

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

_____)	
L.D., Appellant)	
)	
and)	Docket No. 21-0765
)	Issued: February 10, 2022
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Nashville, TN, 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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On April 7, 2021 appellant filed a timely appeal from December 21, 2020 and March 5, 2021 merit decisions as well as a March 8, 2021 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 the case.²

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the March 8, 2021 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.*

ISSUES

The issues are: (1) whether appellant has met her burden of proof to establish disability from work on October 15, 2020 causally related to her accepted August 19, 2020 employment injury; (2) whether appellant has met her burden of proof to expand the acceptance of the claim to include a head injury causally related to the accepted August 19, 2020 employment injury; and (3) whether OWCP properly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On August 19, 2020 appellant, then a 52-year-old mail processing clerk, filed a traumatic injury claim (Form CA-1) alleging that, on that day, she sustained an abrasion and scratch to her right knee when she fell walking to a stacking machine while in the performance of duty. OWCP accepted the claim for patellar tendinitis, right knee, and trochanteric bursitis, right hip, noting that her healthcare provider requested that appellant be further evaluated for a head injury related to her accepted work event.

In a letter dated October 16, 2020, Dr. Daniel McGee, an osteopath specializing in family medicine, related that on August 19, 2020 appellant fell at work and hit her head. He stated that she required a computerized tomography (CT) scan and follow-up appointment with a neurologist.

OWCP received a CT scan of appellant's head dated October 16, 2020 from Dr. Kevin Cunneely, a Board-certified diagnostic radiologist. Dr. Cunneely related that appellant had a normal CT examination.

By decision dated December 21, 2020, OWCP found that appellant had not met her burden of proof to expand the acceptance of her claim to include a diagnosed head injury causally related to the accepted August 19, 2020 employment injury.

Appellant submitted a medical report dated December 30, 2020 from Dr. Damon H. Petty, a Board-certified orthopedic surgeon, which listed appellant's diagnoses of greater trochanteric bursitis, right hip and patellar tendinitis, right knee.

On January 25, 2021 appellant filed a claim for compensation (Form CA-7) for disability from work on October 15, 2020. She noted that on that day she had used eight hours of leave without pay due to right knee pain.

In a development letter dated February 1, 2021, OWCP informed appellant that it had not received any evidence to support her claim for wage-loss compensation on October 15, 2020. It advised her of the type of medical evidence necessary to establish her claim and afforded her 30 days to submit the requested medical evidence.

On February 22, 2021 appellant requested reconsideration of OWCP's December 21, 2020 decision denying expansion of the acceptance of her claim.

On March 1, 2021 OWCP received a Leave Year 2020 Absence Analysis, which indicated that appellant had taken leave without pay on October 15, 2020.

By decision dated March 5, 2021, OWCP denied appellant's claim for compensation for disability from work on October 15, 2020. It found that the medical evidence of record was insufficient to establish that she was disabled from work causally related to her August 19, 2020 employment injury.

By decision dated March 8, 2021, OWCP denied reconsideration of its December 21, 2020 decision denying the expansion of the acceptance of appellant's claim to include a head injury.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA³ has the burden of proof to establish the essential elements of his or her claim including that any disability or specific condition for which compensation is claimed is causally related to the employment injury.⁴ For each period of disability claimed, the employee has the burden of proof to establish that he or she was disabled from work as a result of the accepted employment injury.⁵ Whether a particular injury causes an employee to become disabled from work, and the duration of that disability, are medical issues that must be proven by a preponderance of probative and reliable medical opinion evidence.⁶

Under FECA, the term disability means an incapacity because of an employment injury, to earn the wages the employee was receiving at the time of the injury.⁷ When, however, the medical evidence establishes that the residuals or sequelae of an employment injury are such that, from a medical standpoint, prevent the employee from continuing in his or her employment, he or she is entitled to compensation for any loss of wages.⁸

To establish causal relationship between the disability claimed and the employment injury, an employee must submit rationalized medical evidence, based on a complete factual and medical background, supporting such causal relationship.⁹ The opinion of the physician must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of

³ See *supra* note 1.

⁴ See *D.S.*, Docket No. 20-0638 (issued November 17, 2020); *F.H.*, Docket No. 18-0160 (issued August 23, 2019); *C.R.*, Docket No. 18-1805 (issued May 10, 2019); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁵ *Id.*; *Fereidoon Kharabi*, 52 ECAB 291, 293 (2001).

⁶ 20 C.F.R. § 10.5(f); *J.M.*, Docket No. 18-0763 (issued April 29, 2020).

⁷ *Supra* note 5.

⁸ *Id.*

⁹ See *S.J.*, Docket No. 17-0828 (issued December 20, 2017); *Kathryn E. DeMarsh*, 56 ECAB 677 (2005).

the relationship between the diagnosed condition and the specific employment factors identified by the employee.¹⁰

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met her burden of proof to establish disability from work on October 15, 2020 causally related to her accepted August 19, 2020 employment injury.

OWCP, in its February 1, 2021 development letter, notified appellant of the type of medical evidence to establish that she was disabled from work on the date claimed as a result of the accepted employment injury. However, no medical evidence was received pertaining to this disability claim prior to OWCP's March 5, 2021 decision.

