

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

_____)
A.S., Appellant)

and)

DEPARTMENT OF HOMELAND SECURITY,)
TRANSPORTATION SECURITY)
ADMINISTRATION, Linthicum, MD, Employer)

_____)

Docket No. 13-1141
Issued: September 5, 2013

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

Case Submitted on the Record

DECISION AND ORDER

Before:

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

JURISDICTION

On April 10, 2013 appellant filed a timely appeal from a December 21, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP) denying her claim for an employment-related injury and a February 15, 2013 nonmerit decision 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 does not have jurisdiction over the merits and nonmerits of this case.²

ISSUES

The issues are: (1) whether appellant met her burden of proof to establish that she sustained left elbow and shoulder conditions in the performance of duty causally related to

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the issuance of the February 15, 2013 OWCP decision and on appeal, appellant submitted new evidence. The Board is precluded from reviewing evidence which was not before OWCP at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c)(1).

factors of her federal employment; and (2) OWCP properly refused to reopen appellant's case for further reconsideration of the merits pursuant to 5 U.S.C. § 8128(a).

On appeal, appellant contends that additional medical information he submitted may have crossed transmittal in the mail of the reconsideration letter and, thus, may not have been considered at the time of the December 21, 2012 OWCP decision.

FACTUAL HISTORY

On September 21, 2012 appellant, then a 55-year-old transportation security officer, filed an occupational disease claim (Form CA-2) alleging that she sprained her arm and shoulder due to factors of her federal employment, including consistently handling luggage all day at work, lifting, pulling, checking, transporting luggage from one place to the next. She first became aware of her condition and attributed it to her federal employment on September 11, 2012. Appellant worked full-time, modified duty beginning September 12, 2012 and returned to full duty without restrictions on September 18, 2012.

By letter dated October 11, 2012, OWCP requested additional factual and medical information from appellant. It allotted her 30 days to submit additional evidence and respond to its inquiries.

Subsequently, appellant submitted an October 16, 2012 narrative statement indicating that her light-duty position required moving, lifting, pushing and carrying bags from several heights, to and from different locations.

In a September 11, 2012 report, Dr. Hamida K. Patel, an internist at Patient First Urgent Care, diagnosed left elbow and shoulder sprains and indicated that appellant injured her left shoulder on August 22, 2012 around 5:00 p.m. as a result of moving luggage. She indicated that appellant was required to lift more than 50 pounds of luggage at work. Dr. Patel released appellant to light duty effective September 12, 2012 with restrictions on lifting no more than 10 pounds and no repeated activity of the left hand.

On September 15, 2012 Dr. Xiaohua Yan, a Board-certified family practitioner at Patient First Urgent Care, diagnosed left shoulder sprain and opined that appellant was not able to return to full duty.

In an October 15, 2012 report, Dr. Motti B. Mulleta, a Board-certified internist at Patient First Urgent Care, diagnosed left shoulder sprain and found mild osteoarthritis of the left shoulder upon x-ray review.

By decision dated December 21, 2012, OWCP denied the claim on the basis that the medical evidence failed to establish a causal relationship between the diagnosed conditions and the implicated employment factors.

On February 7, 2013 appellant requested reconsideration, indicating that OWCP would receive additional medical evidence from her health care center.

By decision dated February 15, 2013, OWCP denied appellant's request for reconsideration of the merits finding that she neither raised substantive legal questions nor included new and relevant evidence. It noted that additional medical evidence was not received as part of the reconsideration request.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA³ has the burden of establishing 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 period of FECA, and that an injury⁴ was sustained in the performance of duty. These are the essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁵

To establish that an injury was sustained in the performance of duty in a claim for an occupational disease claim, an employee must submit the following: (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 employee.⁶

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical evidence. The opinion of the physician must be based on a complete factual and medical background of the employee, 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 identified by the employee.⁷

ANALYSIS -- ISSUE 1

The Board finds that appellant did not establish that federal employment factors caused or aggravated her left elbow and shoulder conditions. While appellant submitted a statement in which she identified the factors of employment that she believed caused her condition, she must

³ 5 U.S.C. §§ 8101-8193.

⁴ OWCP regulations define an occupational disease or illness as a condition produced by the work environment over a period longer than a single workday or shift. 20 C.F.R. § 10.5(q).

⁵ See *O.W.*, Docket No. 09-2110 (issued April 22, 2010); *Ellen L. Noble*, 55 ECAB 530 (2004).

