United States Department of Labor
Employees' Compensation Appeals Board

P.B., Appellant	)	
and	)	**Docket No. 18-1322**
	)	**Issued: January 2, 2019**
U.S. POSTAL SERVICE, POST OFFICE, Coram, NY, 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
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On June 20, 2018 appellant filed a timely appeal from a January 9, 2018 merit decision and an April 23, 2018 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.

ISSUES

The issues are: (1) whether appellant has met his burden of proof to establish a left shoulder condition causally related to the accepted July 6, 2016 employment incident; and (2) whether OWCP properly denied appellant's request for further review of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On July 6, 2016 appellant, then a 44-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on that date he injured his left shoulder lifting a parcel while in the performance of duty. He explained that around 9:30 a.m. he was attempting to lift a parcel out of a hamper when he felt something painful in his left shoulder. The parcel was reportedly very bottom heavy, but was not marked as "heavy." Appellant stopped work on July 6, 2016 and resumed full-time, regular duty on August 1, 2016.

On the same date the employing establishment issued an authorization for examination and/or treatment (Form CA-16).[2] Appellant submitted a report dated July 6, 2016 from a nurse practitioner, which noted that he had injured his left shoulder at work when he picked up a package and assessed a left shoulder impingement or dysfunction. In a duty status report (Form CA-17) dated July 6, 2016, the nurse practitioner indicated that appellant was not advised to return to work and assessed a left shoulder impingement. She noted that appellant stated that he hurt his left shoulder lifting a parcel from a hamper.

In a July 20, 2016 development letter, OWCP informed appellant that he had not submitted sufficient evidence to establish his claim. First, it noted that he had not submitted sufficient evidence to establish a diagnosis of a condition resulting from his employment incident. OWCP advised appellant to submit a narrative report from a physician, including diagnoses and a rationalized medical opinion on causal relationship. It also requested additional information regarding similar disability or symptoms before the claimed injury of July 6, 2016. OWCP afforded appellant 30 days to submit the requested evidence.

A July 18, 2016 x-ray demonstrated a normal left shoulder.

In a July 22, 2016 duty status report (Form CA-17), Dr. Antoun S. Mitromaras, Board-certified in urgent care medicine, diagnosed left shoulder sprain and advised that appellant could work part time (six hours) "only desk job" for one week. The restrictions included simple grasping no more than five hours per day, no pushing/pulling, no reaching above shoulder, and only one hour of driving.

In a duty status report dated July 29, 2016, a nurse practitioner assessed a resolved left shoulder impingement. The duty status report dated July 29, 2016, noted that appellant could return to full-time work on August 1, 2016 without restrictions.[3]

In a report dated August 5, 2016, Dr. Mitromaras examined appellant for complaints of left shoulder pain. He noted that appellant was experiencing less pain and diagnosed left shoulder

[2] When 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. 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* 20 C.F.R. § 10.300(c); *Tracy P. Spillane*, 54 ECAB 608, 610 (2003).

[3] The signature of the nurse practitioner on the duty status report is illegible.

impingement -- resolved. Dr. Mitromaras checked a box indicating that the incident described by appellant was the competent cause of his diagnosis and advised that appellant could return to work on August 1, 2016 without restrictions.

By decision dated August 25, 2016, OWCP denied appellant's claim finding that he had not submitted medical evidence containing a diagnosis in connection with the claimed incident of July 6, 2016.

On November 17, 2016 appellant requested reconsideration of OWCP's August 25, 2016 decision. With his request for reconsideration, he submitted the attending physician's report from the Form CA-16 dated November 7, 2016 from Dr. Mitromaras. Dr. Mitromaras examined appellant for complaints of pain in the left shoulder and noted that appellant had told him it occurred when lifting a package. He diagnosed left shoulder sprain and noted that appellant was totally disabled from July 6 through 29, 2016. Dr. Mitromaras checked a box marked "yes" noting that he believed that the left shoulder sprain was caused or aggravated by the described employment activity.

By decision dated February 14, 2017, OWCP reviewed the merits of appellant's claim and denied modification. It found that he had submitted sufficient evidence to establish a diagnosis of left shoulder strain. However, OWCP denied his claim because he had not submitted a well-reasoned medical explanation with supporting objective findings as to how the incident of July 6, 2016 directly caused or aggravated his left shoulder strain.

On March 13, 2017 appellant requested reconsideration of OWCP's February 14, 2017 decision. With his request, he resubmitted the duty status reports of July 6 and 29, 2016 with added counter-signatures from Dr. Mitromaras.

