

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

D.C., Appellant)	
)	
and)	Docket No. 19-0354
)	Issued: May 27, 2020
U.S. POSTAL SERVICE, LA CENTER POST)	
OFFICE, La Center, WA, 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
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On December 4, 2018 appellant filed a timely appeal from an October 5, 2018 merit decision and a November 16, 2018 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ 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 left shoulder condition causally related to the accepted factors of her federal employment; 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 June 28, 2018 appellant, then a 58-year-old rural carrier associate, filed an occupational disease claim (Form CA-2) alleging that she developed a full rotator cuff tear of her left shoulder due to factors of her federal employment, including falling at work on December 19, 2017, as well as engaging in repetitive motion, consisting of lifting, required by her job duties. She noted that she first became aware of her condition on December 20, 2017 and realized its relation to her federal employment on June 26, 2018. Appellant stopped work on June 27, 2018.

Appellant submitted a June 27, 2018 statement in which she indicated that, on December 19, 2017, she fell on slippery steps at work and landed on her left side with her left shoulder, hand, and knee bearing the brunt of the fall. She advised that she continued to work thereafter as a rural carrier associate and noticed that she experienced increased difficulty with her left shoulder over time.² In a separate June 27, 2018 statement, appellant indicated that her federal employment duties included pushing carts, lifting/handling mail trays weighing up to 20 pounds, casing/sorting mail, loading and cleaning her mail truck, and delivering mail (including packages and parcels). She submitted a job description for her rural carrier associate position.

Appellant also submitted a June 27, 2018 report from Dr. Nina Upham, Board-certified in family and sports medicine, who noted that appellant had been treated on June 13, 2018 and had a magnetic resonance imaging (MRI) scan of her left shoulder performed on June 26, 2018. Dr. Upham recommended work restrictions of no lifting, pushing, or pulling more than 10 pounds, and no engaging in overhead activities with her left arm until she was released for work by an orthopedic surgeon.

In a development letter dated July 20, 2018, OWCP informed appellant that it had not received a medical report containing a diagnosis of a medical condition resulting from her claimed employment factors. It requested that she submit additional factual and medical evidence, including a physician's opinion supported by a medical explanation as to how her federal employment activities caused, contributed to, or aggravated her medical condition. OWCP afforded appellant 30 days to submit the requested evidence.³

Appellant subsequently submitted a May 1, 2018 x-ray of her left shoulder which contained an impression of suspected small faintly calcified intra-articular loose bodies.

In a report dated August 6, 2018, Dr. Casey Cornelius, an osteopath Board-certified in orthopedic surgery, provided a history of appellant's left shoulder problems. He noted that she related that her symptoms had begun approximately eight months prior when she fell at work, landing on her left shoulder. Appellant further related experiencing pain along the lateral aspect of her left shoulder. Dr. Cornelius also provided a separate history of her left shoulder problems

² Appellant noted that, during this period, she also worked on a part-time basis delivering parcels for a private employer.

³ On July 20, 2018 OWCP requested that the employing establishment provide comments regarding the accuracy of appellant's statements within 30 days.

which he represented as having been taken from a June 13, 2018 report of Dr. Upham.⁴ He noted that Dr. Upham had indicated in her June 13, 2018 report that appellant had arthroscopic surgery on September 22, 2016 to repair a right rotator cuff tear, and that she reported experiencing aching left shoulder pain because she compensated with her left arm during the period of recovery from her right shoulder surgery. Dr. Cornelius also indicated that Dr. Upham noted that appellant reported that she recently commenced working at the employing establishment in a job which involved repetitive overhead lifting and carrying heavy mail trays, and that her left shoulder pain had worsened.⁵ Dr. Cornelius then reported the findings of his own physical examination of appellant's left shoulder on August 6, 2018, noting that appellant exhibited tenderness to palpation lateral to the acromion, and positive results upon testing for Neer, Hawkins, and empty can signs. Appellant also had positive O'Brien's and Speed's tests. Dr. Cornelius reviewed the June 26, 2018 MRI scan of appellant's left shoulder and diagnosed rotator cuff tear of the left shoulder.

In an August 3, 2018 letter, appellant's immediate supervisor indicated that on December 19, 2017 appellant informed her that she had fallen on that date, and that in June 2018 she advised that she could not work due to effects of the December 19, 2017 fall.

By decision dated October 5, 2018, OWCP accepted the employment factors as alleged. However, it denied appellant's occupational disease claim because the medical evidence of record failed to establish a left shoulder condition causally related to the accepted factors of her federal employment. OWCP noted that "requirements have not been met for establishing that you sustained an injury and/or medical condition causally related to the accepted work event(s)."

On October 29, 2018 appellant requested reconsideration of the October 5, 2018 decision. In an October 29, 2018 statement, she noted that Dr. Upham's June 13, 2018 report "was an opinion discussed with her before the MRI [scan]" and that, subsequent to the MRI scan, she knew her left shoulder problems initially occurred when she fell at work on December 19, 2017. Appellant indicated that subsequent to this fall, her repetitive work duties, including loading trucks, making deliveries, and reaching, had worsened her original left shoulder injury. She indicated that she was attaching a November 2, 2016 report from Joseph Mathias, a physician assistant, who noted that her right shoulder had healed after surgery. Appellant contended that she had no further problems with either shoulder until the December 19, 2017 fall. She advised that she experienced left shoulder pain after the fall, but noted that her repetitive work activities worsened this pain and she then became convinced that she had to file a Form CA-2.

