

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

C.V., Appellant)	
)	
and)	Docket No. 22-0078
)	Issued: November 28, 2022
DEPARTMENT OF VETERANS AFFAIRS,)	
DALLAS VA MEDICAL CENTER, Dallas, TX,)	
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
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On October 26, 2021 appellant filed a timely appeal from a June 17, 2021 merit decision and August 30, 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 this case.²

ISSUES

The issues are: (1) whether appellant has met her burden of proof to establish causal relationship between a diagnosed medical condition and the accepted compensable employment

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the August 30, 2021 decision, appellant submitted additional evidence to OWCP. However, the Board's *Rules of Procedures* 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.*

factor; 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).

FACTUAL HISTORY

On November 17, 2020 appellant, then a 54-year-old registered nurse, filed a traumatic injury claim (Form CA-1) alleging that on October 25, 2020 she developed a sudden onset of blurry vision and eye floaters while in the performance of duty. She explained that on October 25, 2020 she was the charge nurse and called the emergency room regarding the transfer of a patient with COVID-19 when an altercation occurred among subordinate employees regarding the transfer. Appellant's blood pressure increased, she experienced blurred vision, and eye floaters. On the reverse side of the claim form, the employing establishment noted that she stopped work on October 25, 2020.

On October 25, 2020 Dr. Michael Fulton, a family practitioner, treated appellant at an urgent care clinic and diagnosed hypertensive urgency.

On October 25, 2020 appellant was also treated in the emergency room by Dr. Grace Allawirdi, Board-certified in emergency medicine, for hypertension, loss of vision, shortness of breath, and vitreous hemorrhage. In a work excuse note of even date, she returned appellant to work on October 27, 2020.

On October 25, 2020 D.F., a human resource specialist for the employing establishment, challenged appellant's claim. She alleged that appellant had preexisting hypertension, which caused her blurred vision. D.F. noted that appellant underwent right eye surgery on October 27, 2020.

On October 27, 2020 Dr. Vijay Khetpal, a Board-certified ophthalmologist, diagnosed a detached retina of the right eye. He performed a vitrectomy of the right eye. In a work excuse note of even date, Dr. Khetpal returned appellant to full-duty work as of November 6, 2020. In a November 2, 2020 note, he released appellant to full-duty work as of December 21, 2020.

In a November 23, 2020 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of additional factual and medical evidence needed and provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit the necessary evidence.

OWCP subsequently received a clinical summary from Dr. Fulton on October 25, 2020, indicating that appellant presented with a chief complaint of blurry vision, floaters in the left eye, and a cough. She reported a history of hypertension, diabetes, and exposure to COVID-19 positive patients. Dr. Fulton diagnosed hypertensive urgency.

In an emergency room discharge summary dated October 25, 2020, Dr. Allawirdi diagnosed hypertension, established; loss of vision; shortness of breath; and vitreous hemorrhage. She noted that appellant presented to the emergency room on October 25, 2020 with hypertension elevated in the 200's with a sudden onset of blurred vision in the right eye. A computerized tomography (CT) scan of the head/brain revealed no acute intracranial abnormality and appellant's

laboratory testing was negative. A bedside ocular ultrasound showed a small vitreous hemorrhage and a questionable vitreous detachment. Dr. Allawirdi noted that appellant's blood pressure had improved and she was discharged home with a referral to an ophthalmologist.

OWCP also received an undated witness statement from R.S., a registered nurse, who worked with appellant on October 25, 2020. R.S. indicated that appellant was the charge nurse and at 12:15 p.m. a sudden verbal confrontation took place between a nursing assistant and another nurse, about who would accompany a COVID-19 patient to the emergency room. She indicated that appellant was on the telephone with the emergency room facilitating the transfer, when another nurse also barged toward her screaming aggressively, and questioning why the patient's transport was delayed. R.S. noted that, after the patient was transported, appellant reported "three blows to her heart," she was feeling uneasy, had blurry vision, and experienced floating in her eyes that obscured her vision. Appellant reported her condition to the clinical coordinator, G.M., and was on sick leave the rest of the day.

