

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

T.S., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Muskegon, MI, Employer**

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**Docket No. 20-0968
Issued: August 17, 2021**

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 30, 2020 appellant filed a timely appeal from a March 2, 2020 merit decision and a March 17, 2020 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

ISSUES

The issues are: (1) whether appellant has met his burden of proof to expand the acceptance of his claim to include a left hand condition as a consequence of his accepted June 6, 1978 employment injury; and (2) whether OWCP properly denied appellant's request for

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that following the March 17, 2020 decision, 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.*

reconsideration of the merits of his claim for a consequential left hand condition pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

This case has previously been before the Board.³ The facts and circumstances as presented in the Board's prior decisions are incorporated herein by reference. The relevant facts are as follows.

On June 6, 1978 appellant, then a 37-year-old carrier, filed a claim for traumatic injury (Form CA-1) alleging that he sustained a left knee injury on that day when his knee struck a bolt head that protruded from a dash panel in the performance of duty. OWCP accepted the claim for left knee meniscus derangement and left leg traumatic arthropathy. On January 13, 1979 appellant underwent OWCP authorized left knee surgery which included a total medial meniscectomy. He retired from federal employment on November 2, 2002. OWCP subsequently expanded the acceptance of the claim to include bilateral meniscus derangement, bilateral traumatic arthropathy of the lower legs, and right knee internal derangement, open wound of scalp without complications, left, and unspecified angina pectoris.⁴

With respect to the June 6, 1978 claim, the record reflects that by letters dated August 11 and September 4, 2019, appellant requested that a consequential left hand condition be accepted as part of his claim. He indicated that on August 10, 2019, his left knee buckled while he was using his table saw. This caused him to fall forward and lose grip on the wood board he was cutting, which then caused the wood board to strike his left hand. Appellant stated that he had pain in his index and middle fingers of his left hand, and four sutures placed in his left index finger.

In an August 11, 2019 emergency room report, Dr. Joseph A. Betcher, a Board-certified emergency medicine physician, noted the history of the August 10, 2019 incident and that he had sutured appellant's left hand laceration. He provided impressions of laceration of left index finger and fracture of phalanx of left index finger. An August 11, 2019 x-ray of appellant's left hand indicated a comminuted fracture through the base of the proximal phalanx of the second digit.

In an October 3, 2019 report, Dr. Ryan P. Ter Louw, a plastic and reconstructive surgery specialist, noted the history of injury and that appellant sustained laceration to left index and middle fingers. He also noted that the x-ray showed a phalanx fracture. Dr. Louw diagnosed

³ Docket No. 16-1477 (issued December 16, 2016); *Order Dismissing Appeal*, Docket No. 14-1647 (issued September 18, 2014); *Order Dismissing Appeal*, Docket No. 14-0374 (issued May 28, 2014); *Order Remanding Case*, Docket No. 13-2135 (issued April 3, 2014); Docket No. 13-0767 (issued July 8, 2013).

⁴ Appellant has a prior claim assigned OWCP File No. xxxxxx938, wherein appellant alleged that, on March 18, 1991, he slipped and fell and injured both shoulders while in the performance of duty. OWCP accepted that claim for the conditions of bilateral shoulder strains, fractured left humerus, lumbar strain and C6-7 herniated disc. Appellant also has a prior claim under OWCP File No. xxxxxx096 concerning a November 21, 2000 traumatic injury claim (Form CA-1). He alleged that he slipped on snow and ice while in the performance of duty. OWCP accepted that claim for aggravation of right shoulder osteoarthritis, lumbar sprain and displacement of cervical intervertebral disc without myelopathy. Appellant has a separate prior claim under OWCP File No. xxxxxx468 alleging carpal tunnel syndrome and ulnar nerve damage due to factors of his federal employment as of December 22, 2015. His claims have been administratively combined with xxxxxx096 serving as the master file.

de Quervains tenosynovitis, bilateral carpal tunnel syndrome, laceration of extensor muscle, fascia and tendon of right index finger at forearm level, displaced fracture of proximal phalanx of unspecified finger, left index and middle finger laceration from table saw injury and central slip injury to the left index finger. He recommended repeat x-ray and hand therapy.

In a December 12, 2019 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of medical evidence necessary to establish this consequential injury claim. A questionnaire was also provided for appellant's completion. Appellant was afforded 30 days to respond.

In a December 17, 2019 statement, appellant indicated that his knees occasionally buckled and that he had fallen several times since 1978. He noted that ECAB has held and adopted a standard under a "direct and natural consequence rule." Appellant noted that if a member is weakened by an employable injury and later contributes to a fall or other injury, the test of whether it would be considered consequential was if the medical complications directly flow or are a natural consequence of the injury. Photographic evidence was also enclosed of appellant's left hand.

By decision dated March 2, 2020, OWCP denied appellant's claim for expansion, finding that he had not met his burden of proof to establish that he sustained a consequential injury due to his accepted work-related conditions. It found that the factual and medical evidence of record was insufficient to explain how the left hand injury was causally related to his accepted conditions.

On March 10, 2020 appellant requested reconsideration. In a statement dated March 5, 2020, he asserted that he was not claiming a recurrence of his knee conditions; rather, he was claiming a consequential injury to his left hand when his left knee buckled on August 10, 2019, which caused him to lose control of the plywood he was cutting. Appellant quoted the FECA Procedural Manual for a definition of a consequential injury. In a March 9, 2020 addendum statement, he explained that plywood he was holding kicked back and struck his left hand within a fraction of a second of his left knee buckling. Appellant provided an explanation of a table saw kick back and his calculation of the speed of the kick back. He stated that he had no time to react and that he fell forward onto the surface of the table and running saw blade when his left knee buckled. Appellant noted the resulting injury to his left hand and medical treatment. A DVD of the table saw kickback was also submitted.

