

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

L.W., Appellant)	
)	
and)	Docket No. 23-0176
)	Issued: July 24, 2023
U.S. POSTAL SERVICE, GRAFTON POST)	
OFFICE, Yorktown, VA, 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
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On November 10, 2022 appellant filed a timely appeal from a July 29, 2022 merit decision and an August 31, 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.

ISSUES

The issues are: (1) whether appellant has met his burden of proof to establish a right wrist condition causally related to the accepted factors of his federal employment; and (2) whether OWCP properly denied appellant's request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On February 26, 2022 appellant, then a 54-year-old city carrier, filed an occupational disease claim (Form CA-2) alleging that he developed scaphoid lunate advanced collapse (SLAC) of the right wrist due to factors of his federal employment, including lifting and gripping parcels, holding mail, turning mail truck on, closing the mail truck door, pulling the emergency break, turning his wrist in a certain way, and writing. He noted that he first became aware of his condition on May 20, 2021, and first realized its relationship to factors of his federal employment on October 1, 2021. Appellant did not stop working.

In a progress note dated May 3, 2021, Dr. Bruce A. Sandow, a diagnostic radiologist, indicated that x-rays of appellant's right wrist revealed small radiocarpal effusion over the dorsal radial wrist, tenderness to palpation around the mid dorsal wrist, and pain with scaphoid shift test. He also reported that a right wrist computerized tomography (CT) scan showed moderate radiocarpal degenerative changes with scapholunate dissociation and moderate first metacarpophalangeal (MCP) joint degenerative changes.

In a development letter dated March 3, 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 his completion. OWCP afforded appellant 30 days to submit the necessary evidence.

Appellant submitted progress notes dated May 3 through November 30, 2021 by Dr. Michael T. Davis, who specializes in orthopedic hand surgery, who indicated that appellant was seen for complaints of continued right wrist and bilateral shoulder pain. He noted that appellant's previous injection to the right wrist only lasted two weeks. Dr. Davis reported that he discussed operative and nonoperative treatments.

By decision dated April 29, 2022, OWCP denied appellant's occupational disease claim, finding that he had not established that his diagnosed right wrist condition was causally related to the accepted factors of his federal employment.

On May 10, 2022 appellant requested reconsideration.

In an April 26, 2022 progress note, Dr. Davis reported that appellant had been under his care for a right wrist injury since September 1, 2021. He indicated that appellant was diagnosed with SLAC of the right wrist, which was confirmed by CT scan. Dr. Davis noted that appellant drove a mail truck and was responsible for opening and closing the mail truck door. He explained that appellant sustained his initial injury while in the military and opined that "more likely than not, that the extensive load on his wrist, to include, continuous lifting, pushing, pulling and climbing, have exacerbated his wrist symptoms after 15 years of laborious work."

By decision dated July 29, 2022, OWCP denied modification of its April 29, 2022 decision.

On August 2, 2022 appellant requested reconsideration.

Appellant resubmitted Dr. Davis' progress notes dated May 3 through September 1, 2021.²

By decision dated August 31, 2022, OWCP denied appellant's request for reconsideration of the merits of the 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 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, a claimant must submit: (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 claimant.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 claimant, 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 specific employment factors identified by the claimant.⁹ Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease

² The Board notes that appellant submitted an incomplete report signed by Dr. Davis on May 5, 2022.

³ *Id.*

⁴ *D.D.*, Docket No. 19-1715 (issued December 3, 2020); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *Y.G.*, Docket No. 20-0688 (issued November 13, 2020); *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ *C.H.*, Docket No. 19-1781 (issued November 13, 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).

⁷ *T.M.*, Docket No. 20-0712 (issued November 10, 2020); *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *R.H.*, 59 ECAB 382 (2008).

