

Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.³

ISSUES

The issues are: (1) whether appellant has met his burden of proof to establish a medical condition causally related to the accepted October 30, 2019 employment incident; and (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 November 1, 2019 appellant, then a 44-year-old correctional systems officer, filed a traumatic injury claim (Form CA-1) alleging that on October 30, 2019 he injured his back, neck, and hand when his vehicle was struck on the rear passenger side by another vehicle while in the performance of duty. He noted that he had a sore back and neck, as well as a tingling sensation in his fingers. Appellant stopped work on October 30, 2019 and returned to work on November 1, 2019.

In a development letter dated November 7, 2019, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence needed and provided a factual questionnaire for his completion. In a separate development letter of even date, OWCP also requested additional information from the employing establishment. It afforded both parties 30 days to respond.

In a November 6, 2019 medical report, Dr. Aditya Patel, Board-certified in pain medicine, indicated that appellant was involved in a motor vehicle collision (MVC) and diagnosed cervical/thoracic herniated nucleus pulposus (HNP).

A November 9, 2019 magnetic resonance imaging (MRI) scan of the cervical spine demonstrated multilevel interspace narrowing and dehydration, central disc bulge at C2-3, right paracentral disc herniation at C3-4 effacing the anterolateral aspect of the subarachnoid space with right-sided neural foraminal narrowing, central disc bulge at C4-5, central and left lateral disc herniation at C4-5 effacing the anterolateral subarachnoid space with left-sided neural foraminal narrowing, central disc bulge at C6-7, and subligamentous central disc herniation at C7-T1 abutting the ventral aspect of the spinal cord.

In a November 18, 2019 response to OWCP's questionnaire, appellant alleged that he was leaving the employing establishment's parking lot when his vehicle was struck on the rear passenger side by another vehicle. He noted that he had no immediate symptoms following his

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that, following the February 27, 2020 decision, appellant submitted 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.*

MVC, but eventually began to experience a tingling sensation in three fingers in the left hand and soreness in the upper back and the left side of his neck.

A November 26, 2019 MRI scan of the thoracic spine demonstrated multilevel spondylosis, multilevel interspace narrowing and dehydration, central and left paracentral disc bulge at T1-2, central disc bulge at T2-3, mild left lateral disc herniation at T3-4, central disc herniation with right neuroforaminal narrowing at T4-5, broad-based disc herniation partly effacing the anterior subarachnoid space at T6-7, broad-based and right paracentral disc herniation at T8-9, and central and right paracentral disc herniation at T11-12.

In a December 8, 2019 medical report, Dr. Daniel Schlusberg, a diagnostic radiologist, noted that appellant was injured on October 30, 2019 and diagnosed thoracic spine pain and cervical radiculopathy.

By decision dated December 16, 2019, OWCP denied appellant's traumatic injury claim, finding that he had not submitted sufficient evidence to establish causal relationship between his diagnosed conditions and the accepted October 30, 2019 employment incident.

On January 28, 2020 appellant requested reconsideration.

In a January 15, 2020 narrative report, Dr. Sukdeb Datta, Board-certified in pain medicine, noted that appellant presented with neck, back, and left upper extremity pain, as well as headache. He indicated that appellant sustained multiple injuries from being involved in an MVC at work on October 30, 2019 when he was leaving his work facility. Dr. Datta reviewed appellant's MRI scans of the cervical and thoracic spines and an electromyography and nerve conduction velocity (EMG/NCV) study of the left upper extremity. He also conducted a physical examination and diagnosed cervical and thoracic disc herniation, spondylosis, and radiculopathy. Based on appellant's history and physical examination findings, Dr. Datta opined to a reasonable degree of medical certainty that the accepted October 30, 2019 employment incident caused his diagnosed conditions.

By decision dated January 29, 2020, OWCP denied modification of the December 16, 2019 decision.

On February 13, 2020 appellant requested reconsideration. With his request, he resubmitted copies of the November 9, 2019 cervical spine MRI scan and the November 26, 2019 thoracic spine MRI scan, as well as the January 15, 2020 report from Dr. Datta, previously of record.

By decision dated February 27, 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 FECA⁴ 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,⁵ 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.⁶ 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.⁷

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. Second component is whether the employment incident caused a personal injury and can be established only by medical evidence.⁸

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.⁹ 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 factors identified by the employee.¹⁰

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 October 30, 2019 employment incident.

⁴ *Supra* note 2.

⁵ *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).

⁶ *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).

⁷ *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).

⁸ *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).

⁹ *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).

¹⁰ *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).

In a January 15, 2020 narrative report, Dr. Datta provided a history of the accepted October 30, 2019 employment incident, discussed his examination findings, and diagnosed cervical and thoracic disc herniation, spondylosis, and radiculopathy. Based on appellant's history and physical examination findings, he opined, to a reasonable degree of medical certainty, that appellant's accepted October 30, 2019 employment incident caused his diagnosed conditions. While his opinion is generally supportive of causal relationship, Dr. Datta has not provided adequate medical rationale explaining how and why he believes that being involved in a work-related MVC could have resulted in or contributed to the diagnosed conditions. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how a given medical condition/disability was related to the employment incident.¹¹ Therefore, this report is insufficient to establish appellant's claim.