By decision dated May 15, 2017, OWCP reviewed the merits of appellant's claim and affirmed its decision of February 14, 2017. It noted that none of the evidence submitted on reconsideration contained an explanation of how his diagnosed left shoulder impingement was caused or aggravated by lifting a single parcel from a hamper.

On June 14, 2017 appellant requested reconsideration of OWCP's May 15, 2017 decision. With his request, he submitted a June 2, 2017 addendum to the report of July 6, 2016, which had been counter-signed by Dr. Mitromaras. Dr. Mitromaras noted that on July 6, 2016 a physical examination revealed reduced range of motion of the left shoulder. He noted that left shoulder pain presented immediately after lifting a package at work that morning. Dr. Mitromaras explained that it was clear that lifting a box "high" on July 6, 2016 at work was the immediate cause of appellant's instantaneous pain.

By decision dated January 9, 2018, OWCP reviewed the merits of appellant's claim and found that the June 2, 2017 addendum had not provided a well-rationalized opinion as to how the work incident of July 6, 2016 had directly caused or aggravated appellant's conditions, and that it was insufficient for Dr. Mitromaras to merely indicate that his condition was caused by lifting a box without providing further medical reasoning.

On March 9, 2018 appellant requested reconsideration of OWCP's January 9, 2018 decision. With his request, he resubmitted the addendum from Dr. Mitromaras dated June 2, 2017.

By decision dated April 23, 2018, OWCP denied appellant's request for reconsideration. It noted that the addendum of June 2, 2017 was already in the case file as of the decision of January 9, 2018 and was discussed in that decision. As such, OWCP found that the evidence submitted on reconsideration was repetitious.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA[4] 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 timely filed within the applicable time limitation period of FECA, that an injury[5] was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.[6]

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. A fact of injury determination is based on two elements. 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. 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. An employee may establish that the employment incident occurred as alleged, but fail to show that his or her condition relates to the employment incident.[7]

Causal relationship is a medical question that generally requires rationalized medical opinion evidence to resolve the issue.[8] A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background.[9] Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factor(s).[10]

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[4] *Supra* note 1.

[5] OWCP's regulations define a traumatic injury as a condition of the body caused by a specific event or incident, or series of events of incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected. 20 C.F.R. § 10.5(ee).

[6] *T.H.*, 59 ECAB 388, 393 (2008); *see Steven S. Saleh*, 55 ECAB 169, 171-72 (2003); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[7] *See Shirley A. Temple*, 48 ECAB 404, 407 (1997); *John J. Carlone* 41 ECAB 354, 356-57 (1989).

[8] *Robert G. Morris*, 48 ECAB 238 (1996).

[9] *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[10] *Id.*

Certain healthcare providers such as physician assistants, nurse practitioners, physical therapists, and social workers are not considered "physician[s]" as defined under FECA.[11] Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.[12]

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met his burden of proof to establish a left shoulder condition causally related to the accepted July 6, 2016 employment incident.

In support of his claim appellant submitted medical reports, including a series of reports from his attending physician Dr. Mitromaras. In a June 2, 2017 addendum to his report of July 6, 2016, Dr. Mitromaras noted that on July 6, 2016 a physical examination revealed reduced range of motion of the left shoulder. He noted that left shoulder pain presented immediately after lifting a package at work that morning. Dr. Mitromaras explained that it was clear that lifting a box on July 6, 2016 at work was the immediate cause of appellant's instantaneous pain.

Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[13] As noted above, to establish causal relationship between a condition and an employment event or incident, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background, supporting such causal relationship.[14] Dr. Mitromaras provided no rationale to support his opinion that lifting a box on July 6, 2016 was the immediate cause of appellant's left shoulder conditions. His opinion was conclusory in nature and failed to explain in detail how the left shoulder condition was caused by the incident of July 6, 2016.[15] A mere conclusory opinion provided by a physician without the necessary rationale explaining how and why the incident was sufficient to result in the diagnosed medical condition is insufficient to meet a claimant's burden of proof to establish a claim.[16] As such, the addendum of June 2, 2017 was insufficient to establish a causal relationship between appellant's conditions and the incident of July 6, 2016.

In a report dated August 5, 2016 and in duty status reports dated July 6 and 29, 2016, Dr. Mitromaras noted that appellant told him that the injury occurred due to lifting a parcel at work, diagnosed left shoulder impingement, and advised that appellant follow work restrictions. The Board has found that medical evidence offering no opinion about the cause of an employee's

[11] 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t).