Appellant was treated by Dr. Prasad V. Maddukuri, a Board-certified cardiologist, on December 3, 2020 who performed a pharmacological myocardial perfusion study, which was found to be normal. Similarly, an echocardiogram of even date was normal. On December 30, 2020 Dr. Maddukuri noted that appellant was off work for four weeks due to high blood pressure and retinal detachment.

On December 4, 2020 Dr. Khetpal diagnosed vitreous hemorrhage and a retinal tear. He related that on October 27, 2020 he performed a vitrectomy with endolaser and gas injection. Dr. Khetpal noted that he could not determine the causality from appellant's history or examination. On December 18, 2020 he noted that, after surgery, appellant would be on restricted duty for three months due to vision impairment in the right eye.

In a written statement dated December 15, 2020, appellant indicated that on October 25, 2020 she was the charge nurse and her tour of duty was from 7:30 a.m. to 8:00 p.m. She noted that at about 12:15 p.m. an altercation occurred between subordinate employees regarding the transfer of a COVID-19 patient to the emergency room. Appellant was on the telephone giving a report to the emergency room when one of the nursing assistants who was pushing the veteran to the emergency room came back unexpectedly, raised her voice, and removed her gown, stating that it was not her patient and she was not going to the emergency room. She indicated that she could not see the nursing assistant, due to a pillar in the nurses' pod. A nurse started yelling back, but she could not see him because of the wall. Appellant noted that a third person came from behind her and yelled at her about transporting the COVID-19 veteran. She noted that due to the loud noises from three unseen persons from three different directions caused a sudden blow-like feeling to her heart. Appellant indicated that she was hypertensive, but her condition was well controlled with blood pressure medication. She reported heaviness between her shoulder blades, she had a sudden onset of blurred vision in both eyes, and floating in the visual field. Appellant proceeded to her computer to submit the transfer notes and had difficulty completing the task. She thought that perhaps her eye became infected when treating a COVID-19 patient. Appellant informed the clinical coordinator and nurse manager of her condition and left work at 12:30 p.m. Her son took her to urgent care where the physician informed her that her blood pressure was 200/120 and referred her to the emergency room. Appellant underwent emergency eye surgery on October 27, 2020. She asserts that her eye injury occurred on October 25, 2020 as a result of

sudden loud noises and stress. Appellant indicated that she did not sustain any other injury on or off duty between the date of injury and the date it was reported and she did not experience similar symptoms prior to this incident.

By decision dated December 31, 2020, OWCP denied appellant's traumatic injury claim, finding that the medical evidence submitted was insufficient to establish causal relationship between her diagnosed conditions and the accepted employment incident.

OWCP received additional evidence. On October 26, 2020 Dr. Khetpal treated appellant for sudden onset of blurred vision, chest tightness, and elevated blood pressure. He diagnosed retinal tear with vitreous hemorrhage, bleeding, and infection. On November 2, 2020 Dr. Khetpal treated appellant in follow up and noted eye irritation. He related, in reports dated January 4 and April 5, 2021, that appellant was doing well and the vitreous hemorrhage resolved. On April 6, 2021 Dr. Khetpal advised that, due to the long-lasting effects of the October 27, 2020 eye surgery, he recommended appellant's hours be reduced to eight hours a day.

OWCP received medical records from January 22 through February 4, 2021, regarding the employing establishment's evaluation of appellant for return-to-work clearance.

On January 26, 2021 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. A hearing was held on April 13, 2021.

