United States Department of Labor
Employees' Compensation Appeals Board

C.C., Appellant	)	
and	)	**Docket No. 20-0950**
	)	**Issued: October 29, 2020**
DEPARTMENT OF THE AIR FORCE, ROBINS AIR FORCE BASE, Warner Robins, GA, 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
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On March 16, 2020 appellant filed a timely appeal from a February 4, 2020 merit decision and a February 14, 2020 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.[2]

ISSUES

The issues are: (1) whether appellant has met his burden of proof to establish a medical condition causally related to the accepted December 13, 2019 employment incident; and

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that, following the February 4 and 14, 2020 decisions, OWCP received additional evidence. 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.*

(2) whether OWCP properly denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On December 16, 2019 appellant, then a 48-year-old sheet metal mechanic, filed a traumatic injury claim (Form CA-1) alleging that on December 13, 2019 he sustained a right shoulder bruise and experienced numbness in his right arm when he crawled under a wing of an airplane to take out four tang bolts on an engine while in the performance of duty.

In support of his claim, appellant submitted an official copy of his sheet metal mechanic position description and a notification of personnel action (Form SF-50) noting an adjustment of his hourly basic pay rate.

By development letter dated January 2, 2020, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence necessary to establish his claim and provided a questionnaire for his completion. OWCP afforded appellant 30 days to submit the necessary evidence.

Thereafter, OWCP received records from the hospital emergency room. In a December 13, 2019 medical report, Dr. Jose Espinosa, a family practitioner, noted appellant's complaint of right shoulder pain and arm numbness after he hit his shoulder on a part of an airplane wing on that date. He reported examination findings and diagnosed right shoulder pain.

Discharge instructions dated December 13, 2019 by Dr. Brian Cunningham, a Board-certified family practitioner, indicated that appellant was evaluated for right shoulder pain from an uncertain cause and released to return to work with restrictions on December 15, 2019.

A December 13, 2019 right shoulder x-ray report by Dr. Michael G. Fazio, a Board-certified diagnostic radiologist, provided an impression of no acute fracture or dislocation.

A hospital patient order summary dated December 16, 2019 indicated that appellant was examined on December 13, 2019 by Kristi T. Jones, a certified nurse practitioner, for a right shoulder injury with pain sustained at work.

By decision dated February 4, 2020, OWCP accepted that the December 13, 2019 employment incident occurred, as alleged. However, it denied appellant's traumatic injury claim, finding that he had not submitted evidence containing a medical diagnosis in connection with the accepted employment incident. OWCP noted that pain was a symptom, not a medical diagnosis. Consequently, it found that the requirements had not been met to establish an injury as defined by FECA.

On February 10, 2020 appellant requested reconsideration. He submitted a December 19, 2019 work status form from Dr. Jeffrey Meade, a physician specializing in family, general, and occupational medicine, who recommended that appellant return to full-duty work as of that date.

Appellant also submitted an undated report of work status form in which OWCP indicated that he had returned to full-time regular-duty work with no restrictions on December 19, 2019.

Appellant resubmitted Dr. Cunningham's December 13, 2019 discharge instructions, Dr. Espinosa's December 13, 2019 report, and Dr. Fazio's December 13, 2019 right shoulder x-ray report.

By decision dated February 14, 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[3] 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 filed within the applicable time limitation of FECA,[4] 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.[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 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 time, place, and in the manner alleged. The second component is whether the employment incident caused a personal injury and can be established only by medical evidence.[7]

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.[8] 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

[3] *Supra* note 1.

[4] *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).

[5] *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).

[6] *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).

[7] *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).

[8] *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).

nature of the relationship between the diagnosed condition and specific employment factors identified by the employee.[9]

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met his burden of proof to establish a medical condition causally related to the accepted December 13, 2019 employment incident.

On December 13, 2019 appellant was treated in the emergency room for his claimed right shoulder injury. He was evaluated by Dr. Espinosa and Dr. Cunningham who diagnosed right shoulder pain. Dr. Cunningham discharged appellant to return to work with no restrictions on December 15, 2019. Dr. Espinosa noted a history of the accepted December 13, 2019 employment incident. The Board has held that pain is a symptom and not a compensable medical diagnosis.[10] Further, while Dr. Espinosa related appellant's accepted history of injury, he did not provide an opinion as to whether he had any diagnoses causally related to the December 13, 2019 employment incident. Moreover, Dr. Cunningham indicated that appellant's right shoulder pain was from an uncertain cause. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition or disability is of no probative value on the issue of causal relationship.[11] As neither Dr. Espinosa nor Dr. Cunningham have offered an opinion as to whether appellant's claimed condition is causally related to the accepted December 13, 2019 employment incident, the Board finds that their reports are insufficient to meet appellant's burden of proof.

