.K.*, Docket No. 15-0659 (issued September 15, 2016).

**RDER**

**IT IS HEREBY ORDERED THAT** the April 10, 2019 decision is affirmed. **IT IS FURTHER ORDERED THAT** the April 22, 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: July 17, 2020  
Washington, DC

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

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

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