On March 8, 2021 Dr. Ruby Anthony-White, a Board-certified internist and an employing establishment physician, reported treating appellant on January 22, 2021. Appellant presented emotionally affected by "yelling" coming from a coworker while she was on the telephone at work. She reported a few minutes later experiencing palpitations and blurry vision in both eyes, but mostly in the right eye. Appellant immediately sought treatment from an urgent care clinic, which reported her blood pressure was 209/120 and referred her to the emergency room. The healthcare providers diagnosed a vitreous hemorrhage in the right eye. On October 27, 2020 appellant underwent surgery to repair the retinal detachment. She continued to experience diminished vision, which has since improved. Dr. Anthony-White diagnosed hypertension aggravated by stress, reaction to severe stress, vitreous hemorrhage, and right retinal detachment. She opined that appellant had a reaction to severe stress at work, specifically, stress of loud talking by coworkers while trying to manage COVID-19 cases. Dr. Anthony-White further noted that it was not clear what caused the right eye retinal detachment as most cases were spontaneous, or related to trauma or diabetes.

By decision dated June 17, 2021, OWCP's hearing representative modified the December 31, 2020 decision to accept that appellant's reaction to the subordinate employees shouting about transferring a COVID-19 patient constituted a compensable employment factor as it involved her performing her duties as a charge nurse, but denied appellant's claim, finding that the medical evidence of record was insufficient to establish that the accepted compensable employment factor caused her diagnosed conditions.

On August 6, 2021 appellant requested reconsideration. She contended that OWCP's hearing representative mischaracterized the issue; that the basis for the December 30, 2021 decision was incorrect; and that OWCP failed to analyze medical evidence.

By decision dated August 30, 2021, 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 FECA³ has the burden of proof to establish the essential elements of his or her claim including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was filed within the applicable time limitation of FECA, that an injury was sustained in the performance of duty, as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury. 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.⁴

To establish a claim for an emotional condition in the performance of duty, an employee must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his or her condition; (2) medical evidence establishing that he or she has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his or her emotional condition or psychiatric disorder.⁵

A claimant has the burden of proof to establish by the weight of the reliable, probative, and substantial evidence that the condition for which he or she claims compensation was caused or adversely affected by employment factors.⁶ This burden includes the submission of a detailed description of the employment factors or conditions, which he or she believes caused or adversely affected a condition for which compensation is claimed, and a rationalized medical opinion relating the claimed condition to compensable employment factors.⁷

Causal relationship is a medical question that generally requires rationalized medical opinion evidence to resolve the issue.⁸ 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.⁹ Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by

³ 5 U.S.C. § 8101 *et seq.*

⁴ *M.H.*, Docket No. 19-0930 (issued June 17, 2020); *Gary J. Watling*, 52 ECAB 357 (2001).

⁵ *R.B.*, Docket No. 19-0343 (issued February 14, 2020).

⁶ *B.S.*, Docket No. 19-0378 (issued July 10, 2019); *Pamela R. Rice*, 38 ECAB 838 (1987).

⁷ *P.B.*, Docket No. 17-1912 (issued December 28, 2018); *Effie O. Morris*, 44 ECAB 470 (1993).

⁸ 28 ECAB 125 (1976).

⁹ *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factor(s).¹⁰

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met her burden of proof to establish causal relationship between a diagnosed medical condition and the accepted compensable employment factor.

On October 25, 2020 Dr. Fulton treated appellant for blurred vision, floaters in the left eye, and a cough. He diagnosed hypertensive urgency. Appellant was also treated in the emergency room on October 25, 2020 by Dr. Allawirdi for hypertension, loss of vision, shortness of breath, sudden onset of blurred vision in the right eye, and vitreous hemorrhage. In a work excuse note of even date, she returned appellant to work on October 27, 2020. Similarly, on October 26, 2020 Dr. Khetpal treated appellant for sudden onset of blurred vision, chest tightness, and elevated blood pressure. He diagnosed retinal tear with vitreous hemorrhage, bleeding, and infection. Dr. Khetpal performed a vitrectomy of the right eye on October 27, 2020. In work excuse notes dated October 27, November 2, and December 18, 2020, he noted that appellant would be on restricted duty after surgery. On December 4, 2020 Dr. Khetpal diagnosed vitreous hemorrhage and a retinal tear and opined that he could not determine the causality from appellant's history or examination. He related in reports dated January 4, and April 5 and 6, 2021 that the vitreous hemorrhage resolved, but, due to the long-lasting effects of the October 27, 2020 eye surgery, he recommended appellant's hours be reduced. Likewise, in reports dated December 3 and 30, 2020, Dr. Maddukuri noted that appellant was off work for four weeks due to high blood pressure and retinal detachment. However, in these reports, Drs. Fulton, Allawirdi, Khetpal, and Maddukuri offered no opinion as to a causal relationship between the accepted October 25, 2020 compensable factor and her diagnosed 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 relationship.¹¹ These reports, therefore, are insufficient to establish appellant's claim.