[12] *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006). A report from a physician assistant or certified nurse practitioner will be considered medical evidence if countersigned by a qualified physician. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013).

[13] *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

[14] *Supra* note 9.

[15] *See D.O.*, Docket No. 18-0086 (issued March 28, 2018).

[16] *J.D.*, Docket No. 14-2061 (issued February 27, 2015).

condition is of no probative value on the issue of causal relationship.[17] While Dr. Mitromaras reviewed appellant's history of injury in these reports, he did not offer a clear opinion on the cause of appellant's diagnosed conditions. Rather, he merely repeated the history of injury given to him by appellant, without offering rationale of his own on the issue of causal relationship.[18] As such, these reports are insufficient to establish causal relationship.

Appellant submitted several reports that were signed by a nurse practitioner, but not counter-signed by a physician. These reports do not qualify as probative medical evidence, as they were not signed by a qualified physician.[19]

The issue of a causal relationship between appellant's claimed conditions and a work-related incident is a medical question that must be established by probative medical opinion from a physician.[20] 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 work incident and his diagnosed conditions.[21] Accordingly, the Board finds that appellant has not met his 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(a) of FECA does not entitle a claimant to review of an OWCP decision as a matter of right.[22] OWCP has discretionary authority in this regard and has imposed certain limitations in exercising its authority.[23] One such limitation is that the request for reconsideration must be received by OWCP within one year of the date of the decision for which review is sought.[24] A timely application for reconsideration, including all supporting documents, must set forth

[17] *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[18] *See G.O.*, Docket No. 16-0311 (issued June 14, 2016); *K.W.*, Docket No. 10-0098 (issued September 10, 2010).

[19] *Supra* note 12. Certain healthcare providers such as physician assistants, nurse practitioners, physical therapists, and social workers are not considered physicians as defined under FECA. *R.B.*, Docket No. 17-0890 (issued October 18, 2017).

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

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

[22] This section provides in pertinent part: "[t]he 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).

[23] 20 C.F.R. § 10.607.

[24] *Id*. at § 10.607(a). For merit decisions issued on or after August 29, 2011, a request for reconsideration must be received by OWCP within one year of OWCP's decision for which review is sought. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (February 2016). Timeliness is determined by the document receipt date of the request for reconsideration as indicated by the received date in the integrated Federal Employees' Compensation System (iFECS). *Id.* at Chapter 2.1602.4b.

arguments and contain 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.[25] When a timely application for reconsideration does not meet at least one of the above-noted requirements, OWCP will deny the request for reconsideration without reopening the case for a review on the merits.[26]

ANALYSIS -- ISSUE 2

On March 9, 2018 appellant requested reconsideration of OWCP's January 9, 2018 decision, which denied appellant's claim because he had not submitted sufficient evidence to establish causal relationship between his diagnosed left shoulder conditions and the incident of July 6, 2016. By decision dated April 23, 2018, OWCP denied further merit review. The issue presented on appeal is whether appellant met any of the requirements of 20 C.F.R. § 10.606(b)(3), thereby warranting further merit review.

In his request for reconsideration, 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. Thus, he was not entitled to a review of the merits based on the first and second requirements under section 10.606(b)(3).[27]

Appellant also failed to submit any relevant and pertinent new evidence with the March 9, 2018 request for reconsideration. The underlying issue in this case is whether appellant submitted sufficient evidence to establish a causal relationship between his diagnosed left shoulder conditions and the incident of July 6, 2016. On reconsideration appellant resubmitted the June 2, 2017 addendum from Dr. Mitromaras, which had previously been considered and discussed in OWCP's January 9, 2018 decision. Providing additional evidence that either repeats or duplicates information already in the record does not constitute a basis for reopening a claim.[28] Because appellant did not provide relevant and pertinent new evidence he was not entitled to a review of the merits based on the third requirement under section 10.606(b)(3).[29] Accordingly, OWCP properly denied appellant's request for reconsideration under 5 U.S.C. § 8128(a).

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a left shoulder condition causally related to the accepted July 6, 2016 employment incident. The Board further

[25] 20 C.F.R. § 10.606(b)(3).

[26] *Id*. at § 10.608(a), (b).

[27] *Id*. at § 10.606(b)(3)(i) and (ii).

[28] *James W. Scott*, 55 ECAB 606, 608 n.4 (2004).

[29] 20 C.F.R. § 10.606(b)(3)(iii).

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

ORDER

IT IS HEREBY ORDERED THAT the April 23 and January 9, 2018 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: January 2, 2019
Washington, DC

Christopher J. Godfrey, 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