

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

FACTUAL HISTORY

On October 15, 2021 appellant, then 65-year-old rural carrier associate, filed an occupational disease claim (Form CA-2) alleging that she developed an umbilical hernia due to factors of her federal employment. She explained that her physician had been monitoring her condition since April 2018 and referred her for an ultrasound, which raised concerns. Appellant noted that she first became aware of her condition and realized its relationship to her federal employment on April 20, 2018. She stopped work on October 4, 2021.

In an accompanying narrative statement, appellant asserted that lifting heavy packages weighing up to 70 pounds four to six hours a day six to seven days a week and constant bending, twisting, stooping, and climbing caused or contributed to her diagnosed condition.

On October 1 and 5, 2021 Dr. Jean Reams, an osteopath, provided work restrictions.

In an October 19, 2021 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence necessary to establish her claim and provided a questionnaire for her 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 submit the necessary information.

In an October 31, 2021 note, Dr. Alanna Gretschel, an osteopath, reported that about 3.5 years earlier, appellant had developed periumbilical pain and diagnosed small umbilical hernia. She noted that appellant was required to lift up to 70 pounds at work and reported pain with heavy lifting.

Appellant also provided unsigned documentation of her scheduled December 9, 2021 umbilical hernia surgery.

By decision dated November 26, 2021, OWCP denied appellant's occupational disease claim, finding that she had not provided medical evidence establishing a causal relationship between her diagnosed condition and the accepted implicated employment factors.

On December 17, 2021 appellant requested reconsideration. She did not submit any evidence or argument in support of this request.

By decision dated December 21, 2021, OWCP denied appellant's request for reconsideration of the merits of her claim.

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 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,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 establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.⁷

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue. A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background. Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and a appellant's specific employment factor(s).⁸

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met her burden of proof to establish an umbilical hernia causally related to the accepted factors of her federal employment.

In support of her claim, appellant submitted an October 31, 2021 note from Dr. Gretschel who reported that about 3.5 years earlier, she had developed periumbilical pain and diagnosed small umbilical hernia. Dr. Gretschel noted that appellant was required to lift up to 70 pounds at

³ *Supra* note 1.

⁴ *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ *C.H.*, Docket No. 19-1781 (issued November 13, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁷ *T.M.*, Docket No. 20-0712 (issued November 10, 2020); *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *R.H.*, 59 ECAB 382 (2008).

⁸ *J.V.*, Docket No. 21-1353 (issued March 21, 2022); *John J. Carlone*, 41 ECAB 354 (1989).

work and reported pain with heavy lifting. However, she did not offer an opinion on causal relationship. 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.⁹ As such, Dr. Gretschel's report is of no probative value and is insufficient to establish appellant's claim.

In notes dated October 1 and 5, 2021, Dr. Reams provided work restrictions, but did not provide a diagnosis. To establish personal injury, the medical evidence of record must document a diagnosed condition and must explain how that condition is causally related to the accepted factors of employment. Lacking a firm diagnosis of any condition in connection with the accepted employment factors, a medical report is of limited probative value and insufficient to establish appellant's claim.¹⁰ As Dr. Reams did not diagnose a medical condition, his reports are of limited probative value.

OWCP also received unsigned documents regarding the scheduled December 9, 2021 hernia surgery. Reports that are unsigned or that bear illegible signatures cannot be considered probative medical evidence because they lack proper identification¹¹ as the author cannot be identified as a physician.¹²

As the medical evidence of record is insufficient to establish a diagnosed medical condition causally related to the accepted factors of appellant's federal employment, the Board finds that she 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 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.¹³

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

⁹ See *D.V.*, Docket No. 21-1259 (issued March 15, 2022); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹⁰ *A.B.*, Docket No. 20-1017 (issued June 11, 2021); see *J.F.*, Docket No. 18-0904 (issued November 27, 2018); *D.S.*, Docket No. 18-0061 (issued May 29, 2018).

¹¹ See *C.S.*, Docket No. 20-1354 (issued January 29, 2021); *W.L.*, Docket No. 19-1581 (issued August 5, 2020).

¹² *C.S.*, *id.*; *D.T.*, Docket No. 20-0685 (issued October 8, 2020); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

¹³ 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).

OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.¹⁴

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.¹⁵ If it chooses to grant reconsideration, it reopens and reviews the case on its merits.¹⁶ 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.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).

In support of her request for reconsideration, appellant did not provide any additional argument. The Board finds that she 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. Accordingly, appellant is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(3).¹⁸

Appellant also did not submit any new medical evidence. The underlying issue in this case is causal relationship, which is medical in nature. Appellant did not submit any pertinent new and relevant medical evidence not previously considered by OWCP. Therefore, she is not entitled to further review of the merits of her claim based on the third requirement under section 10.606(b)(3).¹⁹

The Board, therefore, 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.

¹⁴ 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).

¹⁵ *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 (September 2020). 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 § 10.608(a); *see also F.V.*, Docket No. 18-0239 (issued May 8, 2020); *M.S.*, 59 ECAB 231 (2007).

¹⁷ *Id.* at § 10.608(b); *Y.K.*, Docket No. 18-1167 (issued April 2, 2020); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

¹⁸ *Id.* at § 10.606(b)(3); *see also D.L.*, Docket No. 21-1142 (issued March 23, 2022); *C.C.*, Docket No. 19-1622 (issued May 28, 2020); *M.S.*, Docket No. 18-1041 (issued October 25, 2018); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

¹⁹ *See* 20 C.F.R. § 10.606(b)(3)(iii); *D.L., id.*

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish an umbilical hernia causally related to the accepted factors of her federal employment. The Board further finds 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, 2021 and November 26, 2021 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: July 8, 2022
Washington, DC

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

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

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board