For each period of disability claimed, the employee has the burden of proof to establish that he or she was disabled from work during the claimed period as a result of the accepted employment injury.¹¹ Because appellant has not submitted rationalized medical opinion evidence sufficient to establish employment-related disability on the date claimed due to her accepted employment injury, the Board finds that she has not met her burden of proof to establish her claim.

LEGAL PRECEDENT -- ISSUE 2

When an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.¹² The medical evidence required to establish causal relationship between a specific condition and the employment injury is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the claimant, 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 the specific employment incident identified by the claimant.¹³

ANALYSIS -- ISSUE 2

The Board finds that appellant has not met her burden of proof to expand the acceptance of the claim to include a head injury causally related to the accepted August 19, 2020 employment injury.

OWCP received a CT scan report of appellant's head dated October 16, 2020 from Dr. Cunneely. Dr. Cunneely reported normal findings. It is appellant's burden of proof to obtain

¹⁰ *C.B.*, Docket No. 18-0633 (issued November 16, 2018); *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

¹¹ *Supra* note 4.

¹² *J.R.*, Docket No. 20-0292 (issued June 26, 2020); *W.L.*, Docket No. 17-1965 (issued September 12, 2018); *V.B.*, Docket No. 12-0599 (issued October 2, 2012); *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004).

¹³ *See E.J.*, Docket No. 09-1481 (issued February 19, 2010).

and submit medical documentation containing a firm diagnosis causally related to the accepted employment injury.¹⁴ As this report did not provide a firm diagnosis of a head injury causally related to the accepted employment injury, it is insufficient to establish causal relationship.¹⁵

In an October 16, 2020 letter, Dr. McGee related that on August 19, 2020 appellant fell at work and hit her head. However, this document did not specifically provide a physician's diagnosis of appellant's condition. The Board has held that a medical report is of no probative value if it does not provide a firm diagnosis of a particular medical condition, or offer a specific opinion as to whether the accepted employment incident caused or aggravated the claimed condition.¹⁶

As the medical evidence of record is insufficient to establish a diagnosed head condition causally related to the accepted August 19, 2020 employment injury, 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(a) and 20 C.F.R. §§ 10.605 through 10.607.

LEGAL PRECEDENT -- ISSUE 3

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.¹⁷

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.¹⁸

¹⁴ *J.P.*, Docket No. 20-0381 (issued July 28, 2020); *R.L.*, Docket No. 20-0284 (issued June 30, 2020).

¹⁵ *See J.C.*, Docket No. 20-1509 (issued May 25, 2021).

¹⁶ *L.E.*, Docket No. 19-0470 (issued August 12, 2019); *M.J.*, Docket No. 18-1114 (issued February 5, 2019).

¹⁷ 5 U.S.C. § 8128(a); *see L.D.*, Docket No. 18-1468 (issued February 11, 2019); *see also V.P.*, Docket No. 17-1287 (issued October 10, 2017); *D.L.*, Docket No. 09-1549 (issued February 23, 2010); *W.C.*, 59 ECAB 372 (2008).

¹⁸ 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.¹⁹ If it chooses to grant reconsideration, it reopens and reviews the case on its merits.²⁰ 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.²¹

ANALYSIS -- ISSUE 3

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

In her February 22, 2021 request for reconsideration of OWCP's December 21, 2020 decision denying expansion of the acceptance of her claim to include a head injury, appellant did not allege or demonstrate that OWCP erroneously applied or interpreted a specific point of law. Moreover, she has not advanced a relevant legal argument not previously considered. Consequently, appellant 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).²²

The Board further finds that appellant has not provided any relevant and pertinent new evidence not previously considered. Although evidence submitted on reconsideration need not carry appellant's burden entirely to warrant reopening the claim for merit review, the new evidence must at least be relevant and pertinent to the issue(s) of the contested decision of OWCP.²³ Appellant submitted a medical report dated December 30, 2020 from Dr. Petty; however, this report did not provide a diagnosis of a head injury. This report, therefore, did not constitute relevant and pertinent new evidence regarding the underlying issue of whether appellant sustained a head injury causally related to the accepted employment injury.²⁴ As appellant did not provide 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).²⁵

¹⁹ *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). Chapter 2.1602.4b.

²⁰ *Id.* at § 10.608(a); *see also A.F.*, Docket No. 19-1832 (issued July 21, 2020); *M.S.*, 59 ECAB 231 (2007).

²¹ *Id.* at § 10.608(b); *J.B.*, Docket No. 20-0145 (issued September 8, 2020); *Y.K.*, Docket No. 18-1167 (issued April 2, 2020); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

²² *C.B.*, Docket No. 18-1108 (issued January 22, 2019).

²³ *See M.J.*, Docket No. 19-1979 (issued August 12, 2020); *R.R.*, Docket No. 18-1562 (issued February 22, 2019).

²⁴ *P.C.*, Docket No. 18-1703 (issued March 22, 2019).

²⁵ *See T.W.*, Docket No. 18-0821 (issued January 13, 2020).

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.²⁶

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish disability from work on October 15, 2020 causally related to her accepted August 19, 2020 employment injury. The Board also finds that OWCP properly determined that she has not met her burden of proof to expand the acceptance of the claim to include a head injury causally related to the accepted August 19, 2020 employment injury. The Board further finds that OWCP properly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the December 21, 2020, and March 5 and 8, 2021 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: February 10, 2022
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

²⁶ *J.B.*, *supra* note 21; *D.G.*, Docket No. 19-1348 (issued December 2, 2019).