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P.C., Appellant)	
)	
and)	Docket No. 22-0263
)	Issued: October 13, 2023
DEPARTMENT OF VETERANS AFFAIRS,)	
NORTHPORT VA MEDICAL CENTER,)	
Northport, NY, Employer)	
)	

Case Submitted on the Record

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JAMES D. MCGINLEY, Alternate Judge

On December 10, 2021 appellant filed a timely appeal from June 22, July 8, and October 14, 2021 merit decisions and a December 6, 2021 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

The issues are: (1) whether appellant has met her burden of proof to establish a traumatic injury in the performance of duty on October 29, 2020, as alleged; and (2) whether OWCP

² The Board notes that, following the December 6, 2021 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.*

properly denied appellant's request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On May 7, 2021 appellant, then a 42-year-old housekeeping aid, filed a traumatic injury claim (Form CA-1) alleging that on October 29, 2020 she sustained a right wrist and hand injury when grabbing garbage and linen and hitting her hand against a dumpster while in the performance of duty. She stopped work on April 23, 2021.

Appellant submitted duty status reports (Form CA-17) dated October 27 and 29, 2020 which provided the date of injury as October 27, 2020 and indicated that she injured her hand and wrist when grabbing garbage and linen as part of her official duties.

On May 13, 2021 the employing establishment controverted appellant's claim, contending that she had not provided any evidence to substantiate her traumatic injury claim.

A security prescription form dated May 17, 2021 from an unidentifiable health care provider indicated that appellant received surgery for a right wrist cyst on April 26, 2021.

In a development letter dated May 18, 2021, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence required and provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit the necessary evidence.

OWCP subsequently received an emergency department report dated October 27, 2020, wherein Dr. Albert W. Heuser, III, Board-certified in emergency medicine, evaluated appellant for right wrist pain that had occurred after she grabbed a bag from a garbage pail. He noted that an x-ray of the right wrist yielded normal findings. Dr. Heuser diagnosed right wrist pain after grasping and lifting a garbage bag and a possible right wrist sprain.

In an October 29, 2020 report, Dr. Yudell Edelstein, a Board-certified radiologist, obtained a history of appellant injuring her right wrist and hand on October 27, 2020 grabbing a bag from a garbage pail. He advised that x-rays showed a normal right wrist and indicated that she could perform light duty.

OWCP received hospital notes dated November 2 through 10, 2020 from various health care providers, who related that appellant's right wrist pain began after she lifted a heavy bag at work and that she was unable to use her right hand due to persistent symptoms.

In a report dated November 4, 2020, Dr. Sergio Lombardo, a Board-certified physiatrist, provided a history of appellant experiencing a week of right-hand pain that was likely a sprain.

A November 18, 2020 computerized tomography (CT) scan of appellant's right wrist revealed no acute fractures or aggressive osseous lesion. In a progress report of even date, Dr. Lombardo indicated that a CT scan revealed a ganglion cyst at the mid-carpal joint.

OWCP received hospital notes dated December 2 and 3, 2020, from Dr. Lombardo who reiterated earlier findings from appellant's CT scan and noted that an additional scan revealed mild carpi ulnaris tendinosis.

In a form report dated April 28, 2021, Dr. Richard Boccio, a Board-certified podiatrist, indicated that appellant had a cyst removal on April 26, 2021 and would be unable to return to work until June 7, 2021.

In nurse triage reports dated June 2, 2021, Debra Englehardt, a nurse, related that appellant injured herself in October 2020 and further indicated that appellant received surgery on April 26, 2021 to remove a cyst that was allegedly related to the workplace incident.

An attending physician's report (Form CA-20) dated June 3, 2021 related a date of injury of April 26, 2021 and diagnosed a ganglion cyst of the right wrist.

On June 4, 2021 the employing establishment again controverted appellant's claim, contending that appellant had not established a medical condition for her traumatic injury claim.

By decision dated June 22, 2021, OWCP denied appellant's claim, finding that she had not submitted sufficient evidence to establish that the events occurred in the performance of duty as alleged. Consequently, it found that she had not met the requirements to establish an injury as defined by FECA.

