

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

K.G., Appellant)	
)	
and)	Docket No. 22-1358
)	Issued: June 27, 2023
U.S. POSTAL SERVICE, SENECA POST)	
OFFICE, Seneca, PA, Employer)	
)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On September 26, 2022 appellant filed a timely appeal from a June 1, 2022 merit decision and July 11, 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 disability from work commencing April 9, 2022 causally related to her accepted July 15, 2021 employment

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that following the July 11, 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.*

injury; and (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 July 28, 2021 appellant, then a 30-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on July 15, 2021 she injured her head and shoulder when a loaded shelf fell on her as she tried to pull it into her delivery truck while in the performance of duty. She did not stop work. OWCP accepted the claim for unspecified subluxation of right shoulder joint, initial encounter. It paid appellant compensation on the supplemental rolls for intermittent disability from work, effective August 30, 2021. She resumed part-time, full-duty work on October 18, 2021. OWCP continued to pay appellant compensation on the supplemental rolls for intermittent disability from work through April 8, 2022.

In an April 15, 2022 duty status report (Form CA-17), Dr. John P. Scullin III, a Board-certified orthopedic surgeon, diagnosed right shoulder impingement syndrome. He held appellant off work until April 21, 2022.

In an April 21, 2022 report, Dr. Scullin recounted a history of the July 15, 2021 employment injury and subsequent treatment. On examination of the cervical spine, he noted stiffness with lateral flexion and extension greater than 30 degrees, and tenderness to palpation of the cervical paraspinal muscles. Regarding the right upper extremity, Dr. Scullin observed full range of shoulder motion with slight discomfort at the extremes, slight tenderness to palpation of the anterior joint line of the shoulder, intact light-touch sensation in the thumb, index, and small finger, and normal strength and reflexes in the biceps and triceps. He noted that a March 18, 2022 cervical MRI scan demonstrated disc protrusions at C3-4 and C4-5 with mild distortion of the thecal sac, mild-to-moderate stenosis at C5-6 with disc space narrowing and narrowing of the neural foramina, and diffuse disc bulging at C6-7 causing flattening of the thecal sac. Dr. Scullin diagnosed neck pain with cervical spondylosis, degenerative disc disease, mild-to-moderate cervical stenosis, right shoulder pain with impingement syndrome and osteoarthritis, and possible carpal tunnel syndrome. He held appellant off work for six weeks. The record also contains an undated Form CA-17 received by OWCP on April 25, 2022 by Dr. Scullin. Dr. Scullin diagnosed impingement syndrome of the right shoulder and held appellant off from work.

On April 29, 2022 appellant filed a claim for compensation (Form CA-7) for disability from work for the period April 9 through 22, 2022. She continued to file claims for compensation for periods thereafter.

In a development letter dated May 3, 2022, OWCP informed appellant of the deficiencies of her claim for wage-loss compensation commencing April 9, 2022. It advised her of the type of medical evidence needed and afforded her 30 days to submit the necessary evidence.

In response, appellant submitted a report dated May 19, 2022 by Dr. Edward J. Uberti, a Board-certified orthopedic surgeon, who provided a history of the July 15, 2021 employment injury. Dr. Uberti discussed right shoulder x-ray scan, which demonstrated narrowing of the acromioclavicular joint, mild-to-moderate osteoarthritis, and a Type II curved acromion, which

narrowed the anterior and especially the lateral aspect of the subacromial space. He diagnosed subacromial bursitis with impingement of the right shoulder and provided work restrictions.

In a May 19, 2022 work slip, Dr. Uberti restricted appellant to light-duty work, with lifting, carrying, pulling, and pushing limited to three pounds, and no overhead work.

By decision dated June 1, 2022, OWCP denied appellant's claims for compensation, finding that the medical evidence of record was insufficient to establish disability from work commencing April 9, 2022.

OWCP received additional evidence. In a March 4, 2022 report, Dr. Matt El-Kadi, a Board-certified neurosurgeon, reviewed appellant's medical history and findings on physical examination. He recommended that appellant undergo an MRI scan of the cervical spine, without contrast, before he could evaluate whether her symptoms were related to her cervical spine.

In a May 5, 2022 report, Dr. William H. Fee, Jr., a Board-certified internist, diagnosed cardiac palpitations.

In reports dated May 19, 2022, Dr. Uberti recounted a history of the accepted employment injury. He noted a prior diagnosis of carpal tunnel syndrome on June 8, 2015. Dr. Uberti obtained x-rays of the right shoulder, which demonstrated narrowing of the acromioclavicular joint, mild-to-moderate osteoarthritis, and a Type II acromion. He noted that a December 2021 MRI scan of the right shoulder demonstrated rotator cuff tendinitis and acromioclavicular arthritis. Dr. Uberti diagnosed subacromial bursitis of the right shoulder and administered an intraarticular injection.

In a June 1, 2022 report, Dr. Uberti renewed prior work restrictions.

In a June 10, 2022 report, Dr. Uberti proscribed use of the right upper extremity pending an evaluation.

OWCP also received a June 16, 2022 Form CA-17 report which bears an illegible signature.

On June 30, 2022 appellant requested reconsideration. She provided an incomplete and unsigned report, titled "History of Injury," from an unidentified practitioner.

Thereafter, OWCP received a June 16, 2022 report by Dr. Uberti. Dr. Uberti noted that appellant's right shoulder pain was localized to the trapezius without shoulder joint pain. On examination, he noted a negative impingement sign in the right shoulder. Dr. Uberti opined that "this is a neck problem and not a shoulder problem," noting that appellant had been diagnosed with a herniated cervical disc. He maintained appellant on light-duty work.

