

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

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S.F., Appellant)	
)	
and)	Docket No. 23-1145
)	Issued: April 18, 2024
U.S. POSTAL SERVICE, PLEASANT RIDGE)	
ANNEX, Fayetteville, NC, Employer)	
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Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge

JURISDICTION

On September 6, 2023 appellant filed a timely appeal from a June 23, 2023 merit decision and an August 1, 2023 nonmerit decision of the Office of Workers’ Compensation Programs (OWCP). Pursuant to the Federal Employees’ Compensation Act¹ (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 has met her burden of proof to establish a medical condition causally related to the accepted factors of her federal employment; and (2) whether

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the August 1, 2023 decision, OWCP received additional evidence. 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.*

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 July 12, 2022 appellant, then a 52-year-old mail processing clerk, filed an occupational disease claim (Form CA-2) alleging that she sustained bilateral ankle sprain and bilateral sciatica causally related to factors of her federal employment when walking from her vehicle in the parking lot to her place of work. She related that she was denied use of a ramp suited for handicapped individuals in the parking lot, noting that her current parking space was furthest away from any space with handicapped accessibility. Appellant noted that she first became aware of her condition on June 15, 2006 and realized its relationship to her federal employment on June 13, 2022. She did not stop work. On the reverse side of the claim form, a supervisor stated that handicapped-accessible parking was available in the employees' parking lot, and that a handicapped-accessible ramp was available at the employees' entrance to the building, but that appellant insisted upon parking in the customers' parking lot.³

In progress notes dated May 23, 2022, Dr. Daniel Laut, a podiatrist, examined appellant for evaluation of her feet secondary to complex regional pain syndrome (CRPS) neuritis of the left foot and sciatica. He recounted that she indicated that she had two falls in the last week, which she initially attributed to cramping of the foot, but when questioned attributed to exacerbation of sciatica. Appellant indicated to Dr. Laut that she was unable to park in a handicapped-accessible parking space close enough to the employing establishment. On physical examination, Dr. Laut observed arthralgias, back pain, antalgic and nonpropulsive gait using a cane, numbness, diffuse soreness of the bilateral feet, and hyperesthesia of the left foot. He diagnosed bilateral chronic ankle pain, CRPS type 1 of the left lower extremity, myalgia, left foot neuritis, antalgic gait and gait disturbance, and history of recent falls.

In a note dated May 23, 2022, Dr. Laut opined that appellant needed to park in a handicapped-accessible parking space due to her medical conditions.

In a note dated July 26, 2022, Dr. Laut opined that appellant was off work on July 11, 12, 18, 19, and 22, 2022 due to bilateral ankle sprain causing a flare-up of sciatica and exacerbation of her lower back condition, making it difficult to walk. In a separate note of the same date, he recommended that she remain off work until August 16, 2022 due to a bilateral ankle sprain causing flare-up of sciatica and exacerbation of her lower back condition.

On July 26, 2022 appellant submitted a claim for compensation (Form CA-7) for intermittent leave without pay from July 4 through 15, 2022. She continued to submit Form CA-7 claims for wage-loss compensation.

³ Under OWCP File No. xxxxxx031, OWCP accepted bilateral ankle sprain as work related due to a traumatic injury involving tripping on steps while fleeing an attacking dog while in the performance of duty on September 27, 2005. Under OWCP File No. xxxxxx150, OWCP initially accepted right ankle sprain as work related due to a traumatic injury involving falling on steps while in the performance of duty on June 15, 2006, later expanding the acceptance of this claim to include left ankle sprain. OWCP has administratively combined these files, with OWCP File No. xxxxxx150 serving as the master file.

In a development letter dated August 3, 2022, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed and afforded her 30 days to respond.

On August 16, 2022 Dr. Laut extended his recommendation that appellant remain off work through September 16, 2022, due to ankle sprain causing a flare-up of sciatica.

