

² The Board notes that, following the June 30, 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 his claim, pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On October 22, 2021 appellant, then a 78-year-old custodian, filed a traumatic injury claim (Form CA-1) alleging that on August 24, 2021 he sustained a strain of the upper region of his left upper extremity while in the performance of duty. On the reverse side of the claim form, his supervisor asserted that on April 24, 2021 appellant had not advised him of an injury, only that he experienced pain in his left upper arm while in the performance of duty. Appellant did not stop work.

In a supporting statement dated September 21, 2021, appellant recounted that on August 24, 2021 he applied absorbent material to an oil spill in the green area. After the oil had been absorbed, he used his left arm to lift the material from the floor to deposit it into a trash container. Appellant then experienced numbness and sharp pain in his left upper arm. He advised his supervisor that he had injured himself and was taken to a hospital emergency department.

Appellant submitted a series of reports dated August 24 through November 3, 2021 by Jessica Cisneros, a nurse practitioner, diagnosing cervical spinal stenosis, cervical radiculopathy, and lumbar facet syndrome. He also provided hospital emergency department discharge instructions dated August 24, 2021, noting a diagnosis of cervical radiculopathy.

In a development letter dated February 7, 2022, OWCP notified appellant of the deficiencies of his claim. It advised him of the type of evidence needed, and provided a questionnaire for his completion. OWCP afforded appellant 30 days to submit the necessary evidence.

By decision dated March 17, 2022, OWCP denied appellant's traumatic injury claim. It accepted that the August 24, 2021 employment incident occurred, as alleged, but denied the claim, finding that the medical evidence was insufficient to establish causal relationship between the accepted employment incident and the diagnosed conditions. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On March 28, 2022 appellant requested reconsideration. He contended that he had been hospitalized for three days and had difficulty obtaining the necessary evidence.

Appellant submitted a report of a March 15, 2022 examination by Dr. Neeraj Jain, Board-certified in anesthesiology and pain management. Dr. Jain noted that appellant had been scheduled for cervical spine surgery on September 14, 2021 related to an unspecified prior claim, but OWCP had not approved the procedure. On February 23, 2022 appellant underwent bilateral medial branch block injections from L3 to L5. Dr. Jain recounted appellant's symptoms of cervical radiculopathy radiating into the left upper extremity. He noted that a computerized tomography (CT) scan of the cervical spine demonstrated severe spinal stenosis at C4-5 and C6-7 with severe multilevel stenosis. On examination Dr. Jain noted limited range of cervical and lumbar motion. He diagnosed cervical radiculopathy, cervical and lumbar facet dysfunction, and cervical and

lumbar discogenic pain. Dr. Jain opined that appellant's symptoms were "directly related to the injury."

An April 19, 2021 CT scan of appellant's cervical spine demonstrated severe spinal stenosis at C4-5 with chronic-appearing spinal cord compression, and moderately severe cord compression at C6-7 possibly associated with myelomalacia, multilevel severe foraminal stenosis, a suggestion of spinal cord atrophy, and reversal of the cervical lordosis. Appellant also submitted an incomplete April 18, 2021 CT scan report.

By decision dated June 30, 2022, OWCP denied appellant's request for reconsideration of his claim under 5 U.S.C. § 8128(a). It found that the imaging study was irrelevant as it predated the claimed August 24, 2021 employment injury. OWCP further found that Dr. Jain's opinion was irrelevant to the underlying issue of causal relationship as he did not specify the date of the injury he mentioned in his report.

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 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 determine if an employee sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established.⁷ 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.⁸ The second component is whether the employment incident caused a personal injury.⁹

³ 20 C.F.R. § 10.607(a).

⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4(b) (September 2020).

⁵ *G.G.*, Docket No. 18-1072 (issued January 7, 2019); *E.R.*, Docket No. 09-0599 (issued June 3, 2009); *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

⁶ *See* 20 C.F.R. § 10.607(b); *M.H.*, Docket No. 18-0623 (issued October 4, 2018); *Charles J. Prudencio*, 41 ECAB 499, 501-02 (1990).

⁷ *L.C.*, Docket No. 18-1407 (issued February 14, 2019); *M.L.*, Docket No. 09-0956 (issued April 15, 2010). *See also* 20 C.F.R. § 10.607(b); *supra* note 4 at Chapter 2.1602.5 (September 2020).

⁸ *J.W.*, Docket No. 18-0703 (issued November 14, 2018); *Robert G. Burns*, 57 ECAB 657 (2006).

⁹ *J.S.*, Docket No. 16-1240 (issued December 1, 2016); *supra* note 4 at Chapter 2.1602.5(a) (September 2020).

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.¹⁰ A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment incident must be based on a complete factual and medical background.¹¹ 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 appellant's specific employment factor(s).¹²

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met his burden of proof to establish a left upper extremity condition causally related to the accepted August 24, 2021 employment incident.

In support of his claim, appellant provided reports from Ms. Cisneros, a nurse practitioner. The Board has held, however, that medical reports signed solely by a nurse practitioner are of no probative value, as they are not considered physicians under FECA and are not competent to provide a medical opinion.¹³ Therefore, these reports are insufficient to meet appellant's burden of proof.

Appellant also provided unsigned hospital emergency department discharge instructions dated August 24, 2021. The Board has held that reports that are unsigned lack proper identification and cannot be considered probative medical evidence as the author cannot be identified as a physician.¹⁴ Accordingly, these documents are also insufficient to establish appellant's claim.

As appellant has not submitted rationalized medical evidence sufficient to establish a causal relationship between his diagnosed medical condition and the accepted August 24, 2021 employment incident, the Board finds that he has not met his burden of proof.