⁶ See *D.R.*, Docket No. 09-1723 (issued May 20, 2010). See *Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁷ See *O.W.*, *supra* note 5.

also submit rationalized medical evidence which explains how her medical conditions were caused or aggravated by the implicated employment factors.⁸

On September 11, 2012 Dr. Patel diagnosed left elbow and shoulder sprains and indicated that appellant injured her left shoulder on August 22, 2012 around 5:00 p.m. by moving luggage. She indicated that appellant was required to lift more than 50 pounds of luggage at work. Dr. Patel released appellant to light duty effective September 12, 2012 with restrictions on lifting no more than 10 pounds and no repeated activity of the left hand. She provided firm diagnoses and identified appellant's work duties. However, Dr. Patel failed to provide a rationalized opinion explaining how factors of appellant's federal employment, such as moving, lifting, pushing and carrying bags, caused or aggravated her left elbow and shoulder conditions. The Board has held that the mere fact that appellant's symptoms arise during a period of employment or produce symptoms revelatory of an underlying condition does not establish a causal relationship between appellant's condition and her employment factors.⁹ Without thorough medical rationale to explain that causal relationship, Dr. Patel's report is insufficient to establish that appellant had an employment-related injury.

On September 15, 2012 Dr. Yan diagnosed left shoulder sprain and opined that appellant was not able to return to full duty. On October 15, 2012 Dr. Mulleta diagnosed left shoulder sprain and found mild osteoarthritis of the left shoulder upon x-ray review. Although they provided firm diagnoses, Drs. Yan and Mulleta did not provide a rationalized medical opinion as to how the implicated factors of appellant's federal employment, such as moving, lifting, pushing and carrying bags, caused or aggravated her left elbow and shoulder conditions. Therefore, appellant failed to meet her burden of proof with these submissions.

Because appellant did not offer rationalized medical evidence to support her allegation that she sustained an injury causally related to the indicated employment factors, she failed to meet her burden of proof to establish a claim.

On appeal, appellant contends that additional medical information submitted may have crossed transmittal in the mail with the reconsideration letter and, was not considered in time of the December 21, 2012 OWCP decision. She 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

To require OWCP to reopen a case for merit review under section 8128 of FECA,¹⁰ OWCP regulations provide that a claimant must: (1) show that OWCP erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously

⁸ A.C., Docket No. 08-1453 (issued November 18, 2008); *Donald W. Wenzel*, 56 ECAB 390 (2005); *Leslie C. Moore*, 52 ECAB 132 (2000).

⁹ See *Richard B. Cissel*, 32 ECAB 1910, 1917 (1981); *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

¹⁰ 5 U.S.C. §§ 8101-8193. Under section 8128 of FECA, the Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application. 5 U.S.C. § 8128(a).

considered by OWCP; or (3) constitute relevant and pertinent new evidence not previously considered by OWCP.¹¹ When a claimant fails to meet one of the above standards, OWCP will deny the application for reconsideration without reopening the case for review of the merits.¹²

ANALYSIS -- ISSUE 2

On February 7, 2013 appellant requested reconsideration, indicating that OWCP would receive additional medical evidence from her health care center. In its February 15, 2013 decision, OWCP denied her request, noting that there was no additional medical evidence. The record shows in fact that OWCP did not receive any additional medical evidence from or on behalf of appellant.

Appellant did not show that OWCP erroneously applied or interpreted a specific point of law or advance a relevant legal argument not previously considered by OWCP. Because she did not submit any evidence with her request for reconsideration, the Board finds that she did not meet any of the necessary requirements and is not entitled to further merit review.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that she sustained left elbow and shoulder conditions in the performance of duty causally related to factors of her federal employment. The Board further finds that OWCP properly refused to reopen her case for further reconsideration of the merits pursuant to 5 U.S.C. § 8128(a).

¹¹ 20 C.F.R. § 10.606(b)(3). *See Susan A. Filkins*, 57 ECAB 630 (2006).

¹² *Id.* at § 10.608(b). *See Tina M. Parrelli-Ball*, 57 ECAB 598 (2006) (when an application for review of the merits of a claim does not meet at least one of the three regulatory requirements OWCP will deny the application for review without reviewing the merits of the claim).

ORDER

IT IS HEREBY ORDERED THAT the February 15, 2013 and December 21, 2012 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: September 5, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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