In a statement dated September 9, 2022, appellant explained that she was verbally advised by supervisors that she could no longer park where she had access to a ramp for her handicap. She further explained that she had to walk further to the building, making it difficult, and that she began experiencing spasms and tingling in her feet. Appellant noted that she had to walk from the parking lot to the building onto the workroom floor to clock in to work, then walk back into the front building to the office where she was assigned a modified position for her head injury.

In progress notes dated September 13, 2022, Dr. Laut stated that appellant continued to have problems with sciatica involving the bilateral lower extremities. He noted that she had a history of CRPS involving the left lower extremity, bilateral ankle sprains, residual pain, and antalgic gait. Dr. Laut stated that the antalgic gait was probably a significant factor in aggravating appellant's sciatica, noting an acute flare-up on July 26, 2022. On physical examination, he observed arthralgia, back pain, antalgic and nonpropulsive gait with a cane, joint swelling, skin color change, numbness, and hyperesthesia of the left foot, greater than the right foot. Dr. Laut diagnosed bilateral chronic ankle pain, CRPS type 1 of the left lower extremity, myalgia, left foot neuralgia, left foot pain, bilateral sciatica, and antalgic gait. He attributed the aggravation of appellant's sciatica to the alteration in gait due to antalgia from residual CRPS and chronic bilateral ankle pain.

On October 11, 2022 Dr. Laut extended his recommendation that appellant remain off work through November 11, 2022.

By decision dated October 25, 2022, OWCP found an employment factor, but denied appellant's occupational disease claim, finding that the evidence of record was insufficient to establish that her diagnosed condition was causally related to the accepted factors of her federal employment.

In an emergency department note dated July 10, 2022, Dr. Saied Khosrowpour, a family medicine specialist, examined appellant for complaints of lower back pain with radiation down the backs of the legs. Appellant attributed her pain to the long walk into work from her vehicle in the parking lot which exacerbated her pain. On physical examination, he observed tenderness to palpation at the lumbar spine and paraspinal muscles, as well as the sciatic nerve exit at the bilateral buttock areas. Dr. Khosrowpour also noted a slow antalgic gait with a positive straight leg raise test. He diagnosed acute bilateral back pain with bilateral sciatica.

In a report dated August 16, 2022, Dr. Laut noted that appellant had been seen twice in the emergency department since their last meeting with severe bilateral sciatica symptoms. On physical examination, he observed hyperesthesia of the bilateral lower extremities consistent with sciatica, positive straight leg raise tests bilaterally, a nonpropulsive gait with an assistive device, and limited motion of the ankle and subtalar joints bilaterally. Dr. Laut diagnosed CRPS type 1 of the left lower extremity, bilateral sciatica, gait disturbance, and pain and swelling of the left ankle.

In a report dated October 11, 2022, Dr. Laut evaluated appellant for bilateral foot pain. On physical examination, he observed bilateral foot hyperesthesia and dysesthesia; radiating symptoms consistent with radiculopathy of the legs, particularly on the posterior lateral margin of the upper legs; and antalgic partially propulsive gait with braces. Dr. Laut noted that, while he could not find an exact dermatome to account for her symptoms, appellant had remnants of CRPS of the left ankle. He diagnosed CRPS type 1 of the left lower extremity, bilateral sciatica, antalgic gait, and a history of peripheral neuropathy.

On November 8, 2022 Dr. Laut extended his recommendation that appellant remain off work through December 6, 2022.

In a report dated November 8, 2022, Dr. Laut followed up with appellant for evaluation of CRPS type 1 of the left lower extremity. He stated that she had probably reached maximum medical improvement at that time. On physical examination, Dr. Laut observed areas of hyperesthesia and decreased sensitivity to vibratory touch, more on the left than the right ankle. He also observed antalgic gait with reduced subtalar motion. Dr. Laut diagnosed CRPS type 1 of the left lower extremity, bilateral chronic ankle pain, and bilateral sciatica.

