

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

S.B., Appellant)	
)	
and)	Docket No. 22-0965
)	Issued: September 22, 2022
U.S. POSTAL SERVICE, POST OFFICE,)	
Santa Clarita, CA, 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
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On June 9, 2022 appellant filed a timely appeal from a March 4, 2022 merit decision and a May 25, 2022 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 a left ankle, left knee, or right wrist condition causally related to the accepted January 18, 2022 employment

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the issuance of OWCP’s May 25, 2022 decision, appellant submitted new evidence. The Board’s jurisdiction is limited to the evidence that was before OWCP at the time of its final decision. Thus, the Board is precluded from reviewing this new evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c)(1).

incident; and (2) whether OWCP properly denied appellant's request for reconsideration of the merits of her claim under 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On January 19 and 20, 2022 appellant, then a 34-year-old city letter carrier, filed a traumatic injury claim (Form CA-1) alleging that she sustained a sprained left ankle, sprained and bruised left knee, and a sprained right wrist in the performance of duty on January 18, 2022. She indicated that her left ankle gave out and rolled, causing her to fall, landing on her left knee and right palm.

On January 19, 2022 appellant was treated by Dr. Alexis L. Dasig, an occupational medicine specialist. Appellant related that on January 18, 2022 her left ankle rolled with no explanation, and she fell on her right hand after internally rotating her left knee. She indicated that she experienced pain in the right wrist and left knee, and slight pain in the left ankle. Appellant also noted that she had a preexisting problem with her left ankle as she had previously sprained it twice at work. Dr. Dasig related appellant's physical examination findings and stated an impression of sprained left ankle, contusion, sprained left knee, and sprained right wrist.

In a January 19, 2022 duty status report (Form CA-17) and, in an occupational work status form of even date, Dr. Dasig indicated that appellant was advised to return to work on January 19, 2022 in a limited capacity.

An x-ray report dated January 19, 2022 from Dr. Rahim Fazel, an osteopath, Board-certified in diagnostic radiology, indicated no acute fracture or dislocation of appellant's left knee. An x-ray report of appellant's right wrist from Dr. Fazel of even date related no findings of an acute fracture or dislocation regarding the right wrist.

By development letter dated January 26, 2022, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed and provided a questionnaire for her completion. By separate letter of even date, OWCP also requested that the employing establishment address whether January 18, 2022 was an official workday for appellant. It both parties 30 days to respond.

In a letter dated January 27, 2022, the employing establishment confirmed that appellant had worked on January 18, 2022, but controverted that an incident occurred on that date.

Appellant submitted her completed responses to the development questionnaire on February 2, 2022, indicating that she previously sprained her ankle on January 9, 2020 at work, but did not have a knee or wrist injury prior to the presently alleged work incident. She also submitted photographs of the accident scene and her hand and foot to the record.

In a February 2, 2022 duty status report (Form CA-17) and an occupational work status form of even date, Dr. Dasig recommended that appellant continue in a modified-duty status.

By decision dated March 4, 2022, OWCP accepted that the January 18, 2022 employment incident occurred as alleged and that medical conditions were diagnosed in connection with the incident. However, it denied appellant's claim, finding that the medical evidence of record was

insufficient to establish causal relationship between her diagnosed conditions and the accepted January 18, 2022 employment incident

On March 17, 2022 appellant requested reconsideration.

Appellant resubmitted the January 19, 2022 narrative report from Dr. Dasig and an occupational work status report of even date.

OWCP also received additional February 23, 2022 reports from Dr. Dasig. In her narrative report dated February 23, 2022, Dr. Dasig related that appellant reported that her ankle had improved, while her left knee would sometimes lock up when walking. She indicated that appellant's left knee was still symptomatic and ordered a magnetic imaging (MRI) scan to rule out a torn posterior cruciate ligament. In a February 23, 2022 duty status report (Form CA-17), and an occupational work status report of even date, Dr. Dasig continued to recommend modified duty.

By decision dated May 25, 2022, 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, 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 an employee sustained a traumatic injury in the performance of duty, it must first be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. The first component is whether the employee actually experienced the employment incident that allegedly occurred. The second component is whether the employment incident caused a personal injury. An employee may establish that an injury occurred in the performance of duty as alleged but fail to establish that the disability or specific condition for which compensation is being claimed is causally related to the injury.⁶

Rationalized medical opinion evidence is required to establish causal relationship. The opinion of the physician must be based on a complete factual and medical background, must be

³ 5 U.S.C. § 8101.

⁴ *J.M.*, Docket No. 17-0284 (issued February 7, 2018) *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁵ *B.H.*, Docket No. 20-0777 (issued October 21, 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).

⁶ *M.H.*, Docket No. 18-1737 (issued March 13, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

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.⁷ Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.⁸

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met her burden of proof to establish a left ankle, left knee, or right wrist condition causally related to the accepted January 18, 2022 employment incident.

