

ISSUES

The issues are: (1) whether appellant has met her burden of proof to establish left shoulder and/or cervical conditions causally related to the accepted factors of her federal employment; 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 January 9, 2023 appellant, then a 52-year-old medical clerk, filed an occupational disease claim (Form CA-2) alleging that she developed multi-level cervical spine discogenic disease with foraminal stenosis and upper extremity radiculopathy, left shoulder impingement, left shoulder adhesive capsulitis, left shoulder acromioclavicular (AC) joint arthropathy, and left shoulder partial rotator cuff tear due to factors of her federal employment. She noted that she first became aware of her condition, and first realized its relationship to factors of her federal employment on October 1, 2021. Appellant stopped work on January 27, 2022 and returned to full-time, limited-duty work in June 2022.

In an attached statement, appellant indicated that her work was highly repetitious and included answering telephone calls, monitoring emails and relaying messages to the appropriate medical staff member, greeting and directing patients and visitors to the appropriate departments, answering basic questions, keeping patients' medical records up to date, ordering supplies, maintaining time and attendance records for employees, and recording physician's orders for patients. She noted that she had spent the last seven years working in "spinal cord injury outpatient," Monday through Friday, from 7:30 a.m. to 4:00 p.m. Appellant alleged that she had experienced a steady increase in assigned duties since 2018/2019. She explained that, in September and October 2021, she began to experience various problems and annoyances with her left arm and shoulder. Appellant asserted that she sought medical treatment, including injections and pain medication, but the symptoms persisted and worsened. She described the additional medical treatment that she received, and noted that she was diagnosed with cervical spine radiculopathy, left rotator cuff syndrome, left shoulder impingement syndrome, left shoulder adhesive capsulitis, and adjustment disorder with anxiety and depressed mood.

In a report dated November 11, 2022, Dr. Keith S. Feder, a Board-certified orthopedic surgeon, indicated that appellant worked as a medical support assistant. Appellant noted that, in November and December 2021, she began to experience ongoing and increasing pain in the left shoulder and cervical spine. Dr. Feder reviewed her medical records and diagnosed multi-level cervical spine discogenic disease with foraminal stenosis and upper extremity radiculopathy, left shoulder partial rotator cuff tear, left shoulder AC joint arthropathy, left shoulder impingement syndrome, and left shoulder adhesive capsulitis. He opined that appellant's work duties as a medical support assistant was a direct cause to the onset of the symptomatic cervical spine radiculopathy, symptomatic cervical spine discogenic disease, and symptomatic left shoulder rotator cuff pathology.

In a development letter dated January 20, 2023, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed, and

provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit the necessary evidence.

Appellant submitted a progress note dated January 28, 2022 by Dr. David H. Blumeyer, Board-certified in physiatry, who related her complaints of left-sided cervical radiculopathy pain with associated shooting pain to the left upper arm with onset of three months prior. On physical examination, Dr. Blumeyer observed tenderness to palpation of the cervical paraspinals and trapezius. Range of motion of the neck showed flexion, extension, lateral bending, and rotation with pain. Dr. Blumeyer assessed cervical neck pain and radiculopathy with associated left upper extremity radicular symptoms.

OWCP also received diagnostic records. A January 28, 2022 cervical spine magnetic resonance imaging (MRI) scan revealed mild broad-based disc osteophyte complex at C3-4, C4-5, C5-6, C6-7, and C7-T1, and foraminal stenosis at C3-4, C4-5, C5-6, and C6-7. A February 16, 2022 cervical spine MRI scan showed multilevel degenerative disc disease at C3-4, C4-5, C5-6, C6-7, and C7-T1. A left shoulder diagnostic imaging report dated March 14, 2022 revealed high-grade articular sided tearing of the supraspinatus tendon, and low-grade articular sided tearing of the infraspinatus tendon.

In a treatment record dated May 4, 2022, Dr. Michael P. Hall, a Board-certified orthopedic surgeon, noted appellant's complaints of left shoulder pain. On physical examination, he observed mild stiffness in the cervical spine and tenderness to palpation over the trapezius and near the AC joint. Dr. Hall diagnosed left shoulder adhesive capsulitis, left rotator cuff tendinopathy and partial supraspinatus tear, and trapezial myofascial pain, possible radicular component.