On November 11, 2022 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

On December 13, 2022 Dr. Laut noted a recent fall without loss of consciousness. On physical examination, he observed poorly defined areas of hyperesthesia of the left foot, which did not follow a dermatome, as well as an area of hyperesthesia of the left ankle near the sinus tarsal canal, and decreased sensitivity to vibratory light touch, more on the left than the right. Dr. Laut further noted an antalgic gait with braces, decreased range of motion of the subtalar joint bilaterally, and asymmetry of intrinsic muscle mass on the left. He diagnosed CRPS type 1 of the left lower extremity, bilateral chronic ankle pain, bilateral sciatica, antalgic gait, and history of a recent fall. Dr. Laut stated that the gait disturbance produced by appellant's ankle issues could aggravate her sciatica. He recommended that she remain off work for another four weeks.

A hearing before a representative of OWCP's Branch of Hearings and Review took place on April 13, 2023.

In a report dated April 18, 2023, Dr. Laut evaluated appellant for chronic bilateral ankle pain. On physical examination, he observed diffuse hypersensitivity of the left lower extremity and noted that she described bilateral radicular symptoms of the lower extremities, reduced range of motion of the left ankle, and partially propulsive antalgic gait with a brace. Dr. Laut diagnosed CRPS type 1 of the left lower extremity, left foot neuritis, bilateral sciatica, and history of peripheral neuropathy.

By letter dated May 24, 2023, Dr. Laut noted that he had previously "written for a handicap placard for [appellant] and on the form and stated that she would have problems with walking more than 200 feet. She should be able to park and does not need a handicap spot with a placard."

By decision dated June 23, 2023, OWCP's hearing representative affirmed the October 25, 2022 decision.

By letter dated July 25, 2023, appellant requested reconsideration. Appellant contended that her rights were violated under the Americans with Disabilities Act (ADA).

By decision dated August 1, 2023, 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 FECA⁴ 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 of FECA, 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.⁵ 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.

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit: (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) rationalized medical evidence establishing that the diagnosed condition is causally related to the identified employment factors.⁶

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.⁷ The opinion of the physician must be based on a complete factual and medical background, 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.⁸

In any case where a preexisting condition involving the same part of the body is present and the issue of causal relationship, therefore, involves aggravation, acceleration, or precipitation, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.⁹

⁴ *Supra* note 1.

⁵ *C.K.*, Docket No. 19-1549 (issued June 30, 2020); *R.G.*, Docket No. 19-0233 (issued July 16, 2019); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁶ *L.D.*, Docket No. 19-1301 (issued January 29, 2020); *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁷ *I.J.*, Docket No. 19-1343 (issued February 26, 2020); *T.H.*, 59 ECAB 388 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

⁸ *D.J.*, Docket No. 19-1301 (issued January 29, 2020).

⁹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013). See *R.D.*, Docket No. 18-1551 (issued March 1, 2019).

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met her burden of proof to establish a medical condition causally related to the accepted factors of her federal employment.

On May 23, 2022 Dr. Laut diagnosed bilateral chronic ankle pain, CRPS type 1 of the left lower extremity, myalgia, left foot neuritis, antalgic gait and gait disturbance, and history of recent falls. On August 16, 2022 he diagnosed CRPS type 1 of the left lower extremity, bilateral sciatica, gait disturbance, and pain and swelling of the left ankle. On September 13, 2022 Dr. Laut diagnosed bilateral chronic ankle pain, CRPS type 1 of the left lower extremity, myalgia, left foot neuralgia, left foot pain, bilateral sciatica, and antalgic gait, and attributed the aggravation of appellant's sciatica to the alteration in gait due to antalgia from residual CRPS and chronic bilateral ankle pain. On October 11, 2022 he diagnosed CRPS type 1 of the left lower extremity, bilateral sciatica, antalgic gait, and a history of peripheral neuropathy. On November 8, 2022 Dr. Laut diagnosed CRPS type 1 of the left lower extremity, bilateral chronic ankle pain, and bilateral sciatica. On December 13, 2022 he diagnosed CRPS type 1 of the left lower extremity, bilateral chronic ankle pain, bilateral sciatica, antalgic gait, and history of a recent fall, and stated that the gait disturbance produced by appellant's ankle issues could aggravate her sciatica. On April 18, 2023 Dr. Laut diagnosed CRPS type 1 of the left lower extremity, left foot neuritis, bilateral sciatica, and history of peripheral neuropathy. Appellant also submitted a note from Dr. Laut dated May 23, 2022, in which he opined that she needed to park in a handicapped-accessible parking space due to her medical conditions. By letter dated May 24, 2023, Dr. Laut noted that he had previously "written for a handicap placard for [appellant] and on the form and stated that she would have problems with walking more than 200 feet. [Appellant] should be able to park and does not need a handicap spot with a placard." Additionally, appellant submitted work excuse notes from him dated from May 23 through November 8, 2022.