By decision dated July 11, 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 that any disability for which compensation is claimed is causally related to the employment injury.³

Under FECA the term “disability” means the incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.⁴

The Board will not require OWCP to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so, would essentially allow an employee to self-certify their disability and entitlement to compensation.⁵

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met her burden of proof to establish disability from work commencing April 9, 2022 causally related to her accepted July 15, 2021 employment injury.

Appellant was first seen following April 9, 2022 by Dr. Scullin. In April 15 and 21, 2022 reports, Dr. Scullin noted diagnoses of cervical spondylosis, degenerative disc disease, mild-to-moderate cervical stenosis, right shoulder impingement syndrome and osteoarthritis, and possible carpal tunnel syndrome. He held appellant off work for six weeks. Dr. Scullin did not provide an opinion explaining why appellant was disabled from work due to her accepted employment injury. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee’s disability is of no probative value on the issue of causal relationship.⁶ Accordingly, these reports are of no probative value and are insufficient to establish appellant’s disability claim.

Thereafter, appellant was examined by Dr. Uberti on May 19, 2022, who provided reports and found her able to perform light-duty work with restrictions. Dr. Uberti’s opinion indicates that appellant was not disabled from work as of May 19, 2022. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee’s disability is of no probative value on the issue of causal relationship.⁷ Thus, these reports are insufficient to establish appellant’s disability claim.

³ *S.W.*, Docket No. 18-1529 (issued April 19, 2019); *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989); *see also Nathaniel Milton*, 37 ECAB 712 (1986).

⁴ *See B.K.*, Docket No. 18-0386 (issued September 14, 2018).

⁵ *B.M.*, Docket No. 19-1075 (issued February 10, 2021); *R.A.*, Docket No. 19-1752 (issued March 25, 2020); *A.W.*, Docket No. 18-0589 (issued May 14, 2019); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

⁶ *See F.S.*, Docket No. 23-0112 (issued April 26, 2023); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

⁷ *Id.*

As the medical evidence of record is insufficient to establish disability from work commencing April 9, 2022 causally related to her accepted July 15, 2021 employment injury, the Board finds that appellant 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.⁸

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.⁹

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.¹⁰ If it chooses to grant reconsideration, it reopens and reviews the case on its merits.¹¹ If the request is timely but fails to meet at least one of the requirements for reconsideration, OWCP will deny the request for reconsideration.¹²

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).

⁸ 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).

⁹ 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).

¹⁰ *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.

¹¹ *Supra* note 11 at § 10.608(a); *F.V.*, Docket No. 18-0230 (issued May 8, 2020); *see also M.S.*, 59 ECAB 231 (2007).

¹² *Supra* note 11 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).

On June 30, 2022 appellant filed a request for reconsideration of a June 1, 2022 decision denying her disability claim.¹³ The Board finds, however, that she neither established that OWCP erroneously applied or interpreted a specific point of law, nor did she 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 above-noted requirements under 20 C.F.R. § 10.606(b)(3).¹⁴

In support of her request, appellant submitted Dr. El-Kadi's March 4, 2022 report, Dr. Fee's May 5, 2022 report, and Dr. Uberti's May 19, 2022 report. However, these reports do not address the claimed period of disability from work. The Board has held that the submission of evidence or argument which does not address the issue involved does not constitute a basis for reopening a case.¹⁵ The unsigned "History of Injury" and June 16, 2022 Form CA-17 do not bear a legible signature. The Board has held that reports that are unsigned or bear an illegible signature cannot be considered probative medical evidence as the author cannot be identified as a physician.¹⁶ As the issue of disability from work must be proven by medical evidence, these reports are not relevant to the claim and, therefore, do not constitute a basis for reopening the merits of the claim.¹⁷ Dr. Uberti's June 1, 10, and 16, 2022 reports noted that appellant was able to perform light-duty work. As these reports do not provide an opinion on causal relationship, they do not address the relevant issue involved and are, therefore, insufficient to reopen the case on its merits.¹⁸ As appellant did not provide relevant and pertinent new evidence not previously considered, she is not entitled to a merit review based on the third requirement under 20 C.F.R. § 10.606(b)(3).¹⁹

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.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish disability from work commencing April 9, 2022, causally related to her accepted July 15, 2021 employment injury. The Board further finds that OWCP properly denied appellant's request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a).

¹³ *See id.*

¹⁴ *See L.W.*, Docket No. 21-0607 (issued October 18, 2022).

¹⁵ *S.M.*, Docket No. 22-0273 (issued October 12, 2022); *see P.G.*, Docket No. 20-1419 (issued September 16, 2021); *C.C.*, Docket No. 20-0950 (issued October 29, 2020); *Edward Matthew Diekemper*, 31 ECAB 224-25 (1979).

¹⁶ *See G.W.*, Docket No. 20-0507 (issued March 4, 2021); *C.S.*, Docket No. 20-1354 (issued January 29, 2021); *D.T.*, Docket No. 20-0685 (issued October 8, 2020); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

¹⁷ *C.V.*, Docket No. 22-0078 (issued November 28, 2022); *see Bobbie F. Cowart*, 55 ECAB 746 (2004).

¹⁸ *Supra* note 15.

¹⁹ 20 C.F.R. § 10.606(b)(3)(iii); *T.W.*, Docket No. 18-0821 (issued January 13, 2020).

ORDER

IT IS HEREBY ORDERED THAT the June 1 and July 11, 2022 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: June 27, 2023
Washington, DC

Patricia H. Fitzgerald, Deputy 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