

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

S.B., Appellant	)	
	)	
and	)	Docket No. 23-0307
	)	Issued: August 25, 2023
U.S. POSTAL SERVICE, PLEASANT RIDGE	)	
ANNEX, Greensboro, NC, Employer	)	
	)	

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Chief Judge  
JANICE B. ASKIN, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On December 6, 2022 appellant filed a timely appeal from a July 19, 2022 merit decision and a September 23, 2022 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

**ISSUES**

The issues are: (1) whether appellant has met her burden of proof to establish a diagnosed medical condition in connection with the accepted January 25, 2022 employment incident; and

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that, following the September 23, 2022 decision, appellant submitted additional evidence to OWCP. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

(2) whether OWCP properly denied appellant's request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a).

### **FACTUAL HISTORY**

On January 31, 2022 appellant, then a 56-year-old postal support employee clerk, filed a traumatic injury claim (Form CA-1) alleging that on January 25, 2022 she sustained strain and pain of the left shoulder and pain in the right knee and elbow after she slipped and fell on a large box on the floor while in the performance of duty. On the reverse side of the claim form, appellant's supervisor acknowledged that she was injured in the performance of duty but indicated that the injury was caused by her willful misconduct, intoxication, or intent to injure herself or another. The supervisor noted that she doubted that the injury occurred during the fall based on her observing appellant "aggressively kicking" the box with her right leg after appellant tripped. Appellant did not stop work.

In support of her claim, appellant submitted a February 14, 2022 progress report signed by Dr. Timothy D. Murphy, a Board-certified orthopedic surgeon, relating her history of injury. Dr. Murphy's examination revealed tenderness at the medial joint line in the right lower extremity and limited range of motion (ROM) of the cervical spine. He reviewed an x-ray of the cervical spine, noting a loss of lordotic curvature, and x-rays of the knee, shoulder, and elbow, revealing no significant abnormalities. Dr. Murphy diagnosed right knee pain and cervicgia with left-sided radicular symptoms. In a duty status report (Form CA-17) and work excuse note dated February 14, 2022, he held appellant off work for one week and then released her for light-duty work. A March 2, 2022 report from Dr. Murphy diagnosed persistent radicular symptoms from appellant's claimed January 25, 2022 employment incident. In a corresponding work excuse note, he indicated that she was seen on that date.<sup>3</sup> In a March 14, 2022 form report, Dr. Murphy diagnosed cervicgia with radicular symptoms.

In a March 25, 2022 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed to establish her claim and provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit the necessary evidence.

Thereafter, appellant submitted a March 14, 2022 progress report from Dr. Murphy, noting MRI scan findings of degenerative changes at C3-C4.

In a March 29, 2022 progress report, Dr. Wesley Ibazebo, a Board-certified physiatrist, provided a history of injury and preexisting conditions, including an injury from a 2008 motor vehicle accident which was reagravated about seven years later. His examination demonstrated tenderness over the cervicothoracic junction, limited rotation with bilateral rotation and lateral bending, weakness with shoulder abduction, decreased distal strength with wrist and elbow extensors, limited shoulder ROM, and positive Neer, Hawkins, and O'Brien's tests with reproduction of posterior and anterior shoulder pain. Dr. Ibazebo diagnosed a work-related injury

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<sup>3</sup> A March 8, 2022 cervical spine magnetic resonance imaging (MRI) scan revealed degenerative ankylosis of the right C3-C4 facets since 2015, associated mild osseous right C4 foraminal stenosis (generally mild for age cervical spine degeneration elsewhere), and upper thoracic facet hypertrophy with moderate right T2 neural foraminal stenosis.

with left-sided neck, shoulder, and arm pain of unspecified etiology. He also noted MRI scan findings of mild bulging at C5-6 but indicated that there was no significant finding that could fully explain appellant's symptoms. In a corresponding form report, Dr. Ibazabo diagnosed left arm pain, checked a box indicating that the employment incident caused or significantly contributed to her condition, and held her off work.

By decision dated April 27, 2022, OWCP denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish that the January 25, 2022 employment incident occurred, as alleged. It noted that she had not submitted a completed factual development questionnaire. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

Appellant requested reconsideration on June 17, 2022. In support of her request, she submitted an undated statement providing further details of the claimed January 25, 2022 employment incident, as well as a statement in which A.G., a coworker, indicated that she witnessed her January 25, 2022 employment incident.

