

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

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W.D., Appellant )

and )

U.S POSTAL SERVICE, POST OFFICE, )  
HOUSTON, TX, Employer )  
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**Docket No. 22-1390  
Issued: June 14, 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  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
JANICE B. ASKIN, Judge

**JURISDICTION**

On September 26, 2022 appellant filed a timely appeal from a July 8, 2022 merit decision and a September 1, 2022 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

**ISSUES**

The issues are: (1) whether appellant has met his burden of proof to establish a medical condition causally related to the accepted February 14, 2022 employment incident; and

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that, following the September 1, 2022 decision, OWCP received additional evidence. 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 under 5 U.S.C. § 8128(a).

### **FACTUAL HISTORY**

On March 2, 2022 appellant, then a 48-year-old letter postal tractor trailer operator, filed a traumatic injury claim (Form CA-1) alleging that on February 14, 2022 he sustained lower and upper back pain due to a motor vehicle accident involving a fatality while in the performance of duty. He also indicated that he was traumatized from the accident, had trouble sleeping and felt emotionally broken. On the reverse side of the claim form, appellant's supervisor acknowledged that appellant was injured in the performance of duty. Appellant stopped work on February 15, 2022.

By development letter dated March 14, 2022, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence necessary to establish the claim and provided a questionnaire for his completion. OWCP afforded appellant 30 days to submit the necessary evidence.

A duty status report (Form CA-17) dated March 22, 2022 from Dr. Anibal Rossel, an internal medicine specialist, indicated a diagnosis of postconcussion syndrome, post-traumatic stress disorder (PTSD), lumbar sprain and strain, cervical sprain and strain, and thoracic sprain and strain. Appellant was advised not to return to work.

Appellant filed a claim for compensation (Form CA-7) on April 15, 2022 claiming disability from work from April 1 through 8, 2022.

By decision dated April 15, 2022, OWCP found that the February 14, 2022 incident had occurred as alleged, but denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish the medical component of the fact of injury element under FECA. It specifically found that he had not submitted any medical evidence, signed by a physician, causally relating a diagnosed medical condition to the accepted employment incident.

On April 28, 2022 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.

On March 22, 2022 appellant was seen by Dr. Rossel. He related that he was driving an 18-wheeler which was hit head-on by a vehicle that was driving in the wrong direction. Appellant lost consciousness briefly and was evaluated both in the emergency room at a hospital and later by a primary care physician. He underwent a computerized tomography scan and magnetic resonance imaging (MRI) scans. Appellant also started psychotherapy. He further related that he experienced headaches, neck pain, and back pain, as well as nightmares and flashbacks since the alleged injury. Dr. Rossel diagnosed postconcussion syndrome, PTSD, lumbar sprain and strain, cervical sprain and strain, and thoracic sprain and strain. He related that appellant was temporarily disabled.

On April 5, 2022 appellant was seen for a follow up with Dr. Rossel who related appellant's complaints of headaches, neck pain, and back pain, as well as nightmares and flashbacks since the alleged injury. Appellant's diagnoses and work status remained the same.

A duty status report (Form CA-17) of even date and signed by Dr. Rossel reiterated a diagnosis of postconcussion syndrome, PTSD, lumbar sprain and strain, cervical sprain and strain, and thoracic sprain and strain. He indicated that appellant remained off work. On May 3, 2022 appellant was again seen by Dr. Rossel who related that appellant's symptoms continued and his diagnoses and work status remained unchanged. A duty status report (Form CA-17) of even date and signed by Dr. Rossel reiterated a diagnosis of postconcussion syndrome, PTSD, lumbar sprain and strain, cervical sprain and strain, and thoracic sprain and strain. He again noted that appellant remained off work.

An MRI scan report dated May 7, 2022 and signed by Dr. Matthew Dang, a Board-certified diagnostic radiologist, demonstrated disc herniations at L5-S1, L4-5, and L3-4, as well as severe foraminal stenosis with contact on left L4 nerve root in the foraminal space.