By decision dated March 17, 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

When an injury arises in the course of employment, every natural consequence that flows from that injury likewise arises out of the employment, unless it is the result of an independent intervening cause attributable to the claimant's own intentional misconduct.⁵ Thus, a subsequent

⁵ See *I.S.*, Docket No. 19-1461 (issued April 30, 2020); see *Charles W. Downey*, 54 ECAB 421 (2003).

injury, be it an aggravation of the original injury or a new and distinct injury, is compensable if it is the direct and natural result of a compensable primary injury.⁶

The claimant bears the burden of proof to establish a claim for a consequential injury.⁷ As part of this burden, the claimant must present rationalized medical opinion evidence, based on a complete factual and medical background, establishing causal relationship. The opinion must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship of the diagnosed condition and the specific employment injury.⁸ The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.⁹

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met his burden of proof to establish a consequential left hand condition due to his accepted work-related left knee conditions.

As noted, an employee claiming a consequential injury has the burden to provide rationalized medical evidence showing how the subsequently-acquired medical condition is a natural consequence of the prior employment injury.¹⁰

The record reflects that appellant has newly diagnosed conditions of laceration of left index finger, fracture of phalanx of left index finger, de Quervains tenosynovitis, bilateral carpal tunnel syndrome, laceration of extensor muscle, fascia and tendon of right index finger at forearm level, displaced fracture of proximal phalanx of unspecified finger, left index and middle finger laceration, which appellant alleged occurred due to a table saw injury following a buckling of his left knee. However, there is no rationalized medical opinion evidence explaining how his left hand conditions were a natural consequence of appellant's accepted 1978 employment injury.

Dr. Betcher provided a history of the injury and treated appellant for a laceration and fracture of the left index finger. Dr. Ter Louw also noted the history of injury and diagnosed de Quervains tenosynovitis, bilateral carpal tunnel syndrome, laceration of extensor muscle, fascia and tendon of right index finger at forearm level, displaced fracture of proximal phalanx of unspecified finger, left index and middle finger laceration from table saw injury and central slip injury to the left index finger. However, these reports are of no probative value regarding appellant's consequential claim as neither physician provided an opinion regarding the cause of the left hand 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 on the issue of causal

⁶ *Id.*; see also *Susanne W. Underwood (Randall L. Underwood)*, 53 ECAB 139, 141 n.7 (2001).

⁷ See *C.H.*, Docket No. 20-0228 (issued October 7, 2020); *P.P.*, Docket No. 19-1359 (issued April 30, 2020).

⁸ *K.W.*, Docket No. 18-0991 (issued December 11, 2018); *P.M.*, Docket No. 18-0287 (issued October 11, 2018).

⁹ *P.M.*, *id.*

¹⁰ *C.H.*, *supra* note 7.

relationship.¹¹ In a case such as this, a well rationalized medical opinion which explains how the left hand conditions were causally related to the accepted employment conditions is required.¹²

OWCP also received an August 11, 2019 x-ray report noting the fracture of the second left digit. The Board has held, however, that diagnostic studies, standing alone, lack probative value as they do not provide an opinion on causal relationship between an employment injury and a diagnosed condition.¹³

Photographic evidence was also enclosed of appellant's left hand. As this is not medical evidence provided by a physician, it is of no probative value.¹⁴

As the medical evidence of record does not include a rationalized opinion explaining how appellant's accepted June 6, 1978 employment conditions caused the left hand conditions on August 10, 2019, the Board finds that he has not met his 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 own motion or on application.¹⁵

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or 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.¹⁶

¹¹ See *L.D.*, Docket No. 20-0894 (issued January 26, 2021); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹² See *J.M.*, Docket No. 19-1926 (issued March 19, 2021); *M.B.*, Docket No. 19-0882 (issued November 6, 2019).

¹³ *M.E.*, Docket No. 18-0940 (issued June 11, 2019).

¹⁴ *Supra* note 11.

¹⁵ 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).

¹⁶ 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).

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.¹⁷ If it chooses to grant reconsideration, it reopens and reviews the case on its merits.¹⁸ 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.¹⁹

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 request for reconsideration neither alleged nor demonstrated that OWCP erroneously applied or interpreted a specific point of law. Additionally, the Board finds that it did not advance a relevant legal argument not previously considered by OWCP. Rather, appellant reiterated his argument that his knee buckled while using his table saw and thus his hand injury was a consequential injury of his accepted conditions. His argument was substantially similar to that which was previously considered and discussed in OWCP's March 2, 2020 decision. 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).

In support of his reconsideration request, appellant submitted a DVD purporting to show a table saw kickback. This evidence is irrelevant or immaterial on the issue of whether appellant's left hand conditions on August 10, 2019 were causally related to his accepted employment injury. As noted above, the claimant must present rationalized medical opinion evidence, based on a complete factual and medical background, establishing causal relationship. 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.²⁰ As appellant failed to 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.

¹⁷ *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.

¹⁸ *Id.* at § 10.608(a); *F.V.*, Docket No. 18-0230 (issued May 8, 2020); *see also M.S.*, 59 ECAB 231 (2007).

¹⁹ *Id.* at § 10.608(b); *B.S.*, Docket No. 20-0927 (issued January 29, 2021); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

²⁰ *A.J.*, Docket No. 20-0926 (issued January 26, 2021); *Jimmy O. Gilmore*, 37 ECAB 257 (1985); *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

CONCLUSION

The Board finds that appellant has not met his burden of proof to expand the acceptance of his claim to include a left hand condition as a consequence of his accepted employment injuries. The Board further finds that OWCP properly denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the March 2 and 17, 2020 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: August 17, 2021
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