

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

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R.W., Appellant))	
))	
and))	Docket No. 23-0527
))	Issued: December 29, 2023
U.S. POSTAL SERVICE, PITTSBURGH POST))	
OFFICE, Pittsburgh, PA, 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 March 2, 2023 appellant filed a timely appeal from September 23 and November 7, 2022 merit decisions and a November 28, 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 medical condition causally related to the accepted factors of his federal employment; and (2) whether

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the November 28, 2022 decision, OWCP received additional evidence. 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.*

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

FACTUAL HISTORY

On July 15, 2022 appellant, then a 48-year-old rural carrier, filed an occupational disease claim (Form CA-2) alleging that he strained his back causally related to factors of his federal employment. He related that, when he placed a package on a customer's porch, he felt a pop in his back. Although he continued to work every day, appellant indicated that he subsequently used a back brace, but experienced spasms on July 9, 2022 and was unable to bend over after casing mail for several hours on July 11, 2022. He indicated that he first became aware of his condition and its relation to his federal employment on May 16, 2022. Appellant stopped work on July 11, 2022.

In a July 22, 2022 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence needed to establish his claim and provided a questionnaire for his completion. In a separate development letter of even date, OWCP requested that the employing establishment provide additional information, including comments from a knowledgeable supervisor. It afforded both parties 30 days to submit the requested evidence.

Thereafter, OWCP received a July 11, 2022 visit note from Jessica Clouser, a physician assistant, noting that appellant reported setting a box down at work a month ago, which caused lower back pain and spasms. Ms. Clouser diagnosed lumbar back pain, prescribed medication, and ordered physical therapy. An x-ray report of even date of appellant's lumbar spine noted an impression of mild lower lumbar degenerative changes.

Appellant submitted physical therapy notes dated July 27 through August 26, 2022 from physical therapists noting that he was treated with therapeutic activities and electrical stimulation.

In an August 12, 2022 attending physician's report (Form CA-20), Dr. An Chen, a Board-certified family medicine specialist, related that on May 16, 2022 appellant experienced pain and pulling in his lower back upon setting a box down. He diagnosed a sprain of the ligaments of the lumbar spine and checked a box marked "Yes" that the condition was caused or aggravated by an employment activity.

An August 12, 2022 report from Dr. Chen noted that appellant worked as a mail carrier for eight hours per day, five days a week. On May 16, 2022 appellant bent down to set a package on a chair on a customer's porch and felt a pull and immediate pain in his low back, after which he felt significant pain for the remainder of the day. Dr. Chen related that appellant wore a back brace and appellant began having spasms in his back on July 9, 2022 and on July 11, 2022 he was only able to work for two to three hours due to pain and tightness in his back. He diagnosed a sprain of the ligaments of the lumbar spine and noted that a lumbar strain/sprain is an injury to either a muscle, tendon, or ligament of the low back that is often caused by twisting or pulling, improper lifting, or overstressing the back muscles and stretching one or more ligaments beyond their normal range, causing injury. Dr. Chen explained that a chronic strain usually results from overuse after prolonged repetitive movement of the muscles and tendon, and symptoms include pain that worsens with movement, muscle cramping, or spasms. He indicated that appellant had an initial injury on May 16, 2022 when he bent down to set the package on the porch and, due to prolonged

aggravation of the injury, began to have significant low back spasms on July 9, 2022 that caused him to stop work and seek treatment. Dr. Chen concluded that appellant's diagnosed condition of a sprain of the ligaments of the lumbar spine was a direct result of the May 16, 2022 work injury.

In an August 24, 2022 challenge letter, the employing establishment requested that appellant's claim be denied and asserted that the factual and medical evidence he submitted was insufficient to establish his claim.

By decision dated September 23, 2022, OWCP found that the evidence of record was sufficient to establish the implicated employment factors. However, it denied appellant's occupational disease claim, finding that the evidence of record was insufficient to establish causal relationship between his diagnosed medical condition and the accepted factors of his federal employment.

On October 24, 2022 appellant requested reconsideration of the September 23, 2022 decision and submitted additional evidence.

In an October 20, 2022 statement, appellant maintained that he had sustained a traumatic injury on May 16, 2022 when he set a package down on a customer's porch and felt a pull in his low back, after which he had intermittent pain and spasms in his low back, but wore a brace that allowed him to work. On July 9, 2022 he began having severe spasms, and on July 11, 2022 the pain and spasms grew so severe that he could only work for three hours before seeking medical care. Appellant related that he was in a motorcycle accident on May 31, 2000 was diagnosed with bulging discs in his lower back, received injections for sciatica, and had been symptom free for 20 years, other than a November 10, 2020 neck injury. He explained that bending over to set a package down on May 16, 2022 caused the condition and that prolonged standing, lifting, twisting, and loading of the mail vehicle increased his pain. Appellant noted that continuing to work and lift packages all day contributed to making the condition worse, and that he has no strenuous outside hobbies.