In a progress note dated July 28, 2022, Dr. Blumeyer recounted appellant's complaints of left-sided neck and shoulder pain that worsened with shoulder and arm movements. He conducted an examination and reviewed her diagnostic records. Dr. Blumeyer diagnosed cervical myofascial pain syndrome, left shoulder impingement syndrome, left shoulder adhesive capsulitis, left shoulder rotator cuff syndrome, and cervical radiculitis.

By decision dated April 5, 2023, OWCP denied appellant's occupational disease claim, finding that she had not established that her diagnosed left shoulder, cervical, and lumbar conditions were causally related to the accepted factors of her federal employment.

On June 22, 2023 appellant, through her representative, requested reconsideration. She alleged that Dr. Feder diagnosed cervical spine and left shoulder conditions, and opined that these conditions were caused by her work duties.

Appellant resubmitted Dr. Feder's November 11, 2022 report.

By decision dated July 13, 2023, OWCP denied appellant's request for reconsideration of the merits of the 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, that the claim was timely filed within the applicable time limitation of FECA,⁴ 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 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) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.⁷

The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon a complete factual and medical background, showing a causal relationship between the claimed condition and identified factors.⁸ The opinion of the physician must be based on a complete factual and medical background of the claimant, 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 specific employment activity or factors identified by the claimant.⁹

³ *Id.*

⁴ *D.D.*, Docket No. 19-1715 (issued December 3, 2020); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *Y.G.*, Docket No. 20-0688 (issued November 13, 2020); *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ *C.H.*, Docket No. 19-1781 (issued November 13, 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).

⁷ *T.M.*, Docket No. 20-0712 (issued November 10, 2020); *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *R.H.*, 59 ECAB 382 (2008).

⁸ *T.D.*, Docket No. 23-0037 (issued August 23, 2023); *J.F.*, Docket No. 18-0492 (issued January 16, 2020); *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *T.H.*, 59 ECAB 388, 393 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

⁹ *C.A.*, Docket No. 22-0764 (issued November 30, 2022); *A.M.*, Docket No. 18-0562 (issued January 23, 2020); *I.J.*, 59 ECAB 408 (2008); *Leslie C. Moore*, 52 ECAB 132 (2000).

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met her burden of proof to establish left shoulder and/or cervical conditions causally related to the accepted factors of her federal employment.

Appellant submitted a November 11, 2022 report by Dr. Feder, who noted her complaints of left shoulder and neck pain. Dr. Feder reviewed her diagnostic imaging records, and diagnosed multi-level cervical spine discogenic disease with foraminal stenosis and upper extremity radiculopathy, left shoulder partial rotator cuff tear, left shoulder AC joint arthropathy, left shoulder impingement syndrome, and left shoulder adhesive capsulitis. He opined that appellant's work duties as a medical support assistant were a direct cause to the onset of the symptomatic cervical spine radiculopathy, symptomatic cervical spine discogenic disease, and symptomatic left shoulder rotator cuff pathology. While Dr. Feder provided an affirmative opinion regarding causal relationship, he did not provide any further explanation or rationale to support his conclusion. The Board has held that a medical opinion is of limited probative value if it is conclusory in nature.¹⁰ The medical evidence must also include rationale explaining how the physician reached the conclusion he or she is supporting.¹¹ For this reason, Dr. Feder's report is insufficient to establish appellant's claim.¹²

In reports dated January 28 and July 28, 2022, Dr. Blumeyer provided examination findings, and diagnosed cervical myofascial pain syndrome, left shoulder impingement syndrome, left shoulder adhesive capsulitis, left shoulder rotator cuff syndrome, and cervical radiculitis. In a report dated May 4, 2022, Dr. Hall, provided examination findings, and diagnosed left shoulder adhesive capsulitis, left rotator cuff tendinopathy and partial supraspinatus tear, and trapezial myofascial pain, possible radicular component. However, Dr. Blumeyer and Dr. Hall did not provide an opinion addressing the cause of appellant's left shoulder and cervical conditions. 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.¹³ Accordingly, these reports are of no probative and are insufficient to establish causal relationship.¹⁴