On May 31, 2022 Dr. Rossel noted appellant's lumbar MRI scan findings. Appellant continued to relate headaches, neck pain, and back pain, as well as nightmares and flashbacks since the alleged injury. Dr. Rossel related that appellant's diagnoses now included lumbar disc herniation. A duty status report (Form CA-17) of even date and signed by him reiterated a diagnosis of postconcussion syndrome, PTSD, lumbar sprain and strain, cervical sprain and strain, and thoracic sprain and strain. Dr. Rossel also noted that appellant remained off work. A subsequent duty status report (Form CA-17) dated June 28, 2022 and signed by him reiterated a diagnosis of postconcussion syndrome, PTSD, lumbar sprain and strain, cervical sprain and strain, and thoracic sprain and strain.

By decision dated July 8, 2022, OWCP's hearing representative modified the April 15, 2022 decision to find that appellant had established a medical diagnosis in connection with the accepted employment incident. However, the hearing representative affirmed the denial of the claim as causal relationship was not established.

On June 28, 2022 appellant was seen for a follow-up with Dr. Rossel, who continued to relate headaches, neck pain, and back pain, as well as nightmares and flashbacks since the employment injury. Appellant's diagnoses and work status remained unchanged. On July 26, 2022 Dr. Rossel noted that appellant's symptoms continued and that appellant had also been crying in his sleep. Appellant's diagnoses remained unchanged. A duty status report (Form CA-17) of even date and signed by Dr. Rossel reiterated a diagnosis of postconcussion syndrome, PTSD, lumbar sprain and strain, cervical sprain and strain, and thoracic sprain and strain.

On August 23, 2022 appellant requested reconsideration.

On August 24, 2022 appellant submitted a duty status report (Form CA-17) dated August 23, 2022 signed by Dr. Rossel. Dr. Rossel reiterated a diagnosis of postconcussion syndrome, PTSD, lumbar sprain and strain, cervical sprain and strain, and thoracic sprain and strain. He again noted that appellant remained off work.

By decision dated September 1, 2022, OWCP denied appellant's request for reconsideration of the merits of his claim.

## LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA<sup>3</sup> 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, 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.<sup>4</sup> 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.<sup>5</sup>

To determine whether an employee sustained a traumatic injury in the performance of duty, it must first be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. The first component is whether the employee actually experienced the employment incident that allegedly occurred. The second component is whether the employment incident caused a personal injury. An employee may establish that an injury occurred in the performance of duty as alleged, but fail to establish that the disability or specific condition for which compensation is being claimed is causally related to the injury.<sup>6</sup>

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.<sup>7</sup> A physician's opinion on whether there is causal relationship between the diagnosed condition and the employment injury must be based on a complete factual and medical background.<sup>8</sup> 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 employment incident.<sup>9</sup> Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.<sup>10</sup>

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<sup>3</sup> *Supra* note 1.

<sup>4</sup> *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>5</sup> *B.H.*, Docket No. 20-0777 (issued October 21, 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).

<sup>6</sup> *M.H.*, Docket No. 18-1737 (issued March 13, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

<sup>7</sup> *R.P.*, Docket No. 21-1189 (issued July 29, 2022); *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

<sup>8</sup> *R.P., id.; F.A.*, Docket No. 20-1652 (issued May 21, 2021); *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

<sup>9</sup> *Id.*

<sup>10</sup> *T.M.*, Docket No. 22-0220 (issued July 29, 2022); *S.S.*, Docket No. 18-1488 (issued March 11, 2019); *see also J.L.*, Docket No. 18-1804 (issued April 12, 2019).

### **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 February 14, 2022 employment incident.

On March 22, 2022 Dr. Rossel diagnosed postconcussion syndrome, PTSD, lumbar sprain and strain, cervical sprain and strain, and thoracic sprain and strain. He indicated that appellant was temporarily disabled. On April 5 and May 3, 2022 appellant was seen for a follow up with Dr. Rossel. His diagnoses and work status remained unchanged. On May 31, 2022 Dr. Rossel diagnosed lumbar disc herniation. In a duty status report (Form CA-17) June 28, 2022, he reiterated appellant's diagnoses. However, Dr. Rossel did not provide an opinion on causal relationship between the diagnosed conditions and appellant's accepted employment incident. 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.<sup>11</sup> Therefore, this evidence is insufficient to establish appellant's claim.