By decision dated November 7, 2022, OWCP denied modification of its September 23, 2022 decision.

In a November 16, 2022 letter, the employing establishment requested that OWCP deny appellant's claim and asserted that the evidence of causal relationship was insufficient to meet his burden of proof.

On November 23, 2022 appellant requested reconsideration of the November 7, 2022 decision and submitted a duplicate copy of Dr. Chen's August 12, 2022 report.

By decision dated November 28, 2022, OWCP denied appellant's request for reconsideration of the merits of his 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 that the individual is an employee of the United

³ *Supra* note 1.

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, an employee must submit the following: (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 employee.⁷

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.⁸ The opinion of the physician must be based on a complete factual and medical background of the employee, 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 factor(s) identified by the employee.⁹

In any case where a preexisting condition involving the same part of the body is present and the issue of causal relationship, therefore, involves aggravation, acceleration or precipitation, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.¹⁰

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met his burden of proof to establish a medical condition causally related to the accepted factors of his federal employment.

In support of his claim, appellant submitted an August 12, 2022 report from Dr. Chen describing the history of injury and diagnosing a sprain of the ligaments of the lumbar spine.

⁴ *F.H.*, Docket No.18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ *T.D.*, Docket No. 23-0037 (issued August 23, 2023); *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁷ *G.J.*, Docket No. 23-0577 (issued August 28, 2023); *T.D.*, Docket No. 20-0921 (issued November 12, 2020); *Ruby I. Fish*, 46 ECAB 276 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁸ *S.A.*, Docket No. 18-0399 (issued October 16, 2018); *Robert G. Morris*, 48 ECAB 238 (1996).

⁹ *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, *supra* note 7.

¹⁰ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013); *S.P.*, Docket No. 23-0327 (issued August 8, 2023); *K.G.*, Docket No. 18-1598 (issued January 7, 2020); *M.S.*, Docket No. 19-0913 (issued November 25, 2019).

Dr. Chen noted that a lumbar strain was an injury to either the muscle, tendon, or ligament of the low back often caused by twisting or pulling, improper lifting, or overstressing the back muscles and stretching one or more ligaments beyond their normal range. He asserted that appellant's diagnosed condition was a result of the claimed May 16, 2022 work injury. Dr. Chen indicated that appellant had an initial injury on May 16, 2022 when he set the package down and, due to prolonged aggravation of the injury, began to have low back spasms on that caused him to stop work. However, while he noted the general causes of a back sprain, he did not explain a pathophysiological process of how any of appellant's work duties caused or contributed to his low back condition.¹¹ The Board has held that a medical opinion that does not offer a medically-sound and rationalized explanation by the physician of how the accepted employment incident or factors physiologically caused or aggravated the diagnosed conditions is of limited probative value.¹² Thus, Dr. Chen's August 12, 2022 report is of limited probative value.

In an August 12, 2022 Form CA-20, Dr. Chen related that on May 16, 2022 appellant experienced pain and pulling in his lower back after setting a box down. He diagnosed a sprain of the ligaments of the lumbar spine and checked a box marked "Yes" to indicate that the condition was caused or aggravated by an employment activity. While the Form CA-20 provided an affirmative opinion which supported causal relationship, Dr. Chen did not provide a pathophysiological explanation as to how the accepted incident either caused or contributed to appellant's diagnosed conditions.¹³ The Board has held that when a physician's opinion as to the cause of a condition consists only of a checkmark on a form, without further explanation or rationale, that opinion is of diminished probative value and is insufficient to establish a claim.¹⁴ Therefore, the August 12, 2022 Form CA-20 is also insufficient to establish appellant's claim.

Appellant also submitted a July 11, 2022 visit note from Ms. Clouser, a physician assistant, and physical therapy notes dated July 27 through August 26, 2022. However, the Board has long held that certain healthcare providers such as physician assistants and physical therapists are not considered qualified "physician[s]" as defined under FECA and their findings, reports and/or

¹¹ *J.D.*, Docket No. 19-1953 (issued January 11, 2021); *J.C.*, Docket No. 18-1474 (issued March 20, 2019); *M.M.*, Docket No. 15-0607 (issued May 15, 2015); *M.W.*, Docket No. 14-1664 (issued December 5, 2014).

¹² *J.B.*, Docket No. 21-0011 (issued April 20, 2021); *A.M.*, Docket No. 19-1394 (issued February 23, 2021).

¹³ *Id.*; *J.G.*, Docket No. 20-0009 (issued September 28, 2020).