In a November 6, 2019 medical report, Dr. Patel indicated that appellant was involved in an MVC. He diagnosed cervical/thoracic HNP, but failed to specifically relate the diagnosed condition to the accepted October 30, 2019 employment incident. 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.¹² Thus, the report is also insufficient to meet appellant's burden of proof.

Dr. Schlüsselberg, in his December 8, 2019 report, indicated that appellant was injured on October 30, 2019 and diagnosed thoracic spine pain and cervical radiculopathy. However, the Board has held that pain is a symptom and not a compensable medical diagnosis.¹³ Lacking a firm diagnosis and reasoned medical opinion regarding causal relationship, this report is also insufficient to meet appellant's burden of proof.¹⁴

Appellant additionally submitted a November 9, 2019 cervical spine MRI scan and a November 26, 2019 thoracic spine MRI scan. The Board has held, however, that diagnostic studies, standing alone, lack probative value on the issue of causal relationship as they do not provide an opinion on causal relationship between an employment incident and a diagnosed condition.¹⁵

As appellant has not submitted sufficient medical evidence to establish a medical condition causally related to the accepted October 30, 2019 employment injury, the Board finds that he has not met his burden of proof to establish his claim.

¹¹ See *S.Y.*, Docket No. 20-0470 (issued July 15, 2020); *T.J.*, Docket No. 19-1339 (issued March 4, 2020).

¹² *N.D.*, Docket No. 20-0991 (issued January 12, 2021); *J.R.*, Docket No. 20-0292 (issued June 26, 2020); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹³ *S.L.*, Docket No. 19-1536 (issued June 26, 2020); *D.Y.*, Docket No. 20-0112 (issued June 25, 2020).

¹⁴ *J.R.*, *supra* note 12; *T.G.*, Docket No. 19-0904 (issued November 25, 2019).

¹⁵ *M.M.*, Docket No. 20-0019 (issued May 6, 2020).

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.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 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 her claim pursuant to 5 U.S.C. § 8128(a).

Appellant has not alleged or demonstrated that OWCP erroneously applied or interpreted a specific point of law. Moreover, he has not advanced a relevant legal argument not previously

¹⁶ 5 U.S.C. § 8128(a); *see M.S.*, Docket No. 19-1001 (issued December 9, 2019); *L.D.*, Docket No. 18-1468 (issued February 11, 2019); *see also V.P.*, Docket No. 17-1287 (issued October 10, 2017); *W.C.*, 59 ECAB 372 (2008).

¹⁷ 20 C.F.R. § 10.606(b)(3); *see also E.W.*, Docket No. 19-1393 (issued January 29, 2020); *L.D., id.; B.W.*, Docket No. 18-1259 (issued January 25, 2019).

¹⁸ *Id.* at § 10.607(a). The one-year period begins on the next day after the date of the original contested decision. 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.

¹⁹ *Id.* at § 10.608(a); *see also Y.H.*, Docket No. 18-1618 (issued January 21, 2020); *R.W.*, Docket No. 18-1324 (issued January 21, 2020); *M.S.*, 59 ECAB 231 (2007).

²⁰ *Id.* at § 10.608(b); *D.C.*, Docket No. 19-0873 (issued January 27, 2020); *M.S.*, Docket No. 19-0291 (issued June 21, 2019).

considered. Consequently, appellant is not entitled to a review of the merits of his claim based on the first and second above-noted requirements under 20 C.F.R. § 10.606(b)(3).²¹

Further, appellant has not provided relevant and pertinent new evidence in support of his request for reconsideration. On reconsideration he resubmitted copies of the November 9, 2019 cervical spine MRI scan and the November 26, 2019 thoracic spine MRI scan, as well as the January 15, 2020 report from Dr. Datta. The Board has held that the submission of evidence or argument which repeats or duplicates evidence or argument already in the case record does not constitute a basis for reopening a case and thus, these reports also insufficient to warrant a merit review.²² As appellant failed to provide relevant and pertinent new evidence related to the underlying issue of causal relationship, he was 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 OWCP properly determined that appellant was not entitled to further review of the merits of his claim pursuant to any of the three requirements under 20 C.F.R. § 10.606(b)(3). Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.²³

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a medical condition causally related to the accepted October 30, 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).

²¹ See *M.O.*, Docket No. 19-1677 (issued February 25, 2020); *C.B.*, Docket No. 18-1108 (issued January 22, 2019).

²² *D.M.*, Docket No. 18-1003 (issued July 16, 2020); *L.C.*, Docket No. 19-0503 (issued February 7, 2020); *A.A.*, Docket No. 18-0031 (issued April 5, 2018); *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

²³ *D.M., id.; 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 February 27, 2020 and January 29, 2020 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: July 21, 2021
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board