With her reconsideration request, appellant submitted a November 2, 2016 report from Mr. Mathias who detailed his examination of appellant's right shoulder and discussed a treatment plan.

By decision dated November 16, 2018, OWCP denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

⁴ The case record does not contain a copy of a June 13, 2018 report of Dr. Upham.

⁵ Dr. Cornelius also noted that Dr. Upham reported administering a corticosteroid injection to appellant's left subacromial bursa.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA⁶ 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,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 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 compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the identified employment factors.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 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 a left shoulder condition causally related to the accepted factors of her federal employment.

⁶ *Supra* note 1.

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 *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

¹¹ *T.H.*, 59 ECAB 388, 393 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

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

¹³ *Id.*; *Victor J. Woodhams*, *supra* note 10.

Appellant submitted a June 27, 2018 report from Dr. Upham who recommended temporary work restrictions, but did not provide an opinion on the cause of a diagnosed medical condition. The Board has held that medical evidence offering no opinion about the cause of an employee's medical condition is of no probative value on the issue of causal relationship.¹⁴ Therefore, the June 27, 2018 report from Dr. Upham is of no probative on causal relationship and is insufficient to establish appellant's occupational disease claim. Similarly, standing alone, the diagnostic report dated May 1, 2018 lacks probative value as it did not provide an opinion on causal relationship between appellant's accepted employment duties and a diagnosed medical condition.¹⁵

In his August 6, 2018 report, Dr. Cornelius detailed the findings of his own physical examination and diagnosed rotator cuff tear of the left shoulder. The Board finds that this report also is of no probative value in establishing the present occupational disease claim because, although Dr. Cornelius mentioned that appellant related her left shoulder problems to both a December 19, 2017 fall at work and her repetitive job duties as a rural carrier associate, he did not provide his own opinion that it was caused or aggravated by the accepted employment factors.¹⁶ As such, Dr. Cornelius' August 6, 2018 report is insufficient to establish appellant's occupational disease claim.

As appellant has not submitted rationalized medical evidence establishing causal relationship between a diagnosed medical condition and the accepted factors of her federal employment, she has not met her burden of proof.

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 or her own motion or on application.¹⁷

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

¹⁴ See *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹⁵ See *S.G.*, Docket No. 17-1054 (issued September 14, 2017).

¹⁶ See *supra* note 14.

¹⁷ 5 U.S.C. § 8128(a); see *L.D.*, Docket No. 18-1468 (issued February 11, 2019); *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).

OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.¹⁸

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.¹⁹ If it chooses to grant reconsideration, it reopens and reviews the case on its merits.²⁰ 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.²¹ The Board has held that the submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.²²

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 made a timely request for reconsideration of OWCP's October 5, 2018 denial of her occupational disease claim and submitted a statement in which she discussed the history of her left shoulder symptoms and her belief that her left shoulder problems were due to both a December 19, 2017 fall at work and her repetitive job duties. However, she did not show that OWCP erroneously applied or interpreted a specific point of law, or advance a new and relevant legal argument not previously considered by OWCP. Consequently, appellant was not entitled to a review of the merits based on the first and second above-noted requirements under 20 C.F.R. § 10.606(b)(3).²³

Appellant submitted a November 2, 2016 report which was authored by Joseph Mathias, a physician assistant. The Board has held that certain healthcare providers, including physician assistants, are not considered to be physicians as defined under FECA. Consequently, their

¹⁸ 20 C.F.R. § 10.606(b)(3); *see M.S.*, Docket No. 18-1041 (issued October 25, 2018); *L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

¹⁹ *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 (iFECS). *Id.* at Chapter 2.1602.4b.

²⁰ *Id.* at § 10.608(a); *see D.C.*, Docket No. 19-0873 (issued January 27, 2020); *M.S.*, 59 ECAB 231 (2007).

²¹ *Id.* at § 10.608(b); *see T.V.*, Docket No. 19-1504 (issued January 23, 2020); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

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

²³ *See supra* note 19.

medical findings and/or opinions are insufficient to establish entitlement to FECA benefits.²⁴ The underlying issue on reconsideration was whether appellant had submitted sufficient medical evidence to establish a causal relationship between her left shoulder condition and the accepted factors of her federal employment. Because the November 2, 2016 report was not from a physician as defined under FECA, it is irrelevant to the underlying issue of causal relationship.²⁵ The submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.²⁶ Consequently, appellant was not entitled to a review of the merits based on the third above-noted requirement under 20 C.F.R. § 10.606(b)(3).²⁷

The Board therefore 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 a left shoulder condition causally related to the accepted factors of her federal employment. 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).

²⁴ 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); 20 C.F.R. § 10.5(t). *See also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *B.K.*, Docket No. 19-0829 (issued September 25, 2019) (physician assistants are not physicians under FECA); *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).

²⁵ *Id.*

²⁶ *See supra* note 23. *See also E.G.*, Docket No. 18-0270 (issued August 24, 2018); *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

²⁷ *See supra* note 19.

ORDER

IT IS HEREBY ORDERED THAT the November 16 and October 5, 2018 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: May 27, 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