United States Department of Labor
Employees' Compensation Appeals Board

L.A., Appellant	)	
and	)	**Docket No. 17-1762**
	)	**Issued: August 9, 2018**
U.S. POSTAL SERVICE, POST OFFICE, Valrico, FL, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 14, 2017 appellant filed a timely appeal from a February 24, 2017 merit decision and a June 7, 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 to consider the merits of this case.

ISSUES

The issues are: (1) whether appellant met her burden of proof to establish a right forearm injury causally related to the accepted September 27, 2016 employment incident; 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).

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On October 5, 2016 appellant, then a 40-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on September 27, 2016 she sustained a right forearm strain when another vehicle backed into the postal vehicle she was driving while performing her duties.

In a September 27, 2016 authorization for examination and/or treatment (Form CA-16), the employing establishment authorized appellant's medical treatment.

In support of her claim, appellant submitted Florida Workers' Compensation forms dated October 5 and 8, 2016 signed by Dr. Gary T. Cannon, an examining Board-certified family practice physician. Dr. Cannon listed the date of injury as September 27, 2016 and checked a box marked "yes" in response to the question of whether the diagnosed condition was work related. He diagnosed right forearm unspecified strain. Dr. Cannon advised that the injury/illness in question was the major contributing cause for the reported medical condition, recommended treatment, and determined functional limitations and restrictions. He noted that appellant had not reached maximum medical improvement (MMI). On the October 8, 2016 form, Dr. Cannon released her to regular duty beginning October 11, 2016.

An October 5, 2016 Form CA-16 Part B -- Attending Physician's Report, unsigned, but identified with an "Urgent Care Medicine – Brandon" stamp, provided work restrictions and diagnosis of right forearm strain/tendinitis. The form noted that appellant complained of right arm pain with repetitive activities and lifting heavy mail. Physical findings included mid right forearm tenderness. A box marked "yes" was checked in response to the question regarding causation.

In an October 16, 2016 development letter, OWCP advised appellant of the deficiencies in her claim and afforded her 30 days to submit additional evidence and respond to its questionnaire.

Dr. Cannon, in October 15 and 22, 2016 Florida Workers' Compensation forms, reiterated findings set forth in prior form reports. He noted an injury date of September 27, 2016 and checked a box marked "yes" to the question of whether the injury/illness was work related. On both forms, Dr. Cannon noted that no clinical services were anticipated. In the October 22, 2016 form, he reported that appellant had reached MMI as of October 21, 2016 and that future medical treatment was anticipated.

By decision dated November 21, 2016, OWCP denied appellant's traumatic injury claim as she did not submit medical evidence containing a medical diagnosis in connection with the accepted September 27, 2016 employment-related incident.

OWCP thereafter received additional medical evidence.

An October 5, 2016 x-ray interpretation noted a September 27, 2016 lifting injury and found no acute osseous abnormality.

Dr. Cannon, in an October 5, 2016 narrative report, noted that appellant was seen for forearm pain which developed on September 27, 2016 after picking up heavy mail.[2] He reported a history of forearm pain and lifting heavy mail and he also noted her recent motor vehicle accident. Dr. Cannon noted that appellant related that on September 27, 2016 she was driving a mail truck when another vehicle backed into the mail truck she was operating. Further, appellant related that, at the time of the event, her right forearm was on the wheel and she was unsure as to whether she sustained any injury due to this incident. Physical examination findings and work restrictions were detailed. Dr. Cannon diagnosed right forearm muscle sprain.

In an October 8, 2016 Form CA-17, Dr. Cannon released appellant to return to regular work. He noted that she injured her right forearm on September 27, 2016 in a motor vehicle accident.

In an October 15, 2016 report, Dr. Joseph Schreier, a treating osteopathic Board-certified family physician, noted that appellant was seen for a September 27, 2016 right forearm injury. Appellant related that her pain was improving, but the right wrist splint aggravated her pain. A physical examination revealed normal range of motion and posterior right forearm tenderness. Dr. Schreier diagnosed right forearm strain.

In an October 22, 2016 duty status report (Form CA-17), Dr. Cannon noted that appellant was advised that she could return to work on October 22, 2016 and diagnosed right anterior forearm tenderness. He noted that the injury occurred on September 27, 2016 due to a motor vehicle accident. Work restrictions were listed.

On January 20, 2017 appellant requested reconsideration.

By decision dated February 24, 2017, OWCP modified its November 21, 2016 decision, finding that the medical evidence of record was sufficient to establish a medical diagnosis of right forearm strain. It denied appellant's claim, however, finding that the etiology of the diagnosed right forearm strain was unclear.