A January 28, 2022 after-visit summary, accompanied by an unsigned summary describing definitions of medical conditions and recommended treatment, indicated that appellant was seen for a fall and shoulder pain by Dr. Matthew J. Trifan, Board-certified in emergency medicine, who diagnosed a fall, strain of left shoulder, acute pain of right knee, and right elbow pain.

In a May 25, 2022 note, Dr. Murphy indicated that he treated appellant for cervicalgia and radicular symptoms into her left arm stemming from the January 25, 2022 employment incident. He noted that she had no pain prior to her fall.

By decision dated July 19, 2022, OWCP modified the April 27, 2022 decision to find that appellant had established that the employment incident occurred on January 25, 2022, as alleged. However, the claim remained denied as the medical evidence of record was insufficient to establish a medical diagnosis in connection with the accepted January 25, 2022 employment incident.

Appellant subsequently submitted a September 9, 2022 note from Dr. Murphy relating her history of injury and indicating that he was treating her for cervicalgia and radicular symptoms of the left arm. Dr. Murphy opined that the accepted January 25, 2022 employment incident caused her pain and radicular symptoms.

On September 19, 2022 appellant requested reconsideration.

By decision dated September 23, 2022, OWCP denied appellant's request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a).

### **LEGAL PRECEDENT -- ISSUE 1**

An employee seeking benefits under FECA<sup>4</sup> has the burden of proof to establish the essential elements of his or her claim, including that the individual is an employee of the United

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<sup>4</sup> *Supra* note 1.

States within the meaning of FECA, that the claim was timely filed within the applicable time limitation of FECA,<sup>5</sup> that an injury 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.<sup>6</sup> These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>7</sup>

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. The first component is that the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time and place, and in the manner alleged. The second component is whether the employment incident caused a personal injury and can be established only by medical evidence.<sup>8</sup>

The medical evidence required to establish a causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.<sup>9</sup> 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 specific employment incident.<sup>10</sup>

### **ANALYSIS -- ISSUE 1**

The Board finds that appellant has not established a diagnosed medical condition in connection with the accepted January 25, 2022 employment incident.

In support of her claim, appellant submitted a February 14, 2022 progress report, wherein Dr. Murphy diagnosed right knee pain and cervicalgia with left-sided radicular symptoms. In a March 2, 2022 report, he diagnosed persistent radicular symptoms from appellant's January 25, 2022 employment incident and, in a March 14, 2022 form report, he diagnosed cervicalgia with radicular symptoms. In a March 29, 2022 progress report, Dr. Ibazebo diagnosed a work-related injury with left-sided neck, shoulder, and arm pain of unspecified etiology and, in a corresponding form report, he diagnosed left arm pain. In a May 25, 2022 note, Dr. Murphy indicated that he

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<sup>5</sup> *F.H.*, Docket No. 18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>6</sup> *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>7</sup> *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

<sup>8</sup> *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

<sup>9</sup> *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

<sup>10</sup> *T.L.*, Docket No. 18-0778 (issued January 22, 2020); *Y.S.*, Docket No. 18-0366 (issued January 22, 2020); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

treated appellant for cervicalgia and radicular symptoms into her left arm stemming from the January 25, 2022 employment incident. However, the Board has held that pain is a description of a symptom, not a diagnosis of a medical condition.<sup>11</sup> It is appellant's burden of proof to obtain and submit medical documentation containing a firm diagnosis causally related to the accepted employment incident.<sup>12</sup> These reports are, therefore, insufficient to meet appellant's burden of proof.

Appellant also submitted medical evidence from Dr. Murphy dated February 14, March 2, and 14, 2022, in which he did not provide a diagnosis. The Board has held that medical reports lacking a firm diagnosis and a rationalized medical opinion regarding causal relationship are of no probative value.<sup>13</sup> Therefore, this evidence is insufficient to meet appellant's burden of proof.<sup>14</sup>

Additionally, appellant submitted an unsigned January 28, 2022 after-visit summary containing diagnoses of a fall, strain of left shoulder, acute pain of right knee, and right elbow pain. The Board has held that reports that are unsigned or bear an illegible signature lack proper identification and cannot be considered probative medical evidence because the author cannot be identified as a physician.<sup>15</sup>

The Board finds that appellant has not submitted rationalized, probative medical evidence sufficient to establish a diagnosed medical condition in connection with the accepted January 25, 2022 employment incident. Appellant, therefore, has not met 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(a) of FECA vests OWCP with discretionary authority to determine whether to review an award for or against compensation. The Secretary of Labor may review an award for or against compensation at any time on his or her own motion or on application.<sup>16</sup>

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or an argument which: (1) shows that OWCP erroneously applied or interpreted

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<sup>11</sup> See *K.S.*, Docket No. 19-1433 (issued April 26, 2021); *S.L.*, Docket No. 19-1536 (issued June 26, 2020); *D.Y.*, Docket No. 20-0112 (issued June 25, 2020).

