

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

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<b>L.F., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 19-1845</b>
	)	<b>Issued: May 8, 2020</b>
<b>U.S. POSTAL SERVICE, POST OFFICE,</b>	)	
<b>Mount Airy, NC, Employer</b>	)	
_____	)	

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Chief Judge  
JANICE B. ASKIN, Judge  
PATRICIA H. FITZGERALD, Alternate Judge

**JURISDICTION**

On September 3, 2019 appellant filed a timely appeal from an April 15, 2019 merit decision and a May 23, 2019 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

**ISSUES**

The issues are: (1) whether appellant has met her burden of proof to establish a medical condition causally related to the accepted employment exposure; 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).

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that appellant 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.*

## **FACTUAL HISTORY**

On March 8, 2019 appellant, then a 48-year-old sales and services/distribution associate, filed an occupational disease claim (Form CA-2) alleging that she was exposed to carbon monoxide gas, which had entered the employing establishment from an outside heater while she was in the performance of duty. She indicated that she first became aware of her condition and attributed it to factors of her federal employment on January 24, 2019. Appellant stopped work on January 24, 2019 and returned to work on January 25, 2019.

In a March 11, 2019 development letter, OWCP informed appellant that the evidence of record 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. In a separate development letter of even date, OWCP requested additional information from the employing establishment regarding appellant's inhalation exposure to potentially hazardous substances. It afforded both parties 30 days to submit the necessary evidence.

OWCP subsequently received a February 19, 2019 payment request issued by a hospital provider with regard to a hospital visit by appellant on January 24, 2019.

By decision dated April 15, 2019, OWCP denied appellant's claim finding that the medical evidence of record was insufficient to establish a valid medical diagnosis causally related to the accepted employment event.

On April 30, 2019 appellant requested reconsideration and submitted an unsigned January 24, 2019 hospital record, which noted Dr. Casey J. Davis, a Board-certified emergency medicine physician, as an attending physician and a diagnosis of an exposure to carbon monoxide at work.

By decision dated May 23, 2019, OWCP denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

## **LEGAL PRECEDENT -- ISSUE 1**

An employee seeking benefits under FECA<sup>3</sup> 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,<sup>4</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

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<sup>3</sup> *Supra* note 1.

<sup>4</sup> *E.W.*, Docket No. 19-1393 (issued January 29, 2020); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

to the employment injury.<sup>5</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>6</sup>

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (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.<sup>7</sup>

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.<sup>8</sup> The opinion of the physician must be based on a complete and accurate 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 factors identified by the claimant.<sup>9</sup> 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.<sup>10</sup>

### **ANALYSIS -- ISSUE 1**

The Board finds that appellant has not met her burden of proof to establish a medical condition causally related to the accepted employment exposure.

A February 19, 2019 payment request issued by a hospital provider, indicated that appellant visited a hospital on January 24, 2019. However, this form was not a medical report signed by a physician and provided no firm medical diagnosis, medical opinion, or objective findings of any kind.<sup>11</sup> The Board therefore finds that this document is of no probative value and is insufficient to establish appellant's claim.

Section 10.303 of OWCP's regulations provides that simple exposure to a workplace hazard does not constitute a work-related injury entitling an employee to medical treatment under FECA unless the employee has sustained an identifiable injury or medical condition as a result of

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<sup>5</sup> *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>6</sup> 20 C.F.R. § 10.115; *E.S.*, Docket No. 18-1580 (issued January 23, 2020); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

<sup>7</sup> *See T.L.*, Docket No. 18-0778 (issued January 22, 2020); *Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

<sup>8</sup> *J.F.*, Docket No. 18-0492 (issued January 16, 2020); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

<sup>9</sup> *A.M.*, Docket No. 18-0562 (issued January 23, 2020); *Leslie C. Moore*, 52 ECAB 132 (2000).

<sup>10</sup> *E.W.*, *supra* note 4; *Gary L. Fowler*, 45 ECAB 365 (1994).

<sup>11</sup> *M.H.*, Docket No. 19-0162 (issued July 3, 2019); *see also Z.G.*, 19-0967 (issued October 21, 2019); *D.D.*, 57 ECAB 734 (2006); *Merton J. Sills*, 39 ECAB 572, 575 (1988) (a medical report which is unsigned or bears an illegible signature cannot be considered probative medical evidence as its author cannot be identified as physician).

that exposure.<sup>12</sup> Since appellant has not submitted medical evidence diagnosing an identifiable medical condition, she has not met her burden of proof to establish her claim.

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.<sup>13</sup>

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.<sup>14</sup>

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.<sup>15</sup> If it chooses to grant reconsideration, it reopens and reviews the case on its merits.<sup>16</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>17</sup>

### **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).

In her request for 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 and second above-noted requirements under 20 C.F.R. § 10.606(b)(3).

On reconsideration appellant submitted a January 24, 2019 hospital record. The underlying issue in this case is whether appellant submitted medical evidence sufficient to establish a valid

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<sup>12</sup> 20 C.F.R. § 10.303; *J.K.*, Docket No. 18-1508 (issued February 5, 2019).

<sup>13</sup> 5 U.S.C. § 8128(a); *see N.C.*, Docket No. 19-1378 (issued February 13, 2020); *W.C.*, 59 ECAB 372 (2008).

<sup>14</sup> 20 C.F.R. § 10.606(b)(3); *see J.M.*, Docket No. 19-1169 (issued February 7, 2020); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

<sup>15</sup> *Id.* at § 10.607(a); *see Y.H.*, Docket No. 18-1618 (issued January 21, 2020).

<sup>16</sup> *Id.* at § 10.608(a); *see S.B.*, Docket No. 19-1320 (issued January 17, 2020); *M.S.*, 59 ECAB 231 (2007).

<sup>17</sup> *Id.* at § 10.608(b); *see S.C.*, Docket No. 19-1305 (issued December 9, 2019); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

medical diagnosis in connection with the accepted employment incident. The Board has held that a report that does not contain the author's signature has no probative value, as it does not establish that the author is a physician.<sup>18</sup> As such, the Board finds that the hospital record is irrelevant to the underlying issue as it does not contain a physician's signature. Accordingly, appellant is not entitled to a review of the merits of her claim based on the third above-noted requirement under 20 C.F.R. § 10.606(b)(3).

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.<sup>19</sup>

### **CONCLUSION**

The Board finds that appellant has not met her burden of proof to establish a medical condition causally related to the accepted employment event. The Board also 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 May 23 and April 15, 2019 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: May 8, 2020  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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

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<sup>18</sup> See *Z.G.*, Docket No. 19-0967 (issued October 21, 2019); *D.D.*, 57 ECAB 734 (2006); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

<sup>19</sup> *Y.H.*, *supra* note 15 (when a request for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(3), OWCP will deny the request for reconsideration without reopening the case for a review on the merits).