⁸ *J.F.*, Docket No. 18-0492 (issued January 16, 2020); *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *T.H.*, 59 ECAB 388, 393 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

⁹ *A.M.*, Docket No. 18-0562 (issued January 23, 2020); *I.J.*, 59 ECAB 408 (2008); *Leslie C. Moore*, 52 ECAB 132 (2000).

or condition was caused or aggravated by employment factors, is sufficient to establish causal relationship.¹⁰

ANALYSIS -- ISSUE 1

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

Appellant submitted reports dated May 3, 2021 through April 26, 2022 by Dr. Davis who recounted appellant's complaints of continued right wrist and bilateral shoulder pain. In an April 26, 2022 report, he noted that appellant was diagnosed with SLAC of the right wrist. Dr. Davis noted that appellant drove a mail truck and was responsible for opening and closing the mail truck door. He explained that appellant sustained his initial injury while in the military and opined that "more likely than not," the continuous lifting, pushing, pulling and climbing at work exacerbated his wrist symptoms after 15 years of work. While Dr. Davis attributed appellant's right wrist injury to his employment, the Board has held that medical opinions that are speculative or equivocal in character diminish the probative value of the medical opinion.¹¹ Dr. Davis' report, therefore, is insufficient to meet appellant's burden of proof.¹²

In a May 3, 2021 progress note, Dr. Sandow provided examination findings and indicated that diagnostic studies showed moderate radiocarpal degenerative changes with scapholunate dissociation and moderate first MCP joint degenerative changes. He did not, however, provide an opinion addressing the cause of appellant's right wrist degenerative 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.¹³ Accordingly, his report is insufficient to meet appellant's burden of proof.

As the medical evidence of record is insufficient to establish causal relationship between a right wrist condition and the accepted factors of federal employment, the Board finds that appellant has not met his 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.

¹⁰ *E.W.*, Docket No. 19-1393 (issued January 29, 2020); *Gary L. Fowler*, 45 ECAB 365 (1994).

¹¹ *S.O.*, Docket No. 21-0002 (issued April 29, 2021); *H.A.*, Docket No. 18-1455 (issued August 23, 2019).

¹² *S.S.*, Docket No. 21-1318 (issued December 7, 2022).

¹³ *J.H.*, Docket No. 20-1645 (issued August 11, 2021); *P.C.*, Docket No. 20-0855 (issued November 23, 2020); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

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 own motion or on application.¹⁴

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or argument 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.¹⁵

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.¹⁶ If it chooses to grant reconsideration, it reopens and reviews the case on its merits.¹⁷ 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.¹⁸

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 has not alleged or demonstrated that OWCP erroneously applied or interpreted a specific point of law. Moreover, he did not advance a relevant legal argument not previously considered by OWCP. Consequently, appellant is not entitled to a review of the merits of his claim based on the first and second above-noted requirements under 20 C.F.R. § 10.606(b)(3).¹⁹

¹⁴ 5 U.S.C. § 8128(a); *see D.G.*, Docket No. 20-1203 (issued April 28, 2021); *L.D.*, Docket No. 18-1468 (issued February 11, 2019); *see also 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).

¹⁵ 20 C.F.R. § 10.606(b)(3); *see P.M.*, Docket No. 20-0780 (issued November 24, 2020); *J.W.*, Docket No. 19-1795 (issued March 13, 2010); *see also L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

¹⁶ *Id.* at § 10.607(a). The one-year period begins on the next day after the date of the originally 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.

¹⁷ *Id.* at § 10.608(a); *see F.V.*, Docket No. 18-0230 (issued May 8, 2020); *M.S.*, 59 ECAB 231 (2007).

¹⁸ *Id.* at § 10.608(b); *see B.S.*, Docket No. 20-0927 (issued January 29, 2021); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

¹⁹ *Id.* at § 10.606(b)(3); *G.K.*, Docket No. 20-1026 (issued December 11, 2020); *D.T.*, Docket No. 20-0456 (issued September 1, 2020).

In support of his request for reconsideration, appellant resubmitted progress notes dated May 3 through September 1, 2021 by Dr. Davis. The Board has held that the submission of evidence which duplicates or is substantially similar to evidence already in the case record does not constitute a basis for reopening a case.²⁰ Therefore, appellant 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 his burden of proof to establish a right wrist condition causally related to the accepted factors of his federal employment. 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).

ORDER

IT IS HEREBY ORDERED THAT the July 29 and August 31, 2022 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: July 24, 2023
Washington, DC

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

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

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

²⁰ *B.S.*, Docket No. 20-0927 (issued January 29, 2021); *S.W.*, Docket No. 18-1261 (issued February 22, 2019); *EM.*, Docket No. 09-39 (issued March 3, 2009); *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

²¹ *See A.G.*, Docket No. 22-1052 (issued December 14, 2022); *see also D.J.*, Docket No. 21-0371 (issued November 24, 2021).