

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

P.W., Appellant	)	
	)	
and	)	<b>Docket No. 20-0380</b>
	)	<b>Issued: November 23, 2020</b>
U.S. POSTAL SERVICE, VEHICLE	)	
MAINTENANCE FACILITY, Detroit, MI,	)	
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 9, 2019 appellant filed a timely appeal from a July 15, 2019 merit decision and an October 22, 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.

**ISSUES**

The issues are: (1) whether appellant has met her burden of proof to establish a medical condition causally related to the accepted March 12, 2019 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).

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

## **FACTUAL HISTORY**

On March 12, 2019 appellant, then a 57-year-old motor vehicle operator, filed a traumatic injury claim (Form CA-1) alleging that on that date she sustained injuries to her upper body, arms, thumbs, back, and left foot when she attempted to open the back door of a truck which had jammed while in the performance of duty. She stopped work on the date of injury.

In an attending physician's report (Form CA-20) dated March 12, 2019, Dr. Ellen Coccitti, a family medicine specialist, related findings of cervical/lumbar, right shoulder, bilateral thumb, and left foot sprains. She checked a box marked "Yes" indicating that she believed appellant's conditions were caused or aggravated by lifting a truck tailgate. In an accompanying duty status report (Form CA-17) of the even date, Dr. Coccitti advised that appellant could return to work on March 13, 2019, but was restricted from driving commercial vehicles.

In reports dated March 13, and 15, 2019, Dr. Chong Yi, a Board-certified family practitioner, diagnosed lumbar, right shoulder, bilateral hand, and left foot strains. He recommended that appellant return to work with a restriction of no driving company vehicles as of March 12, 2019. As of March 13, 2019, Dr. Yi recommended work restrictions of no climbing stairs, squatting, climbing ladders, reaching above the shoulders, driving of company vehicles, use of power tools with the upper extremities, or kneeling, sitting 90 percent of the time, and ground level work only. As of March 15, 2019, he recommended work restrictions of no kneeling, squatting, climbing stairs, or driving.

In a narrative report dated March 13, 2019, Dr. Yi related appellant's account of the incident of March 12, 2019, in which she stated that her injury occurred when she lifted the door on the back of a truck when it became stuck and the force of it "did something" to her lower back, right shoulder, and left hand. As appellant climbed into the truck, her left foot slipped. Dr. Yi noted appellant's symptoms of joint, muscle, and back pain, along with joint stiffness, muscle weakness, and limp. On physical examination of appellant's right shoulder, he observed tenderness and limited range of motion. On examination of her left hand and fingers, Dr. Yi noted moderate tenderness. On examination of appellant's left foot and toes, he observed tenderness and pain out of proportion to the injury. On examination of the lumbosacral spine, Dr. Yi noted tenderness and limited range of motion. He diagnosed strains of the lumbar area, right shoulder, left foot, and left hand.

On March 15, 2019 Dr. Yi diagnosed strains of the right shoulder, both hands, left foot, and the muscle, fascia, and tendons of the lower back. On examination, he noted joint, muscle, and back pain, along with arm and leg weakness.

Appellant submitted physical therapy notes dated from March 14 through April 12, 2019.

In an April 3, 2019 development letter, OWCP informed appellant that additional evidence was necessary to establish her claim. It advised her of the type of factual and medical evidence necessary and provided a factual questionnaire for completion. OWCP afforded appellant 30 days to respond.

On March 25, 2019 Dr. Yi related appellant's complaints that her left thumb was "in pieces" and was not improving, that her left and right arms were weak and painful, that she could not hold anything up. He noted that she had bilateral arm and thumb pain, joint stiffness, and muscle weakness. On physical examination of appellant's shoulders and upper arms, Dr. Yi noted tenderness and limited range of motion with pain. On examination of her hands and fingers, he observed bilateral moderate swelling and severe tenderness with reduced range of motion of the thumbs with pain. Dr. Yi diagnosed bilateral hand, cervical, lumbar right shoulder, and lower back strains. In an accompanying report of even date, he recommended work restrictions of no driving, bending, lifting, pushing, or pulling.

