

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

N.A., Appellant)

and)

DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL
CENTER, Coatesville, PA, Employer)

Docket No. 11-1647
Issued: May 2, 2012

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 6, 2011 appellant filed a timely appeal of a March 22, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP) denying her claim for a recurrence. Her appeal is also timely filed from a May 23, 2011 nonmerit decision of OWCP denying her request for reconsideration. 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 met her burden of proof to establish that she sustained a recurrence of disability on July 20, 2010 causally related to her June 8, 2005 accepted work injury; and (2) whether OWCP properly refused to reopen appellant's case for further review of the merits pursuant to 5 U.S.C. § 8128(a).

¹ 5 U.S.C. § 8101 *et seq.*

On appeal appellant contends that her original claim was accepted for avascular necrosis and that she needed further treatment to maintain function in her wrist.

FACTUAL HISTORY

On October 20, 2005 appellant, then a 48-year-old psychiatric practical nurse, filed an occupational disease claim alleging that, as a result of attending a class, she developed avascular necrosis of bilateral lunate bones. She listed the date of injury as June 8, 2005. On January 20, 2006 OWCP accepted appellant's claim for avascular necrosis, both wrists. On August 23, 2007 Dr. Randall W. Culp, a Board-certified orthopedic surgeon with a subspecialty in surgery of the hand, performed the following surgery on appellant: vascularized distal radius bone graft to lunate; left capitate shortening; left posterior interosseous neurectomy; fluoroscopic examination; and short-arm splint. On October 30, 2007 appellant was released to full-duty work.

On August 31, 2010 appellant alleged a recurrence of the employment injury on July 20, 2010. She noted that she was still working, but was experiencing joint pain. Appellant stated that she was tested for Lyme disease, rheumatoid arthritis and hepatitis and that all these tests were negative.

In support of her claim, appellant submitted a report of an operation conducted by Dr. Culp on October 15, 2010 wherein he performed a repeat left proximal row capectomy, left arthroscopic loose body debridement, left posterior osseous neurectomy, fluoroscopic examination and short-arm splint.

By decision dated December 6, 2010, OWCP denied appellant's claim because the factual and medical evidence did not establish that the claimed recurrence resulted from the accepted work injury.

On December 19, 2010 appellant requested review of the written record by an OWCP hearing representative. In support thereof, she submitted excerpts from *Wheless' Textbook of Orthopaedics*.

By decision dated March 22, 2011, the hearing representative affirmed OWCP's December 6, 2010 decision.

On May 16, 2011 appellant requested reconsideration. She did not submit any new evidence with her request.

By decision dated May 23, 2011, OWCP denied reconsideration without conducting a merit review.

LEGAL PRECEDENT -- ISSUE 1

A recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition, which resulted from a previous

injury or illness without an intervening injury or new exposure to the work environment that caused the illness.²

Where an employee claims a recurrence of disability due to an accepted employment-related injury, she has the burden to establish that the recurrence is causally related to the original injury.³ This burden includes the necessity of furnishing evidence from a qualified physician who concludes, on the basis of a complete and accurate factual and medical history, that the condition is causally related to the employment injury.⁴ The medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated or aggravated by the accepted injury.⁵

ANALYSIS -- ISSUE 1

OWCP accepted that appellant sustained an employment-related injury of avascular necrosis in both her wrists. Appellant returned to work. However, she claimed that she sustained a recurrence of the employment-related injury on July 20, 2010. The Board finds that appellant failed to meet her burden of proof to establish that her claimed recurrence was causally related to the accepted employment injury.

The medical evidence does not support a spontaneous recurrence of appellant's accepted employment injury. The only medical evidence submitted by appellant, the operative report dated October 15, 2010, does not address appellant's employment or causal relationship. Appellant also submitted excerpts from *Wheless' Textbook of Orthopaedics*. However, evidence such as newspaper clippings, medical texts and excerpts from publications are of no evidentiary value, as they are of general application and do not address the particular disability claimed.⁶ Accordingly, the Board finds that the evidence does not establish a recurrence. Appellant therefore did not meet her burden of proof to establish that her claimed disability was causally related to her original injury.

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.

² 20 C.F.R. § 10.5(x).

³ *Id.* at § 10.104(b); *Carmen Gould*, 50 ECAB 504 (1999); *Robert H. St. Onge*, 43 ECAB 1169 (1992).

⁴ *Helen K. Holt*, 50 ECAB 279, 282 (1999).

⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.2 (March 2011).

⁶ *See Gaestan F. Valenza*, 35 ECAB 763 (1984); *Kenneth S. Vansick*, 31 ECAB 1132 (1980).

LEGAL PRECEDENT -- ISSUE 2

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,⁷ OWCP's regulations provide that a claimant may obtain review of the merits of the claim by submitting a written application for reconsideration that sets forth arguments and contains evidence that either: (i) shows that OWCP erroneously applied or interpreted a specific point of law; (ii) advances a relevant legal argument not previously considered by OWCP; or (iii) constitutes relevant and pertinent new evidence not previously considered by OWCP.⁸ Section 10.608(b) states that any application for review that does not meet at least one of the requirements listed in section 10.606(b)(2) will be denied by OWCP without review of the merits of the claim.⁹

ANALYSIS -- ISSUE 2

The Board finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(2). Appellant did not show that OWCP erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by OWCP or submit relevant and pertinent new evidence not previously considered. In fact, appellant submitted no new evidence with her request. Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she sustained a recurrence of disability on July 20, 2010 causally related to her accepted work injury. The Board further finds that OWCP properly refused to reopen her case for further review of the merits pursuant to 5 U.S.C. § 8128(a).

⁷ 5 U.S.C. § 8128(a) providing that the Secretary may review an award for or against payment of compensation at any time on her own motion or on application.

⁸ 20 C.F.R. § 10.606(b)(2).

⁹ *Id.* at § 10.608(b); *see also Norman W. Hanson*, 45 ECAB 430 (1994).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated May 23 and March 22, 2011 are affirmed.

Issued: May 2, 2012
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board