In a letter and form dated March 6, 2017 and received on March 10, 2017, appellant requested reconsideration. She related that her right forearm pain began following the accepted September 27, 2016 employment incident and had not resolved. Appellant further contended that she had met all the criteria for acceptance of her claim.

On April 28, 2017 OWCP received an April 28, 2017 form requesting reconsideration and referencing appellant's March 6, 2017 reconsideration letter. In support of her claim, appellant resubmitted a previous report dated October 22, 2016 from Dr. Cannon.

By decision dated June 7, 2017, OWCP denied appellant's request for reconsideration of the merits of her claim, noting that she had neither raised substantive legal questions nor included relevant and pertinent new evidence with her request for reconsideration.

[2] Appellant is not claiming an injury from this alleged incident of lifting mail.

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 or specific condition for which compensation is claimed is 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 determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether fact of injury has been established.[6] First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged.[7] Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.[8]

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.[9] Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is causal relationship between the employee's diagnosed condition and the compensable employment factors.[10] 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.[11]

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[3] *Id.*

[4] *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

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

[6] *B.F.*, Docket No. 09-0060 (issued March 17, 2009); *Bonnie A. Contreras*, *supra* note 4.

[7] *D.B.*, 58 ECAB 464 (2007); *David Apgar*, 57 ECAB 137 (2005).

[8] *C.B.*, Docket No. 08-1583 (issued December 9, 2008); *D.G.*, 59 ECAB 734 (2008); *Bonnie A. Contreras*, *supra* note 4.

[9] *Y.J.*, Docket No. 08-1167 (issued October 7, 2008); *A.D.*, 58 ECAB 149 (2006); *D'Wayne Avila*, 57 ECAB 642 (2006).

[10] *J.J.*, Docket No. 09-0027 (issued February 10, 2009); *Michael S. Mina*, 57 ECAB 379 (2006).

[11] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met her burden of proof to establish a right forearm injury caused or aggravated by the accepted September 27, 2016 employment incident.

In multiple form reports Dr. Cannon diagnosed right forearm sprain with an injury date of September 27, 2016. He noted that appellant developed right forearm pain. Dr. Cannon did not mention her motor vehicle incident. However, he checked a box marked "yes" that appellant's diagnosed condition was work related. It is well established that a physician's opinion on causal relationship that consists of checking "yes" to a form question is of diminished probative value.[12] The Board has held that medical reports must be based on a complete and accurate factual and medical background. Medical opinions based on an incomplete or inaccurate history are of limited probative value.[13]

In a narrative report dated October 5, 2016, Dr. Cannon noted that appellant developed right forearm pain after picking up heavy mail on September 27, 2016 and also related details of her vehicular accident on that date. He related that her right forearm was on the wheel at the time of the event and she was unsure as to whether she sustained any injury due to this incident. Dr. Cannon offered no rationalized medical opinion explaining how the accepted September 27, 2016 employment incident would have caused appellant's diagnosed right forearm muscle sprain. Without explaining how, physiologically, the movements involved in the employment incident caused or contributed to the diagnosed condition, his opinion on causal relationship is equivocal in nature and of limited probative value.[14]

Dr. Cannon in CA-17 forms dated October 8 and 22, 2016 diagnosed a right forearm injury which he attributed to the accepted September 27, 2016 motor vehicle accident. No supporting rationale was given. The Board has found conclusory opinions insufficient to establish causal relationship.[15] Without explaining how the accepted employment incident caused the diagnosed right forearm injury, Dr. Cannon's opinion is of limited probative value on the issue of whether the diagnosed condition was caused or aggravated by the accepted September 27, 2016 employment incident.[16] The Board has found such conclusory opinions insufficient to establish causal relationship.[17]

[12] *Cecelia M. Corley*, 56 ECAB 662 (2005).

[13] *C.L.*, Docket No. 14-1585 (issued December 16, 2014); *J.R.*, Docket No. 12-1099 (issued November 7, 2012); *Douglas M. McQuaid*, 52 ECAB 382 (2001).

[14] *See L.M.*, Docket No. 14-0973 (issued August 25, 2014); *R.G.*, Docket No. 14-0113 (issued April 25, 2014); *K.M.*, Docket No. 13-1459 (issued December 5, 2013); *A.J.*, Docket No. 12-0548 (issued November 16, 2012).

[15] *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *A.D.*, *supra* note 9; *Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006).

[16] *See L.C.*, Docket No. 18-0011 (issued March 23, 2018).