¹⁴ *See A.C.*, Docket No. 21-0087 (issued November 9, 2021); *O.M.*, Docket No. 18-1055 (issued April 15, 2020); *Gary J. Watling*, 52 ECAB 278 (2001).

opinions will not suffice for purposes of establishing entitlement to FECA benefits.¹⁵ Accordingly, these reports are insufficient to satisfy appellant's burden of proof.¹⁶

The remaining evidence of record includes a July 11, 2022 x-ray report. The Board has held that diagnostic reports, standing alone, lack probative value on the issue of causal relationship as they do not provide an opinion as to whether the accepted employment incident caused a diagnosed condition.¹⁷ Thus, this evidence is insufficient to establish the claim.

As appellant has not submitted rationalized medical evidence sufficient to establish that his diagnosed medical conditions were caused or aggravated by the accepted factors of his federal employment, the Board finds that he has not met his burden of proof.¹⁸

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 does not entitle a claimant to review of an OWCP decision as a matter of right.¹⁹ OWCP has discretionary authority in this regard and has imposed certain limitations in exercising its authority.²⁰ One such limitation is that the request for reconsideration must be received by OWCP within one year of the date of the decision for which review is sought.²¹ A timely application for reconsideration, including all supporting documents, must set forth arguments and contain evidence that either: (i) shows that OWCP erroneously applied or interpreted a specific point of law; (ii) advances a relevant legal argument not previously

¹⁵ Section 8102(2) of FECA provides as follows: (2) physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). *See supra* note 10 at Chapter 2.805.3a(1) (September 2020); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA); *see also S.S.*, Docket No. 21-1140 (issued June 29, 2022) (physician assistants are not considered physicians under FECA and are not competent to provide medical opinions); *George H. Clark*, 56 ECAB 162 (2004) (physician assistants are not considered physicians under FECA). *See also A.M.*, Docket No. 20-1575 (issued May 24, 2021) (physical therapists are not physicians as defined by FECA).

¹⁶ *R.H.*, Docket No. 21-1382 (issued March 7, 2022); *S.E.*, Docket No. 21-0666 (issued December 28, 2021).

¹⁷ *W.M.*, Docket No. 19-1853 (issued May 13, 2020); *L.F.*, Docket No. 19-1905 (issued April 10, 2020).

¹⁸ *See T.J.*, Docket No. 19-1339 (issued March 4, 2020); *F.D.*, Docket No. 19-0932 (issued October 3, 2019); *D.N.*, Docket No. 19-0070 (issued May 10, 2019); *R.B.*, Docket No. 18-1327 (issued December 31, 2018).

¹⁹ This section provides in pertinent part: “[t]he Secretary of Labor may review an award for or against payment of compensation at any time on [his/her] own motion or on application.” 5 U.S.C. § 8128(a).

²⁰ 20 C.F.R. § 10.607.

²¹ *Id.* § 10.607(a). For merit decisions issued on or after August 29, 2011, a request for reconsideration must be received by OWCP within one year of the OWCP decision for which review is sought. *Supra* note 10 at Chapter 2.1602.4 (February 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.

considered by OWCP; or (iii) constitutes relevant and pertinent new evidence not previously considered by OWCP.²² When a timely application for reconsideration does not meet at least one of the above-noted requirements, OWCP will deny the request for reconsideration without reopening the case for a review on the merits.²³

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

Appellant did not show that OWCP erroneously applied or interpreted a specific point of law and did not advance a relevant legal argument not previously considered by OWCP. Consequently, he was not entitled to a review of the merits based on the first and second above-noted requirements under 20 C.F.R. § 10.606(b)(3).

In support of his reconsideration request, appellant submitted a duplicate copy of Dr. Chen's August 12, 2022 report. The Board has held that evidence which merely duplicates or is substantially similar to evidence already of record has no evidentiary value and does not constitute a basis for reopening a case.²⁴ Thus, Dr. Chen's August 12, 2022 report does not constitute relevant and pertinent new evidence not previously considered by OWCP. Appellant, therefore, was not entitled to a review of the merits of his claim based on the third above-noted requirements under 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.²⁵

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a medical condition causally related to the accepted factors of his federal employment. The Board further finds that OWCP properly denied his request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

²² 20 C.F.R. § 10.606(b)(3).

²³ *Id.* at § 10.608(a), (b).

²⁴ *M.F.*, Docket No. 21-1221 (issued March 28, 2022); *R.B.*, Docket No. 21-0035 (issued May 13, 2021); *B.S.*, Docket No. 20-0927 (issued January 29, 2021); *M.O.*, Docket No. 19-1677 (issued February 25, 2020); *Richard Yadron*, 57 ECAB 207 (2005); *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

²⁵ *See D.M.*, Docket No. 18-1003 (issued July 16, 2020); *D.S.*, Docket No. 18-0353 (issued February 18, 2020); *Susan A. Filkins*, 57 ECAB 630 (2006) (when a request for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b), OWCP will deny the request for reconsideration without reopening the case for a review on the merits).

ORDER

IT IS HEREBY ORDERED THAT the September 23, November 7, and November 28, 2022 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: December 29, 2023
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