¹⁰ 20 C.F.R. § 10.607(a); *see J.W.*, *supra* note 8; *Alberta Dukes*, 56 ECAB 247 (2005).

¹¹ *Supra* note 4 at Chapter 2.1602.4 (September 2020); *Veletta C. Coleman*, 48 ECAB 367, 370 (1997).

¹² 20 C.F.R. § 10.607(b); *R.C.*, Docket No. 22-0426 (issued July 22, 2022); *see Debra McDavid*, 57 ECAB 149 (2005).

¹³ Section 8102(2) of FECA provides as follows: 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. § 8102(2); 20 C.F.R. § 10.5(t). *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *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 B.D.*, Docket No. 22-0503 (issued September 27, 2022 (nurse practitioners are not considered physicians as defined under FECA and their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits); *L.S.*, Docket No. 19-1231 (issued March 30, 2021) (a nurse practitioner is not considered a physician as defined under FECA).

¹⁴ *A.H.*, Docket No. 22-0001 (issued July 29, 2022); *M.A.*, Docket No. 19-1551 (issued April 30, 2020); *T.O.*, Docket No. 19-1291 (issued December 11, 2019); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

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.¹⁵

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or 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.¹⁶

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.¹⁷ If it chooses to grant reconsideration, it reopens and reviews the case on its merits.¹⁸ If the request is timely, but fails to meet at least one of the requirements for reconsideration, OWCP will deny the request for reconsideration.¹⁹

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).

In his reconsideration request, appellant did not show that OWCP erroneously applied or interpreted a specific point of law, and did not advance a new and relevant legal argument not

¹⁵ 5 U.S.C. § 8128(a); *see T.K.*, Docket No. 19-1700 (issued April 30, 2020); *L.D.*, Docket No. 18-1468 (issued February 11, 2019); *W.C.*, 59 ECAB 372 (2008).

¹⁶ 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).

¹⁷ *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.

¹⁸ *Id.* at § 10.608(a); *F.V.*, Docket No. 18-0230 (issued May 8, 2020); *see also M.S.*, 59 ECAB 231 (2007).

¹⁹ *Id.* at § 10.608(b); *S.K.*, Docket No. 22-0248 (issued June 27, 2022); *B.S.*, Docket No. 20-0927 (issued January 29, 2021); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

previously considered. Consequently, he was not entitled to a review of the merits of his claim based on the first and second requirements noted above under 20 C.F.R. § 10.606(b)(3).²⁰

Furthermore, the Board finds that appellant did not submit relevant and pertinent new evidence not previously considered by OWCP. The underlying issue on reconsideration is whether appellant has met his burden of proof to establish a left upper extremity condition causally related to the accepted August 24, 2021 employment incident. This is a medical issue, which is addressed by relevant medical evidence not previously considered.²¹

In support of his reconsideration request, appellant submitted his March 28, 2022 statement, April 18, 2021 imaging studies, and Dr. Jain's March 17, 2022 report. The Board finds that appellant's statement and the imaging studies are irrelevant to the underlying medical issue of whether he had established a left upper extremity condition causally related to the accepted August 24, 2021 employment incident. Similarly, Dr. Jain did not mention the August 24, 2021 employment incident in his report. The Board has held that the submission of evidence that does not address the particular issue involved does not constitute a basis for reopening a case.²² Thus, appellant is not entitled to a review of the merits of his claim based on the third above-noted requirement under 20 C.F.R. § 10.606(b)(3).²³

The Board, therefore, finds that appellant was not entitled to further review of the merits of his claim pursuant to any of the three requirements under 20 C.F.R. § 10.606(b)(3). Pursuant to 20 C.F.R. § 10.608, OWCP properly denied his request for reconsideration without reopening the case for review on the merits.²⁴

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a left upper extremity condition causally related to the accepted August 24, 2021 employment incident. The Board further finds that OWCP properly denied appellant's request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).²⁵

²⁰ 20 C.F.R. § 10.606(b)(3); *see L.D.*, *supra* note 15; *see also L.G.*, *supra* note 16; *C.N.*, *supra* note 16.

²¹ *L.S.*, Docket No. 21-1286 (issued April 6, 2022); *Y.L.*, Docket No. 20-1025 (issued November 25, 2020); *Eugene F. Butler*, 36 ECAB 393 (1984); *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

²² *L.W.*, Docket No. 21-0942 (issued May 11, 2022); *see F.H.*, Docket No. 20-0309 (issued January 26, 2021); *T.T.*, Docket No. 19-0319 (issued October 26, 2020); *Alan G. Williams*, 52 ECAB 180 (2000); *Jacqueline M. Nixon-Steward*, 52 ECB 140 (2000); *Edward Matthew Diekemper*, *id.*

²³ *Supra* note 16 at § 10.606(b)(3); *L.W.*, *id.*; *see F.H.*, *id.*; *T.T.*, Docket No. 19-0319 (issued October 26, 2020); *Alan G. Williams*, *id.*; *Edward Matthew Diekemper*, *supra* note 21.

²⁴ *See D.R.*, Docket No. 18-0357 (issued July 2, 2018); *A.K.*, Docket No. 09-2032 (issued August 3, 2010); *M.E.*, 58 ECAB 694 (2007); *Susan A. Filkins*, 57 ECAB 630 (2006).

²⁵ Upon return of the case record, OWCP should consider combining all of appellant's relevant claim files.

ORDER

IT IS HEREBY ORDERED THAT the March 17 and June 30, 2022 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: February 14, 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