In a report dated April 1, 2019, Dr. Yi noted that appellant's symptoms were unchanged. He stated that her pain was located in the neck and right shoulder, which appellant described as severe and sharp in nature, radiating to the right arm. On physical examination of appellant's right shoulder, Dr. Yi observed tenderness and limited range of motion with pain. On examination of the cervical spine, he noted tenderness at C4 through C7 and limited range of motion with pain. Dr. Yi diagnosed strains of the right shoulder and cervical area, as well as internal derangement of the right shoulder and intractable pain. He recommended magnetic resonance imaging (MRI) scan studies of the right shoulder and cervical spine. In an accompanying report of even date, Dr. Yi recommended work restrictions of no use of the right upper extremity, no reaching above the head, and no reaching above the shoulders.

On April 8, 2019 Dr. Yi reexamined appellant's right shoulder and observed tenderness and full range of motion. He diagnosed right shoulder strain. In an accompanying report of the even date, Dr. Yi recommended work restrictions of no reaching above the shoulders or head with her right upper extremity.

In a report dated April 12, 2019, Dr. Yi again reexamined appellant's right shoulder. On physical examination, he observed normal appearance with no tenderness, full range of motion, and full strength with no signs of impingement. Dr. Yi stated that appellant's symptoms had resolved and released her from his care, as maximum medical improvement had been reached. In an accompanying report of the same date, he recommended that she return to regular-duty work on April 15, 2019.

By decision dated May 3, 2019, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish causal relationship between her diagnosed conditions and the accepted March 12, 2019 employment incident.

On May 30, 2019 appellant requested reconsideration. With her request, she submitted a March 12, 2019 report from Dr. Coccitti. Dr. Coccitti noted that appellant had provided a history of injury of lifting a tailgate on the back of a truck, which injured her thumbs, and pulling hard strained her neck, back, and left foot. She noted joint, muscle, and back pain, with joint swelling and stiffness. Physical examination of appellant's bilateral shoulders, upper arms, elbows, forearms, and wrists, revealed normal findings. On physical examination of appellant's hands and fingers, Dr. Coccitti noted normal findings other than pain in the thumbs with flexion. On physical examination of the left foot and toes, she observed tenderness to palpation and minimal pain at the proximal foot. Dr. Coccitti diagnosed lumbar, cervical, bilateral thumb, right shoulder, and left foot strains.

In narrative statements dated June 3, 4, and 5, 2019, appellant described March 12, 2019 incident and her subsequent treatments.

In an undated letter, Dr. Coccitti related that on March 12, 2019 appellant lifted a tailgate of a truck, which had jammed. In attempting to lift the tailgate door by applying more upward force, appellant jammed her thumbs and strained her right shoulder, cervical, and lumbar area. Dr. Coccitti stated that appellant had been placed on restrictions and began physical therapy, of which she attended nine sessions. She noted that x-rays of appellant's thumbs, neck, lower back, and right shoulder had been unremarkable for fractures or acute changes, and that while an MRI scan had been ordered, imaging had not been taken. Appellant was subsequently treated by Dr. Yi.

By decision dated July 15, 2019, OWCP denied modification of its May 3, 2019 decision.

On July 24, 2019 appellant again requested reconsideration. With her request, she resubmitted the Form CA-20 report from Dr. Coccitti dated March 12, 2019. In an accompanying statement, appellant argued that the medical evidence was sufficient to support her traumatic injury claim.

By decision dated October 22, 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>2</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>3</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>4</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>5</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. There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the

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<sup>2</sup> *Id.*

<sup>3</sup> *F.H.*, Docket No.18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>4</sup> *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>5</sup> *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

time, place, and in the manner alleged. Second component is whether the employment incident caused a personal injury and can be established only by medical evidence.<sup>6</sup>

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.<sup>7</sup> The opinion of the physician must be based on a complete factual and medical background of the employee, 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 specific employment incident identified by the employee.<sup>8</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 March 12, 2019 employment incident.

In a series of reports dated March 13 through April 12, 2019, Dr. Yi diagnosed lumbar, right shoulder, bilateral hand, and left foot strains. He did not, however, offer an opinion regarding the cause of appellant's conditions in these reports. 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 on the issue of causal relationship.<sup>9</sup> As such, this evidence is insufficient to meet appellant's burden of proof.