[17] *Id.*

The record also contains a report from Dr. Schreier in which he noted that appellant was seen for a September 27, 2016 right forearm strain. However, he did not offer any opinion as to the cause of the diagnosed condition. The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[18] Thus, the reports from both Dr. Cannon and Dr. Schreier are of limited probative value and insufficient to meet appellant's burden of proof.[19]

An October 5, 2016 Form CA-16 part B was also received from an unknown medical provider, which indicated with a checkmark that appellant's right forearm strain/tendinitis was caused or aggravated by the accepted September 27, 2016 employment incident. The Board has held that unsigned reports or ones that bear illegible signatures cannot be considered as probative medical evidence because they lack proper identification.[20]

The diagnostic testing of record is also of diminished probative value and is insufficient to establish appellant's claim as diagnostic testing does not provide an opinion on the cause of the diagnosed conditions.[21] Thus, this evidence is insufficient to establish her claim.

Causal relationship is a medical question that must be established by probative medical opinion from a physician.[22] In this case, the Board finds that none of the medical evidence appellant submitted constitutes rationalized medical evidence sufficient to establish causal relationship between the accepted September 27, 2016 employment incident and her diagnosed condition.[23] Accordingly, the Board finds that she failed to 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.[24]

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[18] *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

[19] *See supra* note 14.

[20] *E.B.*, Docket No. 17-1862 (issued January 12, 2018); *J.E.*, Docket No. 13-1098 (issued September 3, 2013); *Thomas L. Agee*, 56 ECAB 465 (2005); *Richard F. Williams*, 55 ECAB 343 (2004).

[21] *See G.H.*, Docket No. 17-1387 (issued October 24, 2017).

[22] *W.W.*, Docket No. 09-1619 (issued June 2010); *David Apgar*, 57 ECAB 137 (2005).

[23] *See T.C.*, Docket No. 16-0586 (issued August 9, 2016); *Patricia J. Bolleter*, 40 ECAB 373 (1988).

[24] The Board notes that on September 27, 2016 an authorization for examination and/or treatment form (Form CA-16) was completed by the employing establishment and authorized medical treatment. Where the employing establishment properly executes a Form CA-16, which authorizes medical treatment as a result of an employee's claim for an employment-related injury, the Form CA-16 creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. *See D.M.*, Docket No. 13-0535 (issued June 6, 2013); *L.B.*, Docket No. 10-0469 (issued June 2, 2010). *See also* 20 C.F.R. § 10.304; Federal (FECA) Procedure Manual, Part 3 -- Medical, *Authorizing Examination and Treatment*, Chapter 3.300.3(a)(3) (February 2012). The period for which treatment is authorized by a Form CA-16 is limited to 60 days from the date of issuance, unless terminated earlier by OWCP. *See id.* at § 10.300(c).

LEGAL PRECEDENT -- ISSUE 2

To require OWCP to reopen a case for merit review under section 8128(a) of FECA, OWCP's 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 considered by OWCP; or (3) constitute relevant and pertinent new evidence not previously considered by OWCP.[25] To be entitled to a merit review of an OWCP decision denying or terminating a benefit, a claimant's application for review must be received by OWCP within one year of the date of that decision.[26] 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.[27]

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

The issue is whether appellant met any of the requirements of 20 C.F.R. § 10.606(b)(3), requiring OWCP to reopen the case for review of the merits of the claim.

In appellant's March 6, 2017 request for reconsideration she argued that her claim met all the criteria for acceptance as her pain developed after the accepted September 27, 2016 employment incident and she received timely medical attention. She did not show that OWCP erroneously applied or interpreted a specific point of law, nor did she advance a new and relevant legal argument not previously considered by OWCP. Consequently, appellant is 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).

The Board further finds that appellant did not submit relevant or pertinent new evidence not previously considered by OWCP. In support of her request, appellant resubmitted an October 22, 2016 report from Dr. Cannon, which had already been considered in OWCP's February 24, 2017 decision. Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.[28]

The Board accordingly finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(3). 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

[25] 20 C.F.R. § 10.606(b)(3). *See J.M.*, Docket No. 09-0218 (issued July 24, 2009); *Susan A. Filkins*, 57 ECAB 630 (2006).

[26] *Id.* at § 10.607(a).

[27] *Id.* at § 10.608(b). *See Y.S.*, Docket No. 08-0440, issued March 16, 2009; *Tina M. Parrelli-Ball*, 57 ECAB 598 (2006).

[28] *R.F.*, Docket No. 17-1877 (issued February 6, 2018); *J.J.*, Docket No. 17-0614 (issued June 13, 2017); *Candace A. Karkoff*, 56 ECAB 622 (2005).

submit relevant and pertinent new evidence not previously considered. 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 a right forearm injury causally related to the accepted September 27, 2016 employment incident. The Board further finds that OWCP proper denied her request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated June 7 and February 24, 2017 are affirmed.

Issued: August 9, 2018
Washington, DC

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

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board