

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

S.Q., Appellant

and

**DEPARTMENT OF COMMERCE, BUREAU
OF CENSUS, Irving, TX, Employer**

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**Docket No. 20-1208
Issued: May 4, 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 May 26, 2020 appellant filed a timely appeal from a March 12, 2020 merit decision and a March 30, 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.

ISSUES

The issues are: (1) whether appellant has met her burden of proof to establish a medical condition causally related to the accepted January 27, 2020 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).

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On January 30, 2020 appellant, then a 46-year-old partnership specialist, filed a traumatic injury claim (Form CA-1) alleging that on January 27, 2020 she sustained pain and bruising on the right side of her stomach/ribs, right shoulder, head, and neck, when her car slipped on an icy road causing her to lose control and strike a truck and roadside concrete pillar while in the performance of duty. She stopped work on January 27, 2020 and returned on January 30, 2020.

OWCP received January 27, 2020 hospital emergency room follow-up instructions for treatment of increased pain and swelling, and a patient information sheet related to appellant's motor vehicle injuries.

By development letter dated January 31, 2020, 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 questionnaire for her completion. OWCP afforded appellant 30 days to submit the necessary evidence.

On February 10, 2020 OWCP received appellant's response to the questionnaire. Appellant explained that she lost control of her vehicle on an icy road while in the performance of duty. She explained that she had pain on the right side of her ribs, chest, collar bones, the back of her head, and neck. Appellant indicated that the pain on her right side was "excruciating." She denied any prior injuries.

Appellant submitted a January 27, 2020 sheriff's report and a travel voucher.

OWCP received a January 27, 2020 computerized tomography (CT) scan of the thorax, abdomen, and pelvis, which revealed no acute traumatic abnormality. A CT scan of appellant's head revealed normal findings; however, air-fluid level was noted in her right maximillary sinus, which could be secondary to blood. OWCP also received a January 27, 2020 toxicology report.

In a January 27, 2020 Wyoming Medical Center note, Dr. Travis Washut, an emergency medicine specialist and osteopath, noted that appellant presented after her car slid off the side of a road and hit a pole and had complaints of right-side rib pain. He diagnosed a motor vehicle collision with right flank and rib pain.

In a February 10, 2020 report, Dr. Marjorie L. Wells, a Board-certified family practitioner, diagnosed right upper quadrant pain and sternum pain. She also noted that x-rays of appellant's ribs suggested that she might have a small fracture that appeared secondarily during the healing process, however, repeat x-rays would be taken to confirm.

By decision dated March 12, 2020, OWCP accepted that the January 27, 2020 employment incident occurred as alleged. However, it denied appellant's traumatic injury claim, finding that the medical evidence of record was insufficient to establish a medical diagnosis in connection with the accepted employment incident. OWCP explained that pain is 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 March 24, 2020 appellant requested reconsideration.

By decision dated March 30, 2020, 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 FECA² 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,³ 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.⁴ 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.⁵

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.⁶

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.⁷ 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.⁸

² *Id.*

³ *See A.D.*, Docket No. 20-0679 (issued November 10, 2020); *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).

⁴ *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).

⁵ *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).

⁶ *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).

⁷ *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).

⁸ *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).

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met her burden of proof to establish a medical condition causally related to her January 27, 2020 employment injury.

OWCP initially received unsigned January 27, 2020 emergency room follow-up instructions. Reports that are unsigned or that bear illegible signatures cannot be considered probative medical evidence because they lack proper identification as the author cannot be identified as a physician.⁹

Appellant provided a January 27, 2020 note from Dr. Washut who diagnosed a motor vehicle collision with right flank and rib pain and a February 10, 2020 report from Dr. Wells who diagnosed right upper quadrant pain and sternum pain. The Board has consistently held that pain is a description of a symptom and not, in itself, considered a firm medical diagnosis.¹⁰ While Dr. Wells also noted that appellant might have a small rib fracture, she also indicated that additional x-ray evidence would be needed to confirm the diagnosis. The Board also has held that a medical report lacking a firm diagnosis and a rationalized medical opinion regarding causal relationship is of no probative value.¹¹ As Drs. Washut and Wells failed to provide a firm diagnosis, the assessments of pain are insufficient to establish appellant's claim.

OWCP also received a January 27, 2020 CT scan of the thorax, abdomen, and pelvis and a January 27, 2020 toxicology report. The Board has held that diagnostic test reports, standing alone, lack probative value as they do not provide an opinion on whether there is causal relationship between an employment incident and a diagnosed condition.¹² As the evidence of record is insufficient to establish a medical diagnosis in connection with the accepted January 27, 2020 employment incident, the Board finds that appellant 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 and 20 C.F.R. §§ 10.605 through 10.607.

LEGAL PRECEDENT -- ISSUE 2

Section 8128(a) of FECA does not entitle a claimant to review of an OWCP decision as a matter of right.¹³ OWCP has discretionary authority in this regard and has imposed certain

⁹ *D.T.*, Docket No. 20-0685 (issued October 8, 2020); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

¹⁰ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.4a(6) (August 2012); *see A.D.*, *supra* note 3; *C.H.*, Docket No. 20-0228 (issued October 7, 2020); *T.G.*, Docket No. 19-0904 (issued November 25, 2019).

¹¹ *J.P.*, Docket No. 20-0381 (issued July 28, 2020); *R.L.*, Docket No. 20-0284 (issued June 30, 2020).

¹² *See J.P.*, *id.*; *M.W.*, Docket No. 19-1667 (issued June 29, 2020).

¹³ This section provides in pertinent part: "The Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application." 5 U.S.C. § 8128(a).

limitations in exercising its authority.¹⁴ One such limitation is that the request for reconsideration must be received by OWCP within one year of the date of the decision for which review is sought.¹⁵ A timely request for reconsideration, including all supporting documents, must set forth arguments and contain evidence that either: (i) shows that OWCP erroneously applied or interpreted a specific point of law; (ii) advances a relevant legal argument not previously considered by OWCP; or (iii) constitutes relevant and pertinent new evidence not previously considered by OWCP.¹⁶ When a timely request for reconsideration does not meet at least one of the above-noted requirements, OWCP will deny the request for reconsideration without reopening the case for a review on the merits.¹⁷

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).

On March 24, 2020 appellant requested reconsideration. She did not offer any legal arguments. Therefore, appellant did not show that OWCP erroneously applied or interpreted a specific point of law, nor did she advance a relevant legal argument not previously considered by OWCP. Consequently, she is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under 20 C.F.R. § 10.606(b)(3).

Appellant also did not submit any evidence in support of her request for reconsideration. As she has not provided relevant and pertinent new evidence, she is not entitled to a merit review based on the third requirement under 20 C.F.R. § 10.606(b)(3).¹⁸

The Board accordingly 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 January 27, 2020 employment incident. The Board

¹⁴ *Id.*

¹⁵ *Id.* at § 10.607(a). 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.

¹⁶ *Id.* at § 10.606(b)(3).

¹⁷ *Id.* at § 10.608(a), (b).

¹⁸ *Id.* at § 10.608(b); *M.P.*, Docket No. 20-0814 (issued January 26, 2021); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

further finds that OWCP properly denied her request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the March 12 and 30, 2020 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: May 4, 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