

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

L.R., Appellant

and

**U.S. POSTAL SERVICE, BOARDWALK POST
OFFICE, Saginaw, MI, Employer**

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**Docket No. 22-1310
Issued: April 4, 2023**

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
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On September 11, 2022 appellant filed a timely appeal from a June 1, 2022 merit decision and an August 19, 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 his burden of proof to establish a diagnosed medical condition in connection with the accepted April 12, 2022 employment incident; and

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the August 19, 2022 decision, appellant submitted additional evidence to OWCP. 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.*

(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 April 18, 2022 appellant, then a 55-year-old city delivery specialist, filed a traumatic injury claim (Form CA-1) alleging that on April 12, 2022 she sustained a low back injury causing spine pain and body aches, when she was involved in a motor vehicle accident (MVA) while in the performance of duty. She stopped work on April 14, 2022.

In an April 20, 2022 development letter, OWCP notified 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. OWCP afforded appellant 30 days to respond.

In response, appellant submitted an April 14, 2022 report from Dr. Andrew Whiteside, an osteopath Board-certified in family medicine, who noted that appellant reported that two days prior the front of her postal vehicle hit the rear of another vehicle that turned in front of her. She complained of lower back and hip pain. Dr. Whiteside reported his physical examination findings, including lumbar spine muscle spasm and midline vertebral tenderness. He diagnosed unspecified low back pain and MVA injuring restrained driver. Dr. Whiteside indicated that appellant would be off work through the weekend and noted, "Tentative return to work on Monday."

A report of April 14, 2022, x-rays of appellant's lumbosacral spine contained an impression of mildly accentuated lumbar lordosis without spondylolisthesis, but with limitations in both flexion and extension mobility, and mild generalized lumbar spondylosis somewhat more prominently involving the lower thoracolumbar junction region without fracture, subluxation, or discernible osseous spinal stenosis.

By decision dated June 1, 2022, OWCP accepted that appellant had established the occurrence of the April 12, 2022 employment incident, as alleged. However, it denied her claim, finding that she had not established the medical component of fact of injury because she failed to submit medical evidence containing a diagnosis made in connection with the April 12, 2022 employment incident. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On June 27, 2022 appellant requested reconsideration of the June 1, 2022 decision. She submitted a June 30, 2022 e-mail to OWCP in which she inquired as to whether it had received further medical evidence. Appellant also resubmitted a copy of the April 14, 2022 report from Dr. Whiteside.

By decision dated August 19, 2022, 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 FECA 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 and that the claim was filed within the applicable time

limitation period 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 if an employee has sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Fact of injury consists of two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred.⁶ The second component is whether the employment incident caused a personal injury.⁷

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 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.⁸

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met his burden of proof to establish a diagnosed medical condition in connection with the accepted April 12, 2022 employment incident.

Appellant submitted an April 14, 2022 report from Dr. Whiteside, who noted that appellant reported that two days prior, she was involved in a MVA. Dr. Whiteside reported his physical examination findings and diagnosed unspecified low back pain and MVA injuring restrained driver. The Board has held that pain alone is a symptom, not a medical diagnosis.⁹ Findings of pain or discomfort alone do not satisfy the medical aspect of the fact of injury medical determination.¹⁰ A report of April 14, 2022 x-rays of appellant's lumbosacral spine contained an impression of mildly accentuated lumbar lordosis, and mild generalized lumbar spondylosis. However, the report does not provide any indication that the diagnosed conditions were connected to the accepted April 12, 2022 employment incident. For these reasons, the medical evidence of record does not satisfy one of the requirements of establishing an employment injury, *i.e.*,

³ See *R.B.*, Docket No. 18-1327 (issued December 31, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

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 *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 *B.P.*, Docket No. 16-1549 (issued January 18, 2017); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁷ *M.H.*, Docket No. 18-1737 (issued March 13, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

⁸ *S.S.*, Docket No. 18-1488 (issued March 11, 2019).

⁹ See *F.U.*, Docket No. 18-0078 (issued June 6, 2018).

¹⁰ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.4a(6) (August 2012).

identifying a diagnosed condition connected with the accepted April 12, 2022 employment incident.¹¹

As the medical evidence of record is insufficient to establish a diagnosed medical condition in connection with the accepted April 12, 2022 employment incident, 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 or her own motion or on application.¹²

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.¹³

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.¹⁴ If it chooses to grant reconsideration, it reopens and reviews the case on its merits.¹⁵ 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.¹⁶ The Board has held that the submission of evidence

¹¹ See *supra* note 7 regarding the medical component of the fact of injury.

¹² 5 U.S.C. § 8128(a); see *L.D.*, Docket No. 18-1468 (issued February 11, 2019); *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).

¹³ 20 C.F.R. § 10.606(b)(3); see *M.S.*, Docket No. 18-1041 (issued October 25, 2018); *L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

¹⁴ 20 C.F.R. § 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.

¹⁵ *Id.* at § 10.608(a); see *D.C.*, Docket No. 19-0873 (issued January 27, 2020); *M.S.*, 59 ECAB 231 (2007).

¹⁶ *Id.* at § 10.608(b); see *T.V.*, Docket No. 19-1504 (issued January 23, 2020); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

or argument which repeats or duplicates evidence or argument already in the case record does not constitute a basis for reopening a case.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 June 21, 2022 appellant filed a timely request for reconsideration of a June 1, 2022 decision.¹⁸ In support of her request for reconsideration, she submitted a June 30, 2022 e-mail to OWCP in which she inquired as to whether it had received further medical evidence. The Board finds, however, that this correspondence does not establish that OWCP erroneously applied or interpreted a specific point of law, or advance a relevant legal argument not previously considered by OWCP. Accordingly, the Board finds that appellant is not entitled to a review of the merits based on either the first or second requirement under 20 C.F.R. § 10.606(b)(3).¹⁹

Appellant also resubmitted a copy of the April 14, 2022 report from Dr. Whiteside. However, the resubmission of this report would not require reopening of her claim for merit review because the Board has held that the submission of evidence or argument which repeats or duplicates evidence or argument already in the case record does not constitute a basis for reopening a case.²⁰ On reconsideration, appellant did not submit any new evidence. Therefore, she also failed to satisfy the third requirement under 20 C.F.R. § 10.606(b)(3).²¹

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 diagnosed medical condition in connection with the accepted April 12, 2022 employment incident. The Board further finds that OWCP properly denied her request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a).

¹⁷ *N.L.*, Docket No. 18-1575 (issued April 3, 2019); *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

¹⁸ *See supra* note 14. *See also J.F.*, Docket No. 16-1233 (issued November 23, 2016).

¹⁹ *See supra* note 13.

²⁰ *See supra* note 17.

²¹ *See supra* note 13.

ORDER

IT IS HEREBY ORDERED THAT the June 1 and August 19, 2022 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: April 4, 2023
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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