

FACTUAL HISTORY

On August 12, 2015 appellant, a 53-year-old engineering equipment supervisor, filed an occupational disease claim, (Form CA-2) alleging that he contracted a coccidioides infection also known as Valley Fever, as a result of working at the Elk Ridge Archeological Site in Gila National Forest. He indicated that he first became aware of his condition on July 4, 2015 and related it to his federal employment on August 10, 2015. In a narrative statement, appellant stated that his federal duties required moving excavated soils and rocks on July 2, 2015 for six hours. He alleged that a few days later he became ill with fever, respiratory problems, joint aches, and fatigue. Appellant stated that he went to see a doctor and was informed that he had tested positive for coccidioides infection on August 10, 2015.

Appellant submitted an August 3, 2015 report from Dr. Jennifer Agosta, a Board-certified internist, who found that he had tested positive for coccidioides infection.

In an October 7, 2015 letter, OWCP advised appellant of the deficiencies of his claim and afforded him 30 days to submit additional evidence and respond to its inquiries.

Subsequently, appellant submitted a position description and a narrative statement reiterating the factual history of his claim.

In an October 15, 2015 statement, the employing establishment indicated that at the time of exposure appellant was supervising and assisting the back-filling of an excavated room block and the construction of a rock-filled gabion erosion protection wall to prevent damage to a compromised archeological site. It confirmed that appellant's exposure was a one-time, six-hour exposure on or about July 2, 2015 to soil dust, as well as dust related to the machine and subsequent hand placement of rip-rap-type rock used to fill gabion wire baskets.

In an August 3, 2015 report, Dr. Agosta asserted that appellant presented with a persistent cough that had lasted approximately one month and subjective intermittent fevers. She reported that appellant had been working on an archeological dig close to a second dig where two workers had been found with coccidioidal fever. On September 3, 2015 Dr. Agosta asserted that appellant had been tested for coccidioides based on reported exposure and his laboratory results came back indicating an immune response to coccidioides, indicating exposure to the virus. She concluded that appellant had been exposed to the coccidioides virus and showed a positive immune response, indicating infection.

By decision dated November 20, 2015, OWCP denied appellant's claim, finding that he failed to submit evidence containing a medical diagnosis in connection with the injury or events.

On January 22, 2016 appellant submitted an appeal request form with a check mark indicating that he was requesting reconsideration. He did not submit any evidence in support of his request.

By decision dated February 8, 2016, OWCP denied appellant's request for reconsideration of the merits finding that he did not submit pertinent new and relevant evidence and did not show that OWCP erroneously applied or interpreted a point of law not previously considered by OWCP.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA² 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 injury³ 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.⁴

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.⁵

An employee’s statement 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.⁶ Moreover, an injury does not have to be confirmed by eyewitnesses. The employee’s statement, however, must be consistent with the surrounding facts and circumstances and his subsequent course of action. An employee has not met his or her burden in establishing the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim. Circumstances such 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 doubt on an employee’s statement in determining whether a *prima facie* case has been established.⁷

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

² *Id.*

³ 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).

⁴ See *O.W.*, Docket No. 09-2110 (issued April 22, 2010). See also *Ellen L. Noble*, 55 ECAB 530 (2004).

⁵ See *D.R.*, Docket No. 09-1723 (issued May 20, 2010). See also *Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁶ *R.T.*, Docket No. 08-408 (issued December 16, 2008); *Gregory J. Reser*, 57 ECAB 277 (2005).

⁷ *Betty J. Smith*, 54 ECAB 174 (2002).

of the relationship between the diagnosed condition and the specific employment factors identified by the employee.⁸

ANALYSIS -- ISSUE 1

OWCP accepted that appellant was working at an archeological site on July 2, 2015 when he was exposed to soil dust for a six-hour period. It denied his claim on the basis that the evidence failed to establish a medical diagnosis in connection with the injury or events. The Board finds that appellant has established fact of injury as Dr. Agosta provided a firm diagnosis of coccidioides infection. However, the Board finds that appellant failed to provide sufficiently-rationalized medical opinion evidence establishing that his condition was causally related to the accepted work activities.

