

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

K.N., Appellant)	
)	
and)	Docket No. 18-1540
)	Issued: January 7, 2020
U.S. POSTAL SERVICE, POST OFFICE,)	
Newton, MS, Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On July 17, 2018 appellant filed a timely appeal from a May 9, 2018 merit decision and a June 21, 2018 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 the case.

ISSUES

The issues are: (1) whether appellant has met her burden of proof to establish an injury causally related to the accepted November 14, 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).

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On March 26, 2018 appellant, then a 54-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on November 14, 2017 she injured her upper back and shoulder as a result of a motor vehicle accident (MVA) while in the performance of duty. She indicated that she was hit from behind and sustained a whiplash-type injury. On the reverse side of the claim form, the employing establishment indicated that appellant stopped work on November 14, 2017, and received medical treatment that same day. It also noted that she returned to full-duty work on November 20, 2017.²

In an April 2, 2018 development letter, OWCP informed appellant that the evidence of record was insufficient to establish her traumatic injury claim. It notified her of the deficiencies of her claim and advised her of the type of factual and medical evidence needed. OWCP afforded appellant 30 days to submit the necessary evidence.

OWCP subsequently received a November 15, 2017 employing establishment accident report regarding the November 14, 2017 MVA. The report noted that appellant was operating a long-life vehicle (LLV) and attempting to make a left turn when another motorist rear-ended her LLV. The accident report further noted that appellant sustained injury and sought medical attention.

By decision dated May 9, 2018, OWCP denied appellant's traumatic injury claim. It found that, while appellant had established that the employment incident occurred as alleged, the evidence of record was insufficient to establish a medical diagnosis in connection with the accepted incident. Consequently, OWCP found that appellant had not established the medical component of fact of injury.

On June 18, 2018 appellant requested reconsideration.

By decision dated June 21, 2018, 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, 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 of FECA,⁴ 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

² On March 28, 2018 the employing establishment authorized medical treatment (Form CA-16) for appellant's upper back and shoulder. The authorization form noted that she was involved in an MVA, but the employing establishment incorrectly identified March 23, 2018 as the date of injury, rather than November 14, 2017.

³ *Id.*

⁴ *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *Joe D. Cameron*, 41 ECAB 153 (1989).

the employment injury.⁵ 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.⁶

To determine if an employee sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established.⁷ 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.⁸ The second component is whether the employment incident caused a personal injury.⁹ 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.¹⁰

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.¹¹ A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background.¹² 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).¹³

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met her burden of proof to establish an injury causally related to the accepted November 14, 2017 employment incident.

Appellant did not submit any medical evidence in support of her claim. On April 2, 2018 OWCP informed her of the need to submit medical evidence and afforded her 30 days to provide the evidence. Appellant did not respond. Both the Form CA-1 and the employing establishment accident report indicated that appellant sought medical treatment following her November 14,

⁵ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ *R.R.*, Docket No. 19-0048 (issued April 25, 2019); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁷ *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *T.H.*, 59 ECAB 388, 393-94 (2008).

⁸ *L.T.*, Docket No. 18-1603 (issued February 21, 2019); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁹ *B.M.*, Docket No. 17-0796 (issued July 5, 2018); *John J. Carlone*, 41 ECAB 354 (1989).

¹⁰ *J.P.*, *supra* note 4; *L.T.*, *supra* note 8; *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

¹¹ *E.M.*, *supra* note 7; *Robert G. Morris*, 48 ECAB 238 (1996).

¹² *M.V.*, Docket No. 18-0884 (issued December 28, 2018).

¹³ *Id.*; *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

2017 MVA. However, no such evidence has been submitted to substantiate appellant's claimed upper back and shoulder injury.

As noted, fact of injury consists of two components, one of which appellant has already established. OWCP accepted that the November 14, 2017 employment incident occurred as alleged, but that alone will not suffice. Appellant must also establish that the employment incident caused a personal injury.¹⁴ The evidence submitted does not contain medical evidence. Accordingly, the Board finds that appellant has not established an injury causally related to the accepted November 14, 2017 employment incident.

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 10.607.¹⁵

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.¹⁶

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.¹⁷

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.¹⁸ If it chooses to grant reconsideration, OWCP

¹⁴ See *supra* note 9.

¹⁵ The Board notes that the employing establishment issued a Form CA-16. If properly executed, a Form CA-16 authorizing examination and/or treatment may constitute a contract for payment of medical expenses to a medical facility or physician. The form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination and/or treatment regardless of the action taken on the claim. See 20 C.F.R. § 10.300(c); *W.L.*, Docket No. 19-0774 (issued November 26, 2019).

¹⁶ 5 U.S.C. § 8128(a); see *L.D.*, Docket No. 18-1468 (issued February 11, 2019); see also *V.P.*, Docket No. 17-1287 (issued October 10, 2017); *D.L.*, Docket No. 09-1549 (issued February 23, 2010); *W.C.*, 59 ECAB 372 (2008).

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

¹⁸ *Id.* at § 10.607(a). The one-year period begins on the next day after the date of the original contested decision. 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.

reopens and reviews the case on its merits.¹⁹ 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.²⁰

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).

On June 18, 2018 appellant requested reconsideration of OWCP's May 9, 2018 merit decision. Although the request for reconsideration was timely, she neither alleged nor demonstrated that OWCP erroneously applied or interpreted a specific point of law. Additionally, appellant did not advance a relevant legal argument not previously considered by OWCP. Accordingly, the Board finds that she is not entitled to a review of the merits based on the first and second requirements under 20 C.F.R. § 10.606(b)(3).²¹

Appellant also failed to submit "relevant and pertinent new evidence" with her June 18, 2018 request for reconsideration. The issue on reconsideration was whether appellant established a diagnosis in connection with the accepted employment incident. This is a medical question that requires rationalized medical opinion evidence to resolve the issue.²² Appellant did not submit any additional evidence with her request for reconsideration. Because she did not provide any "relevant and pertinent new evidence," she is not entitled to a review of the merits 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.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish an injury causally related to the accepted November 14, 2017 employment incident. The Board further finds that OWCP properly denied her request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

¹⁹ *Id.* at § 10.608(a); *see also M.S.*, 59 ECAB 231 (2007).

²⁰ *Id.* at § 10.608(b); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

²¹ 20 C.F.R. § 10.606(b)(3)(i) and (ii).

²² *E.T.*, Docket No. 14-1087 (issued September 5, 2014).

²³ 20 C.F.R. § 10.606(b)(3)(iii).

ORDER

IT IS HEREBY ORDERED THAT the June 21 and May 9, 2018 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: January 7, 2020
Washington, DC

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

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

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