Appellant submitted a narrative report from Dr. Dasig dated January 19, 2022 wherein she noted appellant's history of injury on January 18, 2022 and related diagnoses of sprained left ankle, contusion, sprained left knee, and sprained right wrist. Dr. Dasig did not, however, provide 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

Further, appellant indicated that she had a preexisting problem with her left ankle and previously sprained it twice at work. If work-related exposures caused, aggravated, or accelerated appellant's condition, she could be entitled to compensation.¹⁰ However, a well-rationalized opinion is particularly warranted when there is a history of a preexisting condition.¹¹ As such, Dr. Dasig's report lacks the specificity and detail needed to establish that appellant's conditions are a result of the accepted employment injury.¹² This report is, therefore, insufficient to establish appellant's claim.

OWCP also received CA-17 forms and occupational work status form reports from Dr. Dasig dated January 19 and February 2, 2022. In these reports, Dr. Dasig noted appellant's work restrictions, but did not address whether appellant's diagnosed conditions were causally related to the accepted employment incident.¹³ These reports are, therefore, of no probative value and insufficient to establish causal relationship.

⁷ *T.M.*, Docket No. 22-0220 (issued July 29, 2022); *S.S.*, Docket No. 18-1488 (issued March 11, 2019).

⁸ *Id.*; see also *J.L.*, Docket No. 18-1804 (issued April 12, 2019).

⁹ *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹⁰ *P.G.*, Docket No. 19-1827 (issued May 15, 2020); *M.E.*, Docket No. 18-1135 (issued January 4, 2019).

¹¹ *J.H.*, Docket No. 20-1645 (issued August 11, 2021); *T.M.*, Docket No. 08-0975 (issued February 6, 2009).

¹² *Id.*; see also *T.C.*, Docket No. 19-0227 (issued July 11, 2019).

¹³ *Supra* note 9.

Appellant also submitted two diagnostic x-ray reports from Dr. Fazel. However, diagnostic studies standing alone, lack probative value as they do not address whether the employment incident caused any of the diagnosed conditions.¹⁴

As appellant has not submitted rationalized medical evidence establishing causal relationship between her diagnosed medical conditions and the accepted January 18, 2022 employment incident, 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 of FECA vests OWCP with a discretionary authority to determine whether it will review an award for or against compensation, either under its own authority or on application by a claimant.¹⁵

Section 10.608(b) of OWCP's regulations provide that a timely request for reconsideration may be granted if OWCP determines that the claimant has presented evidence and/or argument that meet at least one of the standards described in section 10.606(b)(3).¹⁶ This section provides that the request for reconsideration must be submitted in writing and set forth arguments and contain evidence that (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 Section 10.608(b) provides that, when a request for reconsideration is timely, but fails to meet at least one of these three requirements, OWCP will deny the request for reconsideration without reopening the case for a review on the merits.¹⁸

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 17, 2022 appellant requested reconsideration of the denial of her claim. She did not offer any argument in support of her request. The Board finds that appellant did not show that OWCP erroneously applied or interpreted a specific point of law, or advance a relevant legal

¹⁴ *A.O.*, Docket No. 21-0968 (issued March 18, 2022); *See M.S.*, Docket No. 19-0587 (issued July 22, 2019).

¹⁵ 5 U.S.C. § 8128(a).

¹⁶ 20 C.F.R. § 10.608(a).

¹⁷ *Id.* at § 10.606(b)(3); *see L.D.*, Docket No. 18-1468 (issued February 11, 2019).

¹⁸ *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).

argument not previously considered by OWCP. Consequently, appellant is not entitled to further review of the merits of her claim based on either the first or second above-noted requirements under 20 C.F.R. § 10.606(b)(3).

The Board further finds that appellant has not provided relevant and pertinent new evidence not previously considered by OWCP. The underlying issue in this case was whether appellant had established that her diagnosed conditions were causally related to the accepted January 18, 2022 employment incident. On reconsideration appellant submitted a copy of Dr. Dasig's January 19, 2022 reports, previously of record. OWCP also received Dr. Dasig's February 23, 2022 reports. However, medical evidence that either duplicates or is substantially similar to evidence previously of record does not constitute a basis for reopening a case.¹⁹ Dr. Dasig's February 23, 2022 reports were substantially similar to the evidence previously of record. She did not address the underlying issue of causal relationship in her February 23, 2022 reports. On reconsideration appellant did not submit relevant and pertinent new evidence regarding the underlying issue of causal relationship.²⁰ Therefore, she is also not entitled to further review of the merits of her claim based on the third above-noted requirement under 20 C.F.R. § 10.606(b)(3).

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 left ankle, left knee, or right wrist condition causally related to the accepted January 18, 2022 employment incident. The Board further finds that OWCP properly denied her request for reconsideration of the merits of her claim under 5 U.S.C. § 8128(a).

¹⁹ See *B.S.*, Docket No. 20-0927 (issued January 29, 2021); *M.O.*, Docket No. 19-1677 (issued February 25, 2020).

²⁰ See *S.L.*, Docket No. 21-0201 (issued June 10, 2022); *P.C.*, Docket No. 18-1703 (issued March 22, 2019).

ORDER

IT IS HEREBY ORDERED THAT the March 4 and May 25, 2022 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: September 22, 2022
Washington, DC

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

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

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