Dr. Agosta found that appellant had tested positive for coccidioides infection and asserted that appellant presented with a persistent cough that had lasted approximately one month with subjective intermittent fevers. She reported that appellant had been working on an archeological dig close to a second dig at which two workers had been found with coccidioidal fever. On September 3, 2015 Dr. Agosta asserted that appellant had been tested for coccidioides based on reported exposure and his laboratory results came back indicating an immune response to coccidioides, indicating exposure to the virus. She concluded that appellant had been exposed to the coccidioides virus and showed a positive immune response, indicating infection. Dr. Agosta, however, failed to provide a rationalized opinion explaining the mechanism of how factors of appellant's federal employment, such as being exposed to soil dust for a six-hour period, caused or aggravated the diagnosed condition. Dr. Agosta noted that appellant's condition occurred while he was at work, but such generalized statements do not establish causal relationship because they merely repeat appellant's allegations and are unsupported by adequate medical rationale explaining how his physical activity at work actually caused or aggravated the diagnosed condition.⁹ The mere fact that appellant's symptoms arose during a period of employment or produced symptoms revelatory of an underlying condition does not establish a causal relationship between his condition and his employment factors.¹⁰ Consequently, Dr. Agosta's reports are of limited probative value and insufficient to establish that appellant sustained an employment-related injury causally related to factors of his federal employment.

On appeal appellant contends that the medical evidence he submitted was the best he could do with his physician as she readily supplied the diagnosis of coccidioides infection, but was reluctant to offer an opinion as to how and where he contracted it or how his employment activities caused or aggravated his condition. As appellant has not submitted any rationalized medical evidence to support his allegation that he sustained an injury causally related to factors of his federal employment, he has failed to meet his burden of proof to establish a claim for compensation.

⁸ See *O.W.*, *supra* note 4.

⁹ See *K.W.*, Docket No. 10-98 (issued September 10, 2010).

¹⁰ See *Richard B. Cissel*, 32 ECAB 1910, 1917 (1981); *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

LEGAL PRECEDENT -- ISSUE 2

Section 8128(a) of FECA does not entitle a claimant to a review of an OWCP decision as a matter of right; it vests OWCP with discretionary authority to determine whether it will review an award for or against compensation.¹¹ OWCP, through regulations, has imposed limitations on the exercise of its discretionary authority under section 8128(a).¹²

To require OWCP to reopen a case for merit review under section 8128(a) of FECA, OWCP regulations provide that the evidence or argument submitted by a claimant must: (1) show that OWCP erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by OWCP; or (3) constitute relevant and pertinent new evidence not previously considered by OWCP.¹³ To be entitled to a merit review of an OWCP decision denying or terminating a benefit, a claimant also must file his application for review within one year of the date of that decision.¹⁴ When a claimant fails to meet one of the above standards, OWCP will deny the application for reconsideration without reopening the case for review on the merits.¹⁵

The Board has held that the submission of evidence or argument which repeats or duplicates evidence or argument already in the case record¹⁶ and the submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.¹⁷

ANALYSIS -- ISSUE 2

With his January 22, 2016 reconsideration request, appellant merely checked an appeal request form indicating that he was requesting reconsideration. He did not allege or demonstrate that OWCP erroneously applied or interpreted a specific point of law, or advance a relevant legal argument not previously considered by OWCP. Consequently, appellant was not entitled to a review of the merits of his claim based on the first and second above-noted requirements under section 10.606(b)(3).¹⁸

With respect to the third above-noted requirement under section 10.606(b)(3), appellant did not submit new evidence with his reconsideration request. As he did not show that OWCP

¹¹ 5 U.S.C. § 8101 *et seq.* 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).

¹² See *Annette Louise*, 54 ECAB 783, 789-90 (2003).

¹³ 20 C.F.R. § 10.606(b)(3). See *A.L.*, Docket No. 08-1730 (issued March 16, 2009).

¹⁴ *Id.* at § 10.607(a).

¹⁵ *Id.* at § 10.608(b).

¹⁶ See *A.L.*, *supra* note 13. See also *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

¹⁷ *Id.* See also *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

¹⁸ See *supra* note 13.

erred in applying a point of law, advance a relevant legal argument not previously considered, or submit relevant and pertinent new evidence not previously considered by OWCP, the Board finds that OWCP properly denied his reconsideration request.¹⁹

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.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish that he sustained an injury in the performance of duty. The Board further finds that OWCP properly refused to reopen appellant's case for further reconsideration of the merits pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the February 8, 2016 and November 20, 2015 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: February 8, 2017
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

¹⁹ See *D.P.*, Docket No. 13-1721 (issued February 21, 2014).