

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).

FACTUAL HISTORY

On December 13, 2017 appellant, then a 51-year-old pharmacy technician, filed an occupational disease claim (Form CA-2) alleging that she sustained bilateral carpal tunnel syndrome and acquired trigger finger of the right thumb due to factors of her federal employment, including performing the physical demands required or associated with her employment. She indicated that she first became aware of her condition and first realized it was caused or aggravated by her federal employment on June 16, 2017. Appellant stopped work on August 23, 2017 and returned to work on November 13, 2017.

In a December 18, 2017 development letter, OWCP advised appellant of the deficiencies of her claim. It requested that she submit additional factual and medical evidence and provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit the necessary evidence.

In response, appellant submitted a position description, a written confirmation of request for accommodation dated December 27, 2017, and an "Employee Limitations on Reassignment Options" form dated January 16, 2018 requesting a different type of position for which she was qualified.

Appellant also submitted occupational therapy reports in support of her claims dated October 2, 6, 13, 16, 20, and 31 and November 9 and 10, 2017.

In a July 12, 2017 report, Dr. Michael Ugino, a Board-certified orthopedic surgeon, diagnosed acquired trigger finger of the right thumb and left hand pain. He obtained a history of appellant experiencing triggering of the right thumb as well as bilateral hand numbness and tingling over the prior few months. Dr. Ugino indicated that her hands showed no arthritic changes to the carpometacarpal (CMC), metacarpophalangeal (MCP), and interphalangeal (IP) joints. Appellant otherwise had full range of motion (ROM) of the IP joints and there was no thenar eminence atrophy. Tinel's testing was positive over the carpal canals and Phalen's testing was positive after 30 seconds of volar flexion of the wrists. Sensibility testing showed diminished sensation in the median nerve distribution of the hands. Vascular Allen's testing was normal. There was triggering over the A1 pulley of the right thumb.

An August 3, 2017 electromyography and nerve conduction velocity (EMG/NCV) study revealed mild-moderate bilateral median neuropathy at the wrist consistent with carpal tunnel syndrome.

In an August 7, 2017 report, Dr. Ugino reviewed the results of electrodiagnostic testing. He diagnosed right carpal tunnel syndrome and recommended a right carpal tunnel release.

On August 24, 2017 Dr. Ugino performed a right carpal tunnel release and a right trigger thumb release.

In work excuse notes dated September 1 and 15 and October 6 and 20, 2017, Dr. Ugino advised that appellant was not capable of returning to work.

On September 15, 2017 Dr. Ugino saw appellant for a follow-up evaluation and noted that she was approximately three weeks postsurgery. He confirmed his diagnosis of right carpal tunnel syndrome and found that the incision site was well healed.

In an October 6, 2017 report, Dr. Ugino noted the diagnoses previously made and indicated that appellant was undergoing occupational therapy.

On October 20, 2017 Dr. Ugino indicated that appellant still had numbness in all her fingers that went up her arm to her neck and reported a lot of pain in her thumb, especially in her thumb web space.

In a November 10, 2017 report, Dr. Ugino again diagnosed right carpal tunnel syndrome and right trigger thumb and found that appellant could resume limited-duty employment on November 13, 2017.

In work excuse notes dated November 10 and December 8, 2017 and January 8, 2018, Dr. Ugino released appellant to return to work with restrictions.

By decision dated February 1, 2018, OWCP denied appellant's occupational disease claim finding that the medical evidence of record failed to establish a causal relationship between her right carpal tunnel syndrome and acquired trigger finger of the right thumb and the accepted factors of her federal employment.

On February 15, 2018 appellant requested reconsideration and resubmitted a position description, as well as the August 3, 2017 EMG/NCV studies. She also submitted an undated, unsigned "Employee Limitations on Reassignment Options" form.

Appellant further submitted a January 11, 2018 e-mail message indicating that her work restrictions could not be accommodated by the employing establishment and an October 20, 2013 notification of personnel action (SF-50) indicating that she had received a promotion.

In a February 7, 2018 report, Dr. Ugino discussed appellant's complaints of pain in the hands bilaterally and trigger finger of the right thumb, and noted that she related that her condition was aggravated by excessive repetitive pulling, pushing, and twisting at work, working in awkward or stationary positions for extended hours, and extreme temperatures. He noted that appellant had worked in her current position for nine years and attributed her bilateral hand pain to the physical requirements of her position. Dr. Ugino diagnosed mild-moderate right carpal tunnel syndrome and mild left carpal tunnel syndrome. He opined that appellant had developed bilateral carpal tunnel syndrome with right trigger thumb due to her employment duties as an oncology pharmacy technician. Dr. Ugino explained that appellant was exposed to risk factors likely to result in carpal tunnel syndrome, including repetitive movements, awkward positioning, remaining stationary for extended periods, compression from grasping, and working in cold temperatures. He related, "These risk factors, either alone or in combination, can subject workers' shoulders, arms, hands, wrists, backs, and legs to thousands of repetitive twisting, forceful, or flexing motions during a typical workday."

By decision dated February 22, 2018, OWCP denied appellant's request for reconsideration of the merits of her claim under 5 U.S.C. § 8128(a).

LEGAL PRECEDENT -- ISSUE 1

A claimant seeking benefits under FECA³ 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 filed within the applicable time limitation period of FECA,⁴ that an injury was sustained while in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to 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 establish that an injury was sustained in the performance of duty in an occupational disease claim, an employee 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 employment factors identified by the employee.⁷

Causal relationship is a medical question, which requires rationalized medical opinion evidence to resolve the issue.⁸ A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factors must be based on a complete factual and medical background.⁹ 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 factors.¹⁰

³ *Supra* note 1.