On March 8, 2021 Dr. Anthony-White noted that appellant presented emotionally affected by "yelling" coming from a coworker while she was on the telephone at work and diagnosed hypertension aggravated by stress, reaction to severe stress, vitreous hemorrhage, and right retinal detachment. She opined that appellant had a reaction to severe stress at work, specifically, stress of loud talking by coworkers while trying to manage COVID-19 cases. The Board finds that, although Dr. Anthony-White supported causal relationship, she did not provide medical rationale explaining the basis of her conclusory opinion regarding causal relationship between appellant's diagnosed conditions and the accepted October 25, 2020 compensable factor.¹² Therefore, this report is insufficient to meet appellant's burden of proof.

¹⁰ *Id.*

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

¹² *See T.M.*, Docket No. 08-0975 (issued February 6, 2009) (a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship, which is unsupported by medical rationale).

As the medical evidence of record is insufficient to establish causal relationship between a diagnosed condition and the accepted compensable employment factor, the Board finds that she has not met her burden of proof to establish her claim.

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 or her 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 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).

Appellant has not alleged or demonstrated that OWCP erroneously applied or interpreted a specific point of law. With regard to the second requirement, she contended that OWCP's hearing representative mischaracterized the issue; that the basis for the December 30, 2021

¹³ *Supra* note 1 at § 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).

¹⁴ 20 C.F.R. § 10.606(b)(3); *see L.D., id.*; *see also K.L.*, Docket No. 17-1479 (issued December 20, 2017); *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. 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 M.S.*, 59 ECAB 231 (2007).

¹⁷ *Id.* at § 10.608(b); *M.S.*, Docket No. 19-0291 (issued June 21, 2019); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

decision was incorrect; and that OWCP failed to analyze medical evidence. However, appellant's arguments lack a reasonable color of validity. The Board has held that where a legal argument presented has no reasonable color of validity, OWCP is not required to reopen the case for merit review.¹⁸ 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).¹⁹

Further, appellant did not submit relevant and pertinent new evidence in support of her request for reconsideration under 20 C.F.R. § 10.606(b)(3). The underlying issue is whether appellant submitted sufficient medical evidence to establish a medical condition causally related to the accepted October 25, 2020 compensable employment factor. This is a medical issue, which must be determined by rationalized medical evidence.²⁰ However, appellant did not submit any additional medical evidence in support of her reconsideration request. As appellant did not submit relevant and pertinent new medical evidence not previously considered by OWCP, she is not entitled to further merit review under the third requirement of 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.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish causal relationship between a diagnosed medical condition and the accepted compensable employment factor. 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).

¹⁸ *S.B.*, Docket No. 20-0708 (issued February 11, 2022); *C.N.*, Docket No. 17-1475 (issued May 23, 2018); *see D.F.*, Docket No. 17-0694 (issued June 22, 2017); *D.T.*, Docket No. 14-1239 (issued December 9, 2014); *Constance G. Mills*, 40 ECAB 317 (1988).

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

²⁰ *See Bobbie F. Cowart*, 55 ECAB 746 (2004).

ORDER

IT IS HEREBY ORDERED THAT the June 17 and August 30, 2021 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: November 28, 2022
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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