United States Department of Labor
Employees' Compensation Appeals Board

J.R., Appellant	)	
	)	**Docket No. 17-1312**
and	)	**Issued: September 20, 2017**
U.S. POSTAL SERVICE, POST OFFICE, San Francisco, CA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On May 30, 2017 appellant filed a timely appeal from a December 23, 2016 merit decision and a February 23, 2017 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[2]

ISSUES

The issues are: (1) whether appellant met her burden of proof to establish a neck condition causally related to factors of her federal employment; and (2) whether OWCP properly denied appellant's request for further merit review of her claim under 5 U.S.C. § 8128(a).

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board is precluded from reviewing evidence which was not before OWCP at the time it issued its final decision. Thus, the Board may not consider the new evidence. *See* 20 C.F.R. § 501.2(c)(1). On appeal, appellant submitted new medical evidence from Dr. Paul Slosar, a Board-certified orthopedic surgeon, and contends that this evidence supports her work-related injury.

FACTUAL HISTORY

On November 2, 2016 appellant, then a 47-year-old sales/service and distribution associate, filed an occupational disease claim (Form CA-2) alleging that she sustained a neck injury caused or aggravated by processing and receiving parcels about six hours a day, six days a week, and weighing letters and parcels throughout the day with her arms and hands. She became aware of her condition on October 29, 2016 and realized its relationship to her employment on October 31, 2016. Appellant did not stop work. She and the employing establishment also submitted documents and correspondence regarding the filing of her claim and receipt of physical therapy.

By letter dated November 16, 2016, OWCP advised appellant of the deficiencies of her claim and afforded her 30 days to submit medical evidence in support of her claim.

OWCP received a November 3, 2016 cervical spine x-ray report in which Dr. Christopher Yoo, a Board-certified radiologist, provided an impression of mild-to-moderate degenerative disc disease in the mid-cervical spine. Dr. Yoo found no fracture or mal-alignment. He recommended a magnetic resonance imaging (MRI) scan of the cervical spine if pain persisted. In a November 16, 2016 cervical spine MRI scan report, Dr. Yoo provided an impression of multi-level degenerative disc disease from C3-Tl, notable for multiple disc protrusions which caused mild effacement of the anterior aspect of the cord at C3-4, C4-5, and C5-6, but no cord edema. He also provided an impression of posterior ossific ridge and uncovertebral hypertrophy at C5-6 resulting in severe left foraminal narrowing.

OWCP received an undated attending physician's report (Form CA-20) in which Dr. Herminigildo V. Valle, a Board-certified internist, noted a November 2, 2016 date of injury. Dr. Valle discussed examination findings and diagnosed cervicalgia neuropathy. In response to the form question as to whether the diagnosed condition was caused or aggravated by an employment activity, he wrote "unknown." Dr. Valle advised that appellant was totally disabled for the period November 21 to December 12, 2016. In a November 3, 2016 prescription, he maintained that appellant was medically unable to work on that day. Dr. Valle reiterated, in a prescription dated November 17, 2016, that she was medically unable to work from November 21 to December 12, 2016.

By decision dated December 23, 2016, OWCP denied appellant's claim finding that the medical evidence of record failed to establish that her diagnosed condition was causally related to her established work duties.

In an appeal request form received on February 14, 2017, appellant requested reconsideration. She did not submit any additional evidence.

In a decision dated February 23, 2017, OWCP denied further merit review of appellant's claim. It found that her request for reconsideration neither raised substantive legal questions nor included relevant and pertinent new evidence.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA[3] has the burden of proof to establish 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 filed within the applicable time limitation, that an injury was sustained while in the performance of duty as alleged, and that any disability and/or specific condition for which compensation is claimed are 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 on a traumatic injury or an occupational disease.[5]

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.[6]

The medical evidence required to establish causal relationship is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable certainty, and must be supported by medial rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.[7]

ANALYSIS -- ISSUE 1

It is undisputed that appellant performed repetitive duties of a sales service associate/distribution, which involved processing and receiving parcels and weighing letters and parcels. The Board finds, however, that the medical evidence of record is insufficient to establish that she sustained a neck condition caused or aggravated by the accepted work factors.

Dr. Valle's in his Form CA-20 report, diagnosed cervicalgia neuropathy, but that it was unknown whether her employment caused her cervical condition. Further, Dr. Valle also did not offer an opinion addressing whether the accepted employment factors caused appellant's total disability for the period November 21 to December 12, 2016. The Board has held that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[8] His remaining prescription notes

[3] *Supra* note 1.

[4] *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[5] *S.P.*, 59 ECAB 184 (2007); *Victor J. Woodhams*, 41 ECAB 345 (1989); *Joe D. Cameron*, 41 ECAB 153 (1989).

[6] *Id*.

[7] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams, id.*

[8] *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *A.D.*, 58 ECAB 149 (2006).

dated November 3 and 17, 2016 addressed appellant's work capacity, but failed to offer a specific opinion as to whether the established employment factors caused or aggravated appellant's condition and resultant disability.[9] For these reasons, the Board finds that Dr. Valle's report and prescriptions are of diminished probative value.

Similarly, Dr. Yoo's diagnostic test results are of diminished probative value as they failed to offer an opinion on whether appellant's diagnosed cervical conditions were caused or aggravated by the established employment factors.[10]

The Board finds that appellant has failed to submit any rationalized, probative medical evidence sufficient to establish a neck injury causally related to the established employment factors. Appellant, therefore, did not meet her 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 of FECA vests OWCP with a discretionary authority to determine whether it will review an award for or against compensation, either under its own authority or on application by a claimant.[11] Section 10.608(b) of OWCP's regulations provide that a timely request for reconsideration may be granted if OWCP determines that the claimant has presented evidence and/or argument that meet at least one of the standards described in section 10.606(b)(3).[12] This section provides that the application for reconsideration must be submitted in writing and 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] Section 10.608(b) provides that when a request for reconsideration is timely but fails to meet at least one of these three requirements, OWCP will deny the application for reconsideration without reopening the case for a review on the merits.[14]

ANALYSIS -- ISSUE 2

Appellant disagreed with OWCP's denial of her occupational disease claim for a neck injury causally related to the established factors of her employment. On February 14, 2017 she requested reconsideration.

[9] *Supra* note 7.

[10] *Id.*

[11] 5 U.S.C. § 8128(a).

[12] 20 C.F.R. § 10.608(a).

[13] *Id.* at § 10.606(b)(3).

[14] *Id.* at § 10.608(b).

The Board finds that 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 provide relevant and pertinent new evidence not previously considered by OWCP.

Appellant's February 14, 2017 reconsideration request consisted only of a checkmark on an appeal request form indicating that she wanted reconsideration. She did not offer any argument or submit any evidence in support of her request. Appellant suggested no reason for OWCP to reconsider the denial of her occupational disease claim. Such a bare request is insufficient to warrant a reopening of her case.[15]

CONCLUSION

The Board finds that appellant has failed to meet her burden of proof to establish a neck condition causally related to factors of her federal employment. The Board further finds, that OWCP properly refused to reopen her case for further merit review of her claim pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the February 23, 2017 and December 23, 2016 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: September 20, 2017
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

[15] *See I.J.*, Docket No. 16-1380 (issued November 22, 2016); *L.B.*, Docket No. 14-2064 (issued February 3, 2015); *J.A.*, Docket No. 14-1447 (issued October 21, 2014).