Appellant submitted a December 13, 2019 x-ray report from Dr. Fazio regarding his right shoulder. The Board has held, however, that diagnostic test reports, standing alone, lack probative value as they do not provide an opinion on whether there is a causal relationship between an employment incident and a diagnosed condition.[12]

Appellant also submitted a December 16, 2019 patient order summary which indicated that on December 13, 2019 he was evaluated by Ms. Jones, a certified nurse practitioner, for a right shoulder injury with pain sustained at work. Medical reports signed solely by a nurse practitioner are of no probative value, as a nurse practitioner is not considered a physician as defined under

[9] *See 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).

[10] *See C.C.*, Docket No. 19-1071 (issued August 26, 2020); *S.L.*, Docket No. 19-1536 (issued June 26, 2020); *D.Y.*, Docket No. 20-0112 (issued June 25, 2020).

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

[12] *See J.P.*, Docket No. 20-0381 (issued July 28, 2020); *M.W.*, Docket No. 19-1667 (issued June 29, 2020).

FECA and, therefore, is not competent to provide a medical opinion.[13] Consequently, this evidence is also insufficient to establish appellant's claim.[14]

As there is no medical opinion evidence establishing a diagnosed medical condition causally related to the accepted December 13, 2019 employment incident, the Board finds that appellant has not met his burden of proof to establish his claim.[15]

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 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.[16]

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.[17]

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.[18] If it chooses to grant reconsideration, it reopens

[13] 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). *See also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *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); *B.M.*, Docket No. 19-1341 (issued August 12, 2020); *Paul Foster*, 56 ECAB 208 (2004) (a nurse practitioner is not considered a "physician" pursuant to FECA).

[14] *B.M.*, *id.*; *M.F.*, Docket No. 19-1573 (issued March 16, 2020); *N.B.*, Docket No. 19-0221 (issued July 15, 2019).

[15] *Id.*

[16] 5 U.S.C. § 8128(a); *see T.K.*, Docket No. 19-1700 (issued April 30, 2020); *L.D.*, Docket No. 18-1468 (issued February 11, 2019); *W.C.*, 59 ECAB 372 (2008).

[17] 20 C.F.R. § 10.606(b)(3); *see L.D.*, *id.*; *see also L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

[18] *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.

and reviews the case on its merits.[19] 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.[20]

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).

Appellant's timely February 10, 2020 request for reconsideration neither alleged nor demonstrated that OWCP erroneously applied or interpreted a specific point of law. Additionally, the Board finds that he did not advance a relevant legal argument not previously considered by OWCP. Consequently, appellant is not entitled to further review of the merits of his claim based on either the first or second above-noted requirements under 20 C.F.R. § 10.606(b)(3).

The Board further finds that appellant did not submit relevant and pertinent new evidence in support of his reconsideration request under 20 C.F.R. § 10.606(b)(3). OWCP previously denied his claim because the medical evidence of record did not include a valid diagnosis in connection with the accepted work incident of December 13, 2019. In support of his reconsideration request, appellant submitted a December 19, 2019 work status form in which Dr. Meade recommended that appellant return to full-duty work as of that date. While this evidence is new, it does not address the relevant issue regarding the claim as it does not contain a valid diagnosis of a condition.[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] As such, the Board finds that Dr. Meade's report is insufficient to warrant a merit review.

Similarly, the newly submitted undated and unsigned report of work status, which noted that appellant had returned to full-time regular-duty work with no restrictions on December 19, 2019 is insufficient to warrant a merit review. This factual evidence is not relevant to the underlying medical issue in this case of whether appellant has a diagnosis in connection with the December 13, 2019 employment incident. As such, this evidence does not require reopening of his claim.[23]

Appellant also resubmitted Dr. Cunningham's December 13, 2019 discharge instructions, Dr. Espinosa's December 13, 2019 report, and Dr. Fazio's December 13, 2019 right shoulder x-ray report. Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.[24] As appellant failed to

[19] *Id.* at § 10.608(a); *see also M.S.*, 59 ECAB 231 (2007).

[20] *Id.* at § 10.608(b); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

[21] *M.J.*, Docket No. 19-1979 (issued August 12, 2020); *J.S.*, Docket No. 18-0726 (issued November 5, 2018).

[22] *Id.*; *Jimmy O. Gilmore*, 37 ECAB 257 (1985); *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

[23] *S.J.*, Docket No. 18-1513 (issued May 15, 2019).

[24] *D.M.*, Docket No. 18-1003 (issued July 16, 2020).

provide relevant and pertinent new evidence, he is not entitled to a merit review based on the third requirement under 20 C.F.R. § 10.606(b)(3).

The Board, accordingly, finds that appellant did not meet 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.[25]

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a medical condition causally related to the accepted December 13, 2019 employment incident. The Board further finds that OWCP properly denied his request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the February 14 and 4, 2020 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: October 29, 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

[25] *D.G.*, Docket No. 19-1348 (issued December 2, 2019).