An MRI scan report dated May 7, 2022 from Dr. Dang noted disc herniation at L5-S1, L4-5, and L3-4, as well as severe foraminal stenosis with contact on left L4 nerve root in the foraminal space. However, diagnostic studies, standing alone, lack probative value as they do not address whether the employment incident caused any of the diagnosed conditions.<sup>12</sup>

As the medical evidence of record is insufficient to establish causal relationship between a diagnosed medical condition and the accepted February 14, 2022 employment incident, 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.

### **LEGAL PRECEDENT -- ISSUE 2**

Section 8128 of FECA vests OWCP with a discretionary authority to determine whether it will review an award for or against compensation, either under its own authority or on application by a claimant.<sup>13</sup>

Section 10.608(b) of OWCP's regulations provide that a timely request for reconsideration may be granted if OWCP determines that the claimant has presented evidence and/or argument that meet at least one of the standards described in section 10.606(b)(3).<sup>14</sup> This section provides that the request for reconsideration must be submitted in writing and set forth arguments and contain evidence that (1) shows that OWCP erroneously applied or interpreted a

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<sup>11</sup> *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

<sup>12</sup> *A.O.*, Docket No. 21-0968 (issued March 18, 2022); *see M.S.*, Docket No. 19-0587 (issued July 22, 2019).

<sup>13</sup> 5 U.S.C. § 8128(a).

<sup>14</sup> 20 C.F.R. § 10.608(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.<sup>15</sup> Section 10.608(b) provides that, when a request for reconsideration is timely, but fails to meet at least one of these three requirements, OWCP will deny the request for reconsideration without reopening the case for a review on the merits.<sup>16</sup>

### **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 offer any argument in support of his request for reconsideration. The Board finds that he did not show that OWCP erroneously applied or interpreted a specific point of law, or advance a relevant legal argument not previously considered by OWCP. Consequently, appellant is not entitled to further review of the merits of his claim based on either the first or second above-noted requirements under 20 C.F.R. § 10.606(b)(3).

On reconsideration, appellant submitted additional reports dated June 28, July 26, and August 23, 2022, wherein Dr. Rossel reiterated appellant's diagnoses of postconcussion syndrome, PTSD, lumbar sprain and strain, cervical sprain and strain, and thoracic sprain and strain until May 31, 2022. The additional progress notes submitted following the July 8, 2022 merit decision are not pertinent new evidence as these reports were duplicative of the evidence previously received by OWCP. The Board has held that evidence or argument that repeats or duplicates evidence previously of record has no evidentiary value and does not constitute a basis for reopening a case.<sup>17</sup> The duty status report (Form CA-17) dated August 23, 2022 from Dr. Rossel added a diagnosis of lumbar disc herniation, but he did not offer an opinion regarding causal relationship. The Board has explained that the submission of evidence or argument which does not address the underlying issue involved does not constitute a basis for reopening a case.<sup>18</sup> Therefore, appellant is not entitled to further review of the merits of his claim based on the third above-noted requirement under 20 C.F.R. § 10.606(b)(3).

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.

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<sup>15</sup> *Id.* at § 10.606(b)(3); *see L.D.*, Docket No. 18-1468 (issued February 11, 2019).

<sup>16</sup> *Id.* at § 10.608(b); *J.B.*, Docket No. 20-0145 (issued September 8, 2020); *Y.K.*, Docket No. 18-1167 (issued April 2, 2020).

<sup>17</sup> *C.L.*, Docket No. 20-0410 (issued October 29, 2020); *M.G.*, Docket No. 18-0654 (issued October 17, 2018); *D.K.*, 59 ECAB 141 (2007); *Kenneth R. Mroczkowi*, 40 ECAB 855 (1989); *Eugene F. Butler*, 36 ECAB 393 (1984).

<sup>18</sup> *S.W.*, Docket No. 19-1498 (issued January 9, 2020); *N.L.*, Docket No. 18-1575 (issued April 3, 2019); *Eugene F. Butler, id.*, 393, 398 (1984).

**CONCLUSION**

The Board finds that appellant has not met his burden of proof to establish a medical condition causally related to the February 14, 2022 employment incident. 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).

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 15 and September 1, 2022 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: June 14, 2023  
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Janice B. Askin, Judge  
Employees' Compensation Appeals Board