In a March 12, 2019 report, Dr. Coccitti diagnosed lumbar, cervical, bilateral thumb, right shoulder, and left foot strains. She related that appellant sustained injury while trying to open a tailgate door. The Board has held that medical reports are of no probative value if they do not provide an opinion regarding the cause of the employee's condition or disability.<sup>10</sup>

In a Form CA-20 dated March 12, 2019, Dr. Coccitti related findings of cervical/lumbar injuries with right shoulder strain, and checked a box marked "Yes," indicating that the conditions were employment related. She did not, however, provide any explanation or rationale in support of that opinion. The Board has held that when a physician's opinion on causal relationship consists

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<sup>6</sup> *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

<sup>7</sup> *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

<sup>8</sup> *T.L.*, Docket No. 18-0778 (issued January 22, 2020); *Y.S.*, Docket No. 18-0366 (issued January 22, 2020); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

<sup>9</sup> *D.C.*, Docket No. 19-1093 (issued June 25, 2020); *see L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

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

only of a checkmark on a form, without further explanation or rationale, that opinion is of diminished probative value and is insufficient to establish a claim.<sup>11</sup>

In an undated letter, Dr. Coccitti stated that appellant had experienced an injury on March 12, 2019 when she lifted a tailgate of a truck, which had jammed. She noted that in attempting to lift the tailgate door by applying more upward force, she jammed her thumbs and strained her right shoulder, cervical, and lumbar area. As this report does not provide an opinion on causal relationship, it is of no probative value and therefore insufficient to establish the claim.<sup>12</sup>

Appellant also submitted reports from physical therapists dated from March 14 through April 12, 2019. These reports, however, are insufficient to meet her burden of proof, as physical therapists are not considered physicians as defined under FECA and, as such, their reports are of no probative value.<sup>13</sup>

As appellant has not submitted rationalized medical evidence establishing that her diagnosed medical conditions were causally related to the accepted employment incident of March 12, 2019, the Board finds that 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.<sup>14</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

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<sup>11</sup> *O.M.*, Docket No. 18-1055 (issued April 15, 2020); *Gary J. Watling*, 52 ECAB 278 (2001).

<sup>12</sup> *Supra* note 9.

<sup>13</sup> 5 U.S.C. § 8101(2) provides that a physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by state law. *See id.* at § 8101(2); *M.J.*, Docket No. 19-1287 (issued January 13, 2020); *P.H.*, Docket No. 19-0119 (issued July 5, 2019); *T.K.*, Docket No. 19-0055 (issued May 2, 2019); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as nurses, physician assistants, and physical therapists are not competent to render a medical opinion under FECA).

<sup>14</sup> 5 U.S.C. § 8128(a); *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.<sup>15</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>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 or advance a relevant legal argument not previously considered by OWCP. Thus, she is not entitled to a review of the merits based on the first and second requirements under section 10.606(b)(3).<sup>18</sup>

The underlying issue in this case is whether appellant submitted sufficient medical evidence to establish a traumatic injury causally related to the accepted March 12, 2019 incident. However, she did not submit any relevant and pertinent new evidence with her July 24, 2019 request for reconsideration.

Appellant resubmitted the Form CA-20 report dated March 12, 2019 from Dr. Coccitti with her request for reconsideration. The Board finds that submission of this evidence does not require reopening appellant's case for merit review, as it had already been considered by OWCP and therefore does not constitute pertinent new and relevant evidence. As this report repeats evidence already in the case record, it is cumulative and does not constitute relevant and pertinent new evidence. Providing additional evidence that either repeats or duplicates information already in the record does not constitute a basis for reopening a claim.<sup>19</sup> Therefore, it is insufficient to require OWCP to reopen the claim for consideration of the merits. Because appellant has not provided

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<sup>15</sup> 20 C.F.R. § 10.606(b)(3); *B.R.*, Docket No. 19-0372 (issued February 20, 2020). *L.G.*, Docket No. 09-1517 (issued March 3, 2010).

<sup>16</sup> *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.

<sup>17</sup> *Id.* at § 10.608(b); *M.E.*, Docket No. 20-0067 (issued October 15 2020); *O.P.*, Docket No. 19-0445 (issued July 24, 2019); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

<sup>18</sup> *See supra* note 15.

<sup>19</sup> *S.F.*, Docket No. 18-0516 (issued February 21, 2020); *James W. Scott*, 55 ECAB 606, 608 n.4 (2004).

relevant and pertinent new evidence, she was not entitled to a review of the merits based on the third requirement under section 10.606(b)(3).<sup>20</sup>

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 medical condition causally related to the accepted March 12, 2019 employment incident. 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).

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 22 and July 15, 2019 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: November 23, 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

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<sup>20</sup> See 20 C.F.R. § 10.606(b)(3)(iii).