OWCP also received cervical spine and left shoulder diagnostic study reports. The Board has held that diagnostic studies, standing alone, lack probative value on the issue of causal

¹⁰ *C.F.*, Docket No. 22-0806 (issued July 12, 2023); *B.B.*, Docket No. 21-0284 (issued October 5, 2022); *C.M.*, Docket No. 19-0360 (issued February 25, 2020).

¹¹ *J.W.*, Docket No. 18-0678 (issued March 3, 2020); *B.B.*, Docket No. 19-1102 (issued November 7, 2019); *Beverly A. Spencer*, 55 ECAB 501 (2004).

¹² *See G.J.*, Docket No. 23-0577 (issued August 28, 2023); *C.D.*, Docket No. 20-0762 (issued January 13, 2021).

¹³ *J.H.*, Docket No. 20-1645 (issued August 11, 2021); *P.C.*, Docket No. 20-0855 (issued November 23, 2020); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹⁴ *See L.K.*, Docket No. 21-1155 (issued March 23, 2022); *J.M.*, Docket No. 19-1169 (issued February 7, 2020); *L.B.*, *id.*

relationship as they do not address whether the accepted employment injury caused the diagnosed conditions.¹⁵ These reports, therefore, are insufficient to establish appellant's claim.

As the medical evidence of record is insufficient to establish that appellant's left shoulder and/or cervical conditions were causally related to the accepted factors of federal employment, the Board finds that she 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.

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 own motion or on application.¹⁶

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or argument that: (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.¹⁷

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.¹⁸ If it chooses to grant reconsideration, it reopens and reviews the case on its merits.¹⁹ 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.²⁰

¹⁵ *N.B.*, Docket No. 20-0794 (issued July 29, 2022); *F.D.*, Docket No. 19-0932 (issued October 3, 2019); *J.S.*, Docket No. 17-1039 (issued October 6, 2017).

¹⁶ 5 U.S.C. § 8128(a); *see D.G.*, Docket No. 20-1203 (issued April 28, 2021); *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).

¹⁷ 20 C.F.R. § 10.606(b)(3); *see P.M.*, Docket No. 20-0780 (issued November 24, 2020); *J.W.*, Docket No. 19-1795 (issued March 13, 2010); *see also L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

¹⁸ *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.

¹⁹ *Id.* at § 10.608(a); *see F.V.*, Docket No. 18-0230 (issued May 8, 2020); *M.S.*, 59 ECAB 231 (2007).

²⁰ *Id.* at § 10.608(b); *see 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 has not alleged or demonstrated that OWCP erroneously applied or interpreted a specific point of law. Moreover, she did not advance a relevant legal argument not previously considered by OWCP. 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).²¹

In support of her request for reconsideration, appellant resubmitted Dr. Feder's November 11, 2022 report. The Board has held that the submission of evidence which duplicates or is substantially similar to evidence already in the case record does not constitute a basis for reopening a case.²² Therefore, appellant also failed to satisfy the third requirement under 20 C.F.R. § 10.606(b)(3).²³

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 left shoulder and/or cervical conditions causally related to 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).

²¹ *Id.* at § 10.606(b)(3); *G.K.*, Docket No. 20-1026 (issued December 11, 2020); *D.T.*, Docket No. 20-0456 (issued September 1, 2020).

²² *B.S.*, Docket No. 20-0927 (issued January 29, 2021); *S.W.*, Docket No. 18-1261 (issued February 22, 2019); *E.M.*, Docket No. 09-39 (issued March 3, 2009); *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

²³ *See A.G.*, Docket No. 22-1052 (issued December 14, 2022); *see also D.J.*, Docket No. 21-0371 (issued November 24, 2021).

ORDER

IT IS HEREBY ORDERED THAT the July 13 and April 5, 2023 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: March 4, 2024
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