

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

_____)	
T.F., Appellant)	
)	
and)	Docket No. 22-0573
)	Issued: March 31, 2023
U.S. POSTAL SERVICE, UPTOWN POST OFFICE, San Bernardino, CA, Employer)	
_____)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On March 7, 2022 appellant filed a timely appeal from a December 30, 2021 merit decision and a February 4, 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 a diagnosed medical condition in connection with the accepted factors of her federal employment; and

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that appellant submitted additional evidence on appeal. 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 her claim, pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On November 11, 2021 appellant, then 58-year-old city carrier assistant, filed an occupational disease claim (Form CA-2) alleging that she developed severe bilateral carpal tunnel due to factors of her federal employment, including repetitive body movements of the hands and wrists over the course of 27 years. She noted that she first became aware of her condition on July 23, 2021 and first realized its relation to her federal employment on November 8, 2021. Appellant did not stop work.

In a development letter dated November 17, 2021, OWCP informed appellant that the evidence of record was insufficient to establish her claim. It advised her of the type of factual and medical evidence needed, and provided a questionnaire for her completion. In a separate development letter of even date, OWCP requested that the employing establishment provide a copy of appellant's position description and physical requirements of her job. It afforded both parties 30 days to respond. No additional evidence was received from appellant.

In a statement dated December 8, 2021, K.H., a supervisor in customer service, summarized the physical activities appellant performed and agreed with appellant's statement regarding the factors of her federal employment.

By decision dated December 30, 2021, OWCP found that appellant had established the implicated employment factors, but denied her occupational disease claim, finding that the medical evidence of record was insufficient to establish a medical diagnosis in connection with the accepted factors of her federal employment. It concluded, therefore, that she had not met the requirements to establish an injury as defined under FECA.

On January 19, 2020 appellant requested reconsideration. No additional evidence was received.

By decision dated February 4, 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 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, 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

³ *Supra* note 1.

the employment injury.⁴ 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.

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) rationalized medical evidence establishing that the diagnosed condition is causally related to the identified employment factors.⁵

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.⁶ The opinion of the physician must be based on a complete factual and medical background, 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 factors.⁷

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met her burden of proof to establish a medical diagnosis in connection with the accepted factors of her federal employment.

To establish that she sustained an occupational disease in the performance of duty, appellant must submit medical evidence that establishes the presence or existence of the disease or condition for which compensation is claimed, and that the diagnosed condition is causally related to the identified employment factors.⁸ As she has not submitted any medical evidence, she has not established a medical diagnosis in connection with the accepted employment factors.⁹ The Board thus finds that appellant has not met her burden of proof to establish her claim.

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.

⁴ A.A., Docket No. 21-0774 (issued January 11, 2022); C.K., Docket No. 19-1549 (issued June 30, 2020); R.G., Docket No. 19-0233 (issued July 16, 2019); Elaine Pendleton, 40 ECAB 1143 (1989).

⁵ A.A., *id.*; L.D., Docket No. 19-1301 (issued January 29, 2020); S.C., Docket No. 18-1242 (issued March 13, 2019); Victor J. Woodhams, 41 ECAB 345, 352 (1989).

⁶ A.A., *id.*; I.J., Docket No. 19-1343 (issued February 26, 2020); T.H., 59 ECAB 388 (2008); Robert G. Morris, 48 ECAB 238 (1996).

⁷ A.A., *id.*; D.J., Docket No. 19-1301 (issued January 29, 2020).

⁸ P.R., Docket No. 19-1787 (issued April 21, 2021); R.G., *supra* note 4. See also Roy L. Humphrey, 57 ECAB 238, 241 (2005); Ruby I. Fish, 46 ECAB 276, 279 (1994); Victor J. Woodhams, *supra* note 5.

⁹ P.R., *id.*; C.L., Docket No. 20-0385 (issued August 5, 2020).

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.¹⁰

To require OWCP to reopen a case for merit review, pursuant to FECA, the claimant must provide evidence or an 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.¹¹

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.¹² If it chooses to grant reconsideration, it reopens and reviews the case on its merits.¹³ 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.¹⁴

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).

In her timely request for reconsideration, appellant neither alleged nor demonstrated that OWCP erroneously applied or interpreted a specific point of law. Additionally, the Board finds that she did not advance a relevant legal argument not previously considered by OWCP.

¹⁰ 5 U.S.C. § 8128(a); *see R.H.*, Docket No. 21-1382 (issued March 7, 2022); *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).

¹¹ 20 C.F.R. § 10.606(b)(3); *see R.H.*, *id.*; *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).

¹² *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.

¹³ *Id.* at § 10.608(a); *F.V.*, Docket No. 18-0230 (issued May 8, 2020); *see also M.S.*, 59 ECAB 231 (2007).

¹⁴ *Id.* at § 10.608(b); *B.S.*, Docket No. 20-0927 (issued January 29, 2021); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

Consequently, appellant is not entitled to further review of the merits of her claim based on either the first or second above-noted requirements under 20 C.F.R. § 10.606(b)(3).¹⁵

The Board further finds that appellant has not provided any relevant and pertinent new evidence in support of her request for reconsideration. As appellant failed to provide relevant and pertinent new evidence, she is not entitled to a merit review based on the third requirement under 20 C.F.R. § 10.606 (b)(3).¹⁶

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.¹⁷

CONCLUSION

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

¹⁵ See *A.A.*, *supra* note 4; *C.S.*, Docket No. 19-0851 (issued November 18, 2019); *J.B.*, Docket No. 17-0628 (issued June 28, 2017).

¹⁶ *C.Y.*, Docket No. 21-1049 (issued February 1, 2022); *P.S.*, Docket No. 20-1090 (issued September 9, 2021); *see also G.J.*, Docket No. 20-0071 (issued July 1, 2020); *V.Q.*, Docket No. 19-1309 (issued January 3, 2020); *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

¹⁷ *C.Y.*, *id.*; *M.O.*, Docket No. 21-0459 (issued December 29, 2021); *D.G.*, Docket No. 19-1348 (issued December 2, 2019).

ORDER

IT IS HEREBY ORDERED THAT the December 30, 2021 and February 4, 2022 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: March 31, 2023
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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