



OWCP properly denied appellant's request for a review of the written record pursuant to 5 U.S.C. § 8124(b) as untimely filed.

### **FACTUAL HISTORY**

On January 7, 2020 appellant, then a 48-year-old customer care agent, filed an occupational disease claim (Form CA-2) alleging that she developed lower back disc herniation with mild stenosis and an annular tear and disc herniation on the left side due to factors of her federal employment, including carrying mail for several years. She noted that she first became aware of her conditions on September 30, 2019 and first realized their relation to her federal employment on October 14, 2019. Appellant explained that she was unable to sit or stand for longer than 15 minutes due to pain in her hip and when she went to the doctor they informed her that her hip pain was caused by a back injury. On the reverse side of the claim form appellant's supervisor indicated that she had a medical appointment scheduled for January 15, 2020 and stated that she had not returned to work.

In support of her claim, appellant submitted an October 31, 2019 diagnostic report, wherein Dr. Christopher Sweet, a Board-certified radiologist, performed a magnetic resonance imaging (MRI) scan of appellant's lumbar spine. He noted a history of lumbar radiculopathy, as well as a previous November 1, 2016 MRI scan of her lumbar spine. Dr. Sweet diagnosed a small left foraminal disc herniation at L3-L4 and mild degenerative spondylosis involving the lumbar spine.

Dr. Samuel Rosenbaum, a Board-certified orthopedic surgeon, in a January 15, 2020 medical note, diagnosed low back pain and sacroiliitis. He indicated that appellant was under his care for treatment relating to her right shoulder and opined that she would be disabled from work until February 19, 2020.

In an undated statement, appellant explained that during the morning of September 30, 2019 she tried to get out of bed and experienced pain in her hip and back that caused her to lay on the floor until she could receive help. She visited the doctor who informed her that her pain was caused by a back condition and then sent her to Dr. Rosenbaum for further testing. Appellant claimed that both doctors believed her pain was caused by her having to twist, bend, turn and walk for 12 hours a day for 7 days a week while carrying mail for 16 years. She noted her diagnoses and reasoned that the tear in her back was the cause of her hip pain. Appellant also indicated that she had a similar problem in 2017, but noted that it was with her hip.

In a January 22, 2020 development letter, OWCP informed appellant of the evidence necessary to establish her claim and requested a narrative medical report from her treating physician, which contained a detailed description of findings and a diagnosis, explaining how her work activities caused, contributed to, or aggravated her medical conditions. It afforded her 30 days to respond. No additional evidence was received.

By decision dated February 25, 2020, OWCP denied appellant's occupational disease claim, finding that the evidence of record was insufficient to establish that her diagnosed medical conditions were causally related to the accepted factors of her federal employment.

On March 6, 2020 appellant requested reconsideration of OWCP's February 25, 2020 decision. She attached an undated statement from Dr. Rosenbaum in which he explained that she underwent an electromyography (EMG) scan which found radiculopathy with inflammation of the bilateral sacroiliac joints. Appellant had undergone physical therapy, a home exercise program and taken anti-inflammatory medication and a sacroiliac joint injection to treat her condition. She also attached multiple March 6, 2020 time analysis forms (Form CA-7a) that indicated that she was claiming lost time from work for the period January 18 through March 3, 2020.

By decision dated March 31, 2020, OWCP denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

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

An employee seeking benefits under FECA 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>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 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>6</sup>

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.<sup>7</sup> 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.<sup>8</sup> Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical

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<sup>3</sup> *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>4</sup> *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>5</sup> *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).

<sup>6</sup> *R.G.*, Docket No. 19-0233 (issued July 16, 2019). 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).

<sup>7</sup> *T.H.*, 59 ECAB 388, 393 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

<sup>8</sup> *M.V.*, Docket No. 18-0884 (issued December 28, 2018).

rationale explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factor(s).<sup>9</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 factors of her federal employment.

In support of her claim, appellant submitted a January 15, 2020 report from Dr. Rosenbaum in which he indicated that appellant was under his care for treatment relating to her right shoulder and diagnosed low back pain and sacroiliitis. 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>10</sup> Without explaining how appellant's accepted employment duties caused or contributed to her condition, Dr. Rosenbaum's is insufficient to meet appellant's burden of proof.