<sup>12</sup> *J.P.*, Docket No. 20-0381 (issued July 28, 2020); *R.L.*, Docket No. 20-0284 (issued June 30, 2020).

<sup>13</sup> See *A.C.*, Docket No. 20-1510 (issued April 23, 2021); *J.P.*, Docket No. 20-0381 (issued July 28, 2020); *R.L.*, Docket No. 20-0284 (issued June 30, 2020).

<sup>14</sup> See *J.P.*, Docket No. 18-0349 (issued December 30, 2019); *D.D.*, 57 ECAB 734 (2006).

<sup>15</sup> See *D.F.*, Docket No. 22-0904 (issued October 31, 2022); see also *R.C.*, Docket No. 19-0376 (issued July 15, 2019); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

<sup>16</sup> 5 U.S.C. § 8128(a); see *M.S.*, Docket No. 19-1001 (issued December 9, 2019); *L.D.*, Docket No. 18-1468 (issued February 11, 2019); see also *V.P.*, Docket No. 17-1287 (issued October 10, 2017); *W.C.*, 59 ECAB 372 (2008).

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.<sup>17</sup>

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.<sup>18</sup> If it chooses to grant reconsideration, it reopens and reviews the case on its merits.<sup>19</sup> If the request is timely, but fails to meet at least one of the requirements for reconsideration, OWCP will deny the request for reconsideration without reopening the case for review on the merits.<sup>20</sup>

### **ANALYSIS -- ISSUE 2**

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

Appellant has not alleged or demonstrated that OWCP erroneously applied or interpreted a specific point of law. Moreover, she has not advanced a relevant legal argument not previously considered. Consequently, appellant is not entitled to a review of the merits of her claim based on the first or second above-noted requirements under 20 C.F.R. § 10.606(b)(3).<sup>21</sup>

In support of her request for reconsideration, appellant submitted a September 9, 2022 note from Dr. Murphy. While this evidence is new, it is substantially similar to a May 25, 2022 note from Dr. Murphy previously considered by OWCP. The Board has held that the submission of evidence or argument, which repeats or duplicates evidence or argument already in the record does not constitute a basis for reopening a claim.<sup>22</sup> As such, this evidence is insufficient to warrant merit review. Because appellant has not provided relevant and pertinent new evidence, she was not entitled to a review of the merits based on the third requirement under 20 C.F.R. § 10.606(b)(3).<sup>23</sup>

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<sup>17</sup> 20 C.F.R. § 10.606(b)(3); *see L.D., id.*; *see also K.L.*, Docket No. 17-1479 (issued December 20, 2017); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

<sup>18</sup> *Id.* at § 10.607(a). The one-year period begins on the next day after the date of the original contested decision. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (September 2020). 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.

<sup>19</sup> *Id.* at § 10.608(a); *see also M.S.*, 59 ECAB 231 (2007).

<sup>20</sup> *Id.* at § 10.608(b); *M.S.*, Docket No. 19-0291 (issued June 21, 2019); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

<sup>21</sup> *M.O.*, Docket No. 19-1677 (issued February 25, 2020); *C.B.*, Docket No. 18-1108 (issued January 22, 2019).

<sup>22</sup> *J.L.*, Docket No. 21-1373 (issued March 27, 2023); *S.F.*, Docket No. 18-0516 (issued February 21, 2020); *James W. Scott*, 55 ECAB 606, 608 n.4 (2004); *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

<sup>23</sup> *See* 20 C.F.R. § 10.606(b)(3)(iii).

The Board, accordingly, finds that appellant has not met any of the requirements under 20 C.F.R. § 10.606(b)(3). 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 diagnosed medical condition in connection with the accepted January 25, 2022 employment incident. The Board further finds that OWCP properly denied appellant's request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a).

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 19 and September 23, 2022 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: August 25, 2023  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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