On June 28, 2021 appellant requested reconsideration of OWCP's June 22, 2021 decision. She submitted CA-17 forms dated October 29 and November 2, 2020 and a Form CA-17 with an illegible date. The November 2, 2020 CA-17 form noted the date of injury as November 2, 2020.

OWCP subsequently received an illegible statement from appellant dated June 29, 2021.

By decision dated July 8, 2021, OWCP denied modification of its June 22, 2021 decision. It found that appellant had not submitted a legible factual statement and attached a copy of its May 18, 2021 development letter and questionnaire.

On July 8, 2021 appellant requested reconsideration of OWCP's July 8, 2021 decision. In an attached statement of even date, she explained that on October 27, 2020 employee health instructed her to go to the emergency department and that her supervisor had excused her absence. Appellant further indicated that she continues to seek medical treatment due to her condition.

Appellant resubmitted the October 29, 2020 Form CA-17 which listed appellant's date of injury as October 27, 2020.

Appellant submitted occupational therapy notes dated June 4 through July 12, 2021 from various health care providers, who noted her right wrist pain diagnosis and medical treatment for short- and long-term recovery.

In a July 13, 2021 statement, appellant explained that she was in the emergency room due to her condition, and that it was recommended that she receive surgery.

A July 22, 2021 employing establishment work capacity evaluation form from Dr. Anne Marie Meo, a Board-certified orthopedist, indicated that appellant was examined on January 15, 2021.

On August 13, 2021 Dr. Thor Robert Rhodin, a Board-certified orthopedic surgeon, related appellant's history of right wrist pain on October 27, 2020 when she "hit her wrist on a dumpster throwing out a garbage bag." He discussed her ongoing complaints of right wrist pain due to the alleged October 27, 2020 workplace incident. Dr. Rhodin diagnosed tenosynovitis of the right wrist.

In a September 16, 2021 medical narrative report, Dr. Rhodin related a date of injury of October 27, 2020 and noted that appellant had injured her wrist on that date when she hit it on a dumpster throwing a bag of garage. He found that she remained unable to repetitively grip or lift anything more than a few pounds. Dr. Rhodin additionally diagnosed a damaged wrist capsule with ligament and tendon scarring.

By decision dated October 14, 2021, OWCP denied modification of its July 8, 2021 decision.

On October 18, 2021 appellant requested reconsideration of OWCP's October 14, 2021 decision and submitted duplicate copies of Dr. Rhodin's August 13 and September 16, 2021 medical reports.

By decision dated December 6, 2021, 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 that the individual is an employee of the United States within the meaning of FECA,⁴ 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.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 whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There

³ *Supra* note 1; *D.M.*, Docket No. 18-1003 (issued July 16, 2020); *L.C.*, Docket No. 19-0503 (issued February 7, 2020); *A.A.*, Docket No. 18-0031 (issued April 5, 2018); *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

⁴ *F.H.*, Docket No. 18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued December 13, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *J.T.*, Docket No. 20-0713 (issued July 11, 2022); *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

are two components involved in establishing fact of injury. The first component is whether the employee actually experienced the employment incident at the time and place, and in the manner alleged. The second component is whether the employment incident caused a personal injury and can be established only by medical evidence.⁷

To establish that an injury occurred as alleged, the injury need not be confirmed by eyewitnesses, but the employee's statements must be consistent with the surrounding facts and circumstances and his or her subsequent course of action. The employee has not met his or her burden when there are such inconsistencies in the evidence as to cast serious doubt on the validity of the claim. Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury, and failure to obtain medical treatment may, if otherwise unexplained, cast serious doubt on the employee's statements in determining whether a *prima facie* case has been established.⁸ An employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.⁹

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met her burden of proof to establish a traumatic injury in the performance of duty on October 29, 2020, as alleged.

On her May 7, 2021 Form CA-1, appellant alleged that she was injured on October 29, 2020. However, the medical evidence of record listed inconsistent dates of injury. These inconsistent dates of injury throughout the evidence of record cast serious doubt as to whether the alleged employment incident occurred at the time and place, and in the manner alleged.¹⁰

Additionally, in its May 18, 2021 development letter, OWCP advised appellant of the factual information needed to establish her claim and attached a questionnaire regarding the circumstances surrounding the alleged traumatic injury for her completion. However, she did not complete and return the questionnaire. As appellant failed to provide responses to the questions posed, she did not sufficiently explain circumstances surrounding her alleged injury.¹¹

⁷ *E.S.*, Docket No. 22-1339 (issued May 16, 2023); *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

⁸ *C.M.*, Docket No. 20-1519 (issued March 22, 2021); *Betty J. Smith*, 54 ECAB 174 (2002).