Appellant also submitted an October 31, 2019 diagnostic report in which Dr. Sweet performed an MRI scan of her lumbar spine and diagnosed a small left foraminal disc herniation at L3-4 and mild degenerative spondylosis involving the lumbar spine. The Board has held, however, that diagnostic test reports standing alone lack probative value as they do not provide an opinion on causal relationship between employment factors and a diagnosed condition.<sup>11</sup> Therefore, this report is insufficient to meet appellant's burden of proof.

On appeal appellant contends that OWCP received a blank page that was supposed to contain important information regarding her case. She explained that she would like to resubmit her claim with the correct paperwork for consideration. However, as was noted above, the Board may not consider evidence for the first time on appeal that was not before OWCP at the time it issued the final decision in the case.<sup>12</sup>

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of the Board's merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

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<sup>9</sup> *Id.*; *Victor J. Woodhams*, *supra* note 6.

<sup>10</sup> *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018). *See also R.Z.*, Docket No. 19-0408 (issued June 26, 2019); *P.S.* Docket No. 18-1222 (issued January 8, 2019).

<sup>11</sup> *See W.M.*, Docket No. 19-1853 (issued May 13, 2020); *L.F.*, Docket No. 19-1905 (issued April 10, 2020).

<sup>12</sup> *Supra* note 2.

## LEGAL PRECEDENT -- ISSUE 2

Section 8128(a) of FECA<sup>13</sup> 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 payment of compensation at any time on his own motion or on application.<sup>14</sup>

To require OWCP to reopen a case for merit review under 5 U.S.C. § 8128(a), OWCP regulations provide that the evidence or argument submitted by a claimant must: (1) show that OWCP erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by OWCP; or (3) constitute 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 its decision for which review is sought.<sup>16</sup> If it chooses to grant reconsideration, it reopens and reviews the case on its merits.<sup>17</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>18</sup>

## ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of his 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, and she did not 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 section 10.606(b)(3).

Furthermore, appellant failed to submit relevant and pertinent new evidence with her March 6, 2020 request for reconsideration.<sup>19</sup> The underlying issue in this case is whether appellant's medical conditions are causally related to the accepted factors of her federal employment. That is a medical issue which must be addressed by relevant medical evidence not

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<sup>13</sup> *Supra* note 1.

<sup>14</sup> 5 U.S.C. § 8128(a).

<sup>15</sup> 20 C.F.R. § 10.608(b)(3); *see also H.H.*, Docket No. 18-1660 (issued March 14, 2019); *L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

<sup>16</sup> *Id.* at § 10.607(a).

<sup>17</sup> *Id.* at § 10.608(a); *see also M.S.*, 59 ECAB 231 (2007).

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

<sup>19</sup> *J.B.*, Docket No. 18-1531 (issued April 11, 2019); *see L.R.*, Docket No. 18-0400 (issued August 24, 2018); *Candace A. Karkoff*, 56 ECAB 622 (2005).

previously considered.<sup>20</sup> Although evidence submitted on reconsideration need not carry appellant's burden entirely to suffice for reconsideration, the new evidence must at least be relevant and pertinent to the issue upon which the claim was denied.<sup>21</sup>

In support of her request for reconsideration, appellant submitted an undated statement in which Dr. Rosenbaum indicated that she underwent an EMG that revealed radiculopathy with inflammation of the bilateral sacroiliac joints. He also noted that she participated in physical therapy, a home exercise program and had received anti-inflammatory medication and a sacroiliac joint injection to treat her condition. However, appellant failed to provide an opinion on causal relationship. This evidence is therefore irrelevant to the underlying issue of causal relationship. Thus, she is not entitled to a review of the merits of her claim based on the third requirement under 20 C.F.R. § 10.606(b)(3).<sup>22</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.<sup>23</sup>

### **CONCLUSION**

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

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<sup>20</sup> *R.S.*, Docket No. 19-0312 (issued June 18, 2019); *T.B.*, Docket No. 18-1214 (issued January 29, 2019); *D.L.*, Docket No. 16-0342 (issued July 26, 2016).

<sup>21</sup> *R.R.*, Docket No. 18-1562 (issued February 22, 2019); *A.A.*, Docket No. 18-0031 (issued April 5, 2018); *K.B.*, Docket No. 18-1392 (issued January 15, 2019).

<sup>22</sup> *Id.*

<sup>23</sup> *D.M.*, Docket No. 18-1003 (July 16, 2020); *Susan A. Filkins*, 57 ECAB 630 (2006) (when a request for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b), OWCP will deny the request for reconsideration without reopening the case for a review on the merits).

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 31 and February 25, 2020 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: November 25, 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