⁴ *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

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 *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).

⁷ *See L.C.*, Docket No. 19-1301 (issued January 29, 2020); *D.R.*, Docket No. 09-1723 (issued May 20, 2010). *See also Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁸ *See A.L.*, Docket No. 19-1122 (issued January 7, 2020); *Robert G. Morris*, 48 ECAB 238 (1996).

⁹ *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *Victor J. Woodhams*, *supra* note 7.

¹⁰ *Id.*

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met her burden of proof to establish right carpal tunnel syndrome and acquired trigger finger of the right thumb causally related to the accepted factors of her federal employment.

In support of her claim, appellant submitted reports dated July 12, 2017 to January 8, 2018 from Dr. Ugino. In these reports, however, Dr. Ugino failed to address the cause of 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 and insufficient to establish the claim.¹¹

The August 3, 2017 EMG/NCV studies of record revealed mild-moderate bilateral median neuropathy at the wrist, as seen in carpal tunnel syndrome. The Board has held, however, that diagnostic studies lack probative value on the issue of causal relationship as they do not provide an opinion as to whether the accepted employment factors caused appellant's diagnosed condition.¹²

Appellant also submitted occupational therapy reports dated October 2 through November 10, 2017 in support of her claim. These documents do not constitute competent medical evidence because an occupational therapist is not considered a "physician" as defined under FECA. Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to compensation benefits.¹³

As appellant has not submitted rationalized medical evidence sufficient to establish a medical condition causally related to the accepted factors of her federal employment, the Board finds that she has not met her burden of proof to establish her claim.

LEGAL PRECEDENT -- ISSUE 2

Section 8128(a) of FECA does not entitle a claimant to review of an OWCP decision as a matter of right.¹⁴ OWCP has discretionary authority in this regard and has imposed certain

¹¹ *A.P.*, Docket No. 18-1690 (issued December 12, 2019).

¹² *L.C.*, Docket No. 19-1301 (issued January 29, 2020).

¹³ See *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); 5 U.S.C. § 8101(2) (this subsection defines a physician as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by state law).

¹⁴ This section provides in pertinent part: "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application." 5 U.S.C. § 8128(a).

limitations in exercising its authority.¹⁵ One such limitation is that the request for reconsideration must be received by OWCP within one year of the date of the decision for which review is sought.¹⁶

A timely request for reconsideration, including all supporting documents, must set forth arguments and contain evidence that either: (i) shows that OWCP erroneously applied or interpreted a specific point of law; (ii) advances a relevant legal argument not previously considered by OWCP; or (iii) constitutes relevant and pertinent new evidence not previously considered by OWCP.¹⁷ When a timely request for reconsideration does not meet at least one of the above-noted requirements, OWCP will deny the request for reconsideration without reopening the case for a review on the merits.¹⁸

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).

On reconsideration appellant submitted a February 7, 2018 report wherein Dr. Ugino discussed appellant's complaints of pain in the hands bilaterally and trigger finger of the right thumb. He noted that appellant related that her condition was aggravated by excessive repetitive pulling, pushing, and twisting at work, working in awkward or stationary positions for extended hours, and extreme temperatures. Dr. Ugino discussed appellant's work history and diagnosed mild-moderate right carpal tunnel syndrome and mild left carpal tunnel syndrome. He opined that appellant had developed bilateral carpal tunnel syndrome with right trigger thumb due to her employment duties as an oncology pharmacy technician. Dr. Ugino explained that appellant was exposed to risk factors likely to result in carpal tunnel syndrome, including repetitive movements, awkward positioning, remaining stationary for extended periods, compression from grasping, and working in cold temperatures. He concluded that "These risk factors, either alone or in combination, can subject workers' shoulders, arms, hands, wrists, backs, and legs to thousands of repetitive twisting, forceful, or flexing motions during a typical workday."

Dr. Ugino's February 7, 2018 report directly addressed the basis upon which OWCP denied appellant's claim as it provided additional explanation as to the cause of the diagnosed conditions and discussed the relationship to appellant's federal employment.¹⁹ The Board, thus, finds that OWCP improperly refused to reopen appellant's case for further review of the merits, as the evidence she submitted, in support of her reconsideration request, is relevant and pertinent new

¹⁵ 20 C.F.R. § 10.607.

¹⁶ *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.

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

¹⁸ *Id.* at § 10.608(a), (b).

¹⁹ *M.C.*, Docket No. 17-1983 (issued August 17, 2018).

evidence not previously considered.²⁰ Reopening a claim for merit review does not require a claimant to submit all evidence that may be necessary to discharge his or her burden of proof.²¹

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 under section 10.606(b)(3) of OWCP's regulations.²² The case will be remanded to OWCP to conduct a merit review of the claim. Following this and such other development as deemed necessary, it shall issue an appropriate merit decision.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish right carpal tunnel syndrome and acquired trigger finger of the right thumb causally related to the accepted factors of her federal employment. The Board further finds that OWCP improperly denied appellant's request for reconsideration of the merits of her claim.

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

²¹ *R.T.*, Docket No. 18-1263 (issued February 7, 2019); *K.S.*, Docket No. 18-1022 (issued October 24, 2018).

²² *Id.*

ORDER

IT IS HEREBY ORDERED THAT the February 1, 2018 decision of the Office of Workers' Compensation Programs is affirmed and the February 22, 2018 decision is set aside and the case is remanded to OWCP for further proceedings consistent with this decision of the Board.

Issued: March 10, 2020
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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