

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

D.S., Appellant)	
)	
and)	Docket No. 24-0305
)	Issued: April 24, 2024
DEPARTMENT OF JUSTICE, FEDERAL)	
BUREAU OF INVESTIGATION,)	
Milwaukee, WI, 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
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On February 2, 2024 appellant filed a timely appeal from an August 31, 2023 merit decision and an October 16, 2023 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 diagnosed medical condition in connection with the accepted June 16, 2023 employment incident; 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 June 20, 2023 appellant, then a 30-year-old electronics technician, filed a traumatic injury claim (Form CA-1) alleging that on June 16, 2023 he sustained whiplash due to a motor vehicle accident (MVA) while in the performance of duty.

In a June 28, 2023 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence needed to establish his claim. OWCP afforded appellant 60 days to submit the necessary evidence. In a separate development letter of even date, it requested additional information from the employing establishment, including comments from a knowledgeable supervisor. OWCP afforded the employing establishment 30 days to respond.

Thereafter, OWCP received an emergency department report and after visit summary dated June 16, 2023 from Jill Mikash, a registered nurse practitioner, who diagnosed neck muscle strain and clavicle pain as the result of an MVA. Emergency services records dated June 16, 2023 were also received, which related that a paramedic team was dispatched for appellant's transport to the medical center from the accident site.

OWCP also received the employing establishment's statement acknowledging that appellant was in the performance of duty at the time of the MVA on June 16, 2023.

In a letter dated August 4, 2023, OWCP informed appellant that it had performed an interim review of his claim and found the evidence insufficient to establish his claim. It advised him that nurse practitioners are not considered qualified physicians under FECA unless their report is countersigned by a physician. OWCP requested that appellant submit medical documentation from a qualified physician, within 60 days of the initial June 28, 2023 letter.

OWCP received duplicate copies of the June 16, 2013 emergency room record by Ms. Mikash, and the report by the paramedic team.

By decision dated August 31, 2023, OWCP accepted that the June 16, 2023 employment incident occurred as alleged. However, it denied appellant's traumatic injury claim, finding that he had not submitted medical evidence containing a medical diagnosis from a qualified physician in connection with the accepted June 16, 2023 employment incident. Consequently, OWCP found that the requirements had not been met to establish an injury as defined by FECA.

On October 12, 2023 appellant requested reconsideration. In support of his request, he submitted an additional page from the June 16, 2023 emergency room report signed by Ms. Mikash. This document noted the medications that appellant was prescribed on June 16, 2023 for pain and spasm. It also noted that the supervising provider was Dr. Mohammad R. Malik, a specialist in emergency medicine.

By decision dated October 16, 2023, OWCP denied appellant's request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA² 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,³ 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.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.⁵

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 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 an injury.⁶

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.⁷ The opinion of the physician must be based upon 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 incident.⁸

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met his burden of proof to establish a diagnosed medical condition in connection with the accepted June 16, 2023 employment incident.

In support of his claim, appellant submitted a June 16, 2023 emergency department report and an after-visit summary signed by Ms. Mikash, an advanced registered nurse practitioner, who diagnosed neck muscle strain and clavicle pain. Emergency services records dated June 16, 2023

² *Supra* note 1.

³ *P.G.*, Docket No. 23-0195 (issued August 15, 2023); *F.H.*, Docket No. 18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁴ *P.G.*, *id.*; *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).

⁵ *P.G.*, *id.*; *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).

⁶ *D.P.*, Docket No. 23-0370 (issued July 11, 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).

⁷ *D.P.*, *id.*; *I.J.*, Docket No. 19-1343 (issued February 26, 2020); *T.H.*, 59 ECAB 388 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

⁸ *D.P.*, *id.*; *D.C.*, Docket No. 19-1093 (issued June 25, 2020); *see L.B.*, Docket No. 18-0533 (issued August 27, 2018).

were also received, which related that a paramedic team was dispatched for appellant's transport to the medical center from the accident site. However, none of these documents were signed by a physician. Certain healthcare providers such as nurses, nurse practitioners, and paramedics are not considered physicians as defined under FECA.⁹ Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.

As the medical evidence of record is insufficient to establish a diagnosed medical condition in connection with the accepted June 16, 2023 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(a) of FECA does not entitle a claimant the review of an OWCP decision as a matter of right.¹⁰ OWCP has discretionary authority in this regard and has imposed certain limitations in exercising its authority.¹¹ One such limitation is that the request for reconsideration must be received by OWCP within one year of the date of the decision for which review is sought.¹²

A timely request for reconsideration, including all supporting documents, must set forth arguments, and contain evidence that either: (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.¹³ When a timely request for reconsideration does not meet at least one of

⁹ Section 8101(2) provides that physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). *See also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (September 2020); *M.M.*, Docket No. 23-0475 (issued July 27, 2023) (a registered nurse and an advanced registered nurse practitioner are not considered physicians as defined under FECA); *N.F.*, Docket No. 21-1145 (issued January 25, 2023) (nurses are not considered physicians as defined by FECA); *B.L.*, Docket No. 22-1338 (issued January 20, 2023) (nurse practitioners are not considered physicians as defined by FECA); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA). *See also E.P.*, Docket No. 21-0936 (issued April 12, 2022) (a paramedic is not a physician under FECA).

¹⁰ 5 U.S.C. § 8128(a).

¹¹ 20 C.F.R. § 10.607.

¹² *Id.* at § 10.607(a). 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. *Supra* note 9 at 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 § 10.606(b)(3); *see L.F.*, Docket No. 20-1371 (issued March 12, 2021); *B.R.*, Docket No. 19-0372 (issued February 20, 2020).

the above-noted requirements, OWCP will deny the request for reconsideration without reopening the case for a review on the merits.¹⁴

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

Appellant also did not submit any relevant and pertinent new medical evidence in support of his request for reconsideration. He submitted an additional page from the June 16, 2023 emergency department report from Ms. Mikash, which noted the medications that appellant was prescribed on June 16, 2023 for pain and spasm. The Board has held that the submission of evidence or argument, which repeats or duplicates evidence or argument already of record does not constitute a basis for reopening a claim.¹⁵ Thus, appellant is not entitled to further review of the merits of his claim based on the third requirement under 20 C.F.R. § 10.606(b)(3).¹⁶

The Board, therefore, 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 medical condition in connection with the accepted June 16, 2023 employment incident. 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).

¹⁴ *Id.* at § 10.608.

¹⁵ *J.R.*, Docket No. 23-0980 (issued January 23, 2024); *J.V.*, Docket No. 19-1554 (issued October 9, 2020); *see T.B.*, Docket No. 16-1130 (issued September 11, 2017); *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *see also S.F.*, Docket No. 18-0516 (issued February 21, 2020); *James W. Scott*, 55 ECAB 606, 608 n.4 (2004).

¹⁶ *See D.M.*, Docket No. 18-1003 (issued July 16, 2020); *D.S.*, Docket No. 18-0353 (issued February 18, 2020); *Susan A. Filkins*, 57 ECAB 630 (2006) (when a request for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b), OWCP will deny the request for reconsideration without reopening the case for a review on the merits).

ORDER

IT IS HEREBY ORDERED THAT the August 31 and October 16, 2023 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: April 24, 2024
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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