⁹ *See J.M.*, Docket No. 19-1024 (issued October 18, 2019); *M.F.*, Docket No. 18-1162 (issued April 9, 2019).

¹⁰ *Supra* note 8.

¹¹ *R.B.*, Docket No. 19-1026 (issued January 14, 2020); *M.S.*, Docket No. 18-0059 (issued June 12, 2019); *John R. Black*, 49 ECAB 624 (1998); *Judy Bryant*, 40 ECAB 207 (1988); *Martha G. List*, 26 ECAB 200 (1974).

The Board, therefore, finds that appellant has not established an injury in the performance of duty on October 29, 2020, as alleged. Consequently, it is unnecessary to address the medical evidence of record.¹²

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 payment of compensation at any time on his own motion or on application.¹³

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.¹⁴

A request for reconsideration must also be received by OWCP within one year of the date of OWCP's decision for which review is sought.¹⁵ A timely request for reconsideration may be granted if OWCP determines that the employee has presented evidence or provided an argument that meets at least one of the requirements for reconsideration. If OWCP chooses to grant reconsideration, it reopens and reviews the case on its merits.¹⁶ 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.¹⁷

¹² *J.C.*, Docket No. 19-0542 (issued August 14, 2019); *see M.P.*, Docket No. 15-0952 (issued July 23, 2015); *Alvin V. Gadd*, 57 ECAB 172 (2005); *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997) (as appellant failed to establish that the claimed incident occurred as alleged, it is unnecessary to discuss the probative value of medical evidence).

¹³ 5 U.S.C. § 8128(a); *see D.G.*, Docket No. 20-1203 (issued April 28, 2021); *T.K.*, Docket No. 19-1700 (issued April 30, 2020); *see L.D.*, Docket No. 18-1468 (issued February 11, 2019); *W.C.*, 59 ECAB 372 (2008).

¹⁴ 20 C.F.R. § 10.606(b)(3); *see D.G., 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).

¹⁵ *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). Chapter 2.1602.4b.

¹⁶ *Id.* at § 10.608(a); *D.G., supra* note 13; *F.V.*, Docket No. 18-0230 (issued May 8, 2020); *see also M.S.*, 59 ECAB 231 (2007).

¹⁷ *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).

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).

Appellant's timely October 18, 2021 request for reconsideration does not demonstrate that OWCP erroneously applied or interpreted a specific point of law. Moreover, she has not advanced a relevant legal argument not previously considered. Consequently, appellant is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under 20 C.F.R. § 10.606(b)(3).¹⁸

Appellant also did not submit relevant and pertinent new evidence in support of her reconsideration request. In support of her reconsideration request, she submitted duplicate copies of Dr. Rhodin's August 13 and September 16, 2021 medical reports. Evidence which repeats or duplicates evidence already of record has no evidentiary value and does not constitute a basis for reopening a case.¹⁹

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 her burden of proof to establish a traumatic injury in the performance of duty on October 29, 2020, as alleged. 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).

¹⁸ See *R.L.*, Docket No. 20-1403 (issued July 21, 2021); *M.O.*, Docket No. 19-1677 (issued February 25, 2020); *C.B.*, Docket No. 18-1108 (issued January 22, 2019).

¹⁹ *R.B.*, Docket No. 21-0035 (issued May 13, 2021); *V.L.*, Docket No. 19-0069 (issued February 10, 2020); *A.K.*, Docket No. 19-1210 (issued November 20, 2019); *R.S.*, Docket No. 19-0312 (issued June 18, 2019); *Richard Yadron*, 57 ECAB 207 (2005); *Eugene F. Butler*, *supra* note 3.

ORDER

IT IS HEREBY ORDERED THAT the June 22, July 8, October 14, and December 6, 2021 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: October 13, 2023
Washington, D.C.

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

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

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