None of the medical evidence submitted by appellant from Dr. Laut however contained an opinion as to whether the accepted work factor of walking from her parking space to the entrance of the employing establishment caused or aggravated her diagnosed conditions. Dr. Laut did not offer an opinion as to whether her diagnosed conditions were caused or aggravated by walking from her parking space to the entrance of the employing establishment. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how a given medical condition/disability was related to employment factors.¹⁰ Further, in any case where a preexisting condition involving the same part of the body is present, and the issue of causal relationship, therefore, involves aggravation, acceleration, or precipitation, the medical evidence must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition. While Dr. Laut attributed the aggravation of appellant's sciatica to the alteration in gait due to antalgia from residual CRPS and chronic bilateral ankle pain, he did not specifically differentiate between her

¹⁰ See *H.D.*, Docket No. 22-0419 (issued February 22, 2023); *E.K.*, Docket 22-1130 (issued December 30, 2022); *L.K.*, Docket No. 21-1155 (issued March 23, 2022); *T.S.*, Docket No. 20-1229 (issued August 6, 2021); *J.M.*, Docket No. 19-1169 (issued February 7, 2020); *A.L.*, 19-0285 (issued September 24, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

preexisting condition and the effects of her accepted employment factor.¹¹ The Board therefore finds this evidence insufficient to establish her claim.

On July 10, 2022 Dr. Khosrowpour diagnosed acute bilateral back pain with bilateral sciatica. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.¹² This report is, therefore, insufficient to establish causal relationship.¹³

As appellant has not submitted rationalized medical evidence explaining causal relationship between her diagnosed lower back and bilateral lower extremity conditions, the Board finds that she 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.¹⁴

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or argument which: (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.¹⁵

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.¹⁶ If it chooses to grant reconsideration, it reopens and reviews the case on its merits.¹⁷ If the request is timely, but fails to meet at least one of the

¹¹ *Supra* note 9.

¹² *S.J.*, Docket No. 19-0696 (issued August 23, 2019); *M.C.*, Docket No. 18-0951 (issued January 7, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹³ *Supra* note 9 at Chapter 2.805.3e (January 2013). *See R.D.*, Docket No. 18-1551 (issued March 1, 2019).

¹⁴ 5 U.S.C. § 8128(a); *see T.K.*, Docket No. 19-1700 (issued April 30, 2020); *L.D.*, Docket No. 18-1468 (issued February 11, 2019); *W.C.*, 59 ECAB 372 (2008).

¹⁵ 20 C.F.R. § 10.606(b)(3); *see L.D., id.*; *see also L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

¹⁶ *Id.* at § 10.607(a). The one-year period begins on the next day after the date of the original contested decision. 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. *Supra* note 9 at 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.

¹⁷ *Id.* at § 10.608(a); *F.V.*, Docket No. 18-0230 (issued May 8, 2020); *see also M.S.*, 59 ECAB 231 (2007).

requirements for reconsideration, OWCP will deny the request for reconsideration without reopening the case for review on the merits.¹⁸

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).

In appellant's timely July 25, 2023 request for reconsideration, she did not argue that OWCP erroneously applied or interpreted a specific point of law or advance a relevant legal argument not previously considered by OWCP. She stated that she retired from the employing establishment after six months with no pay. Appellant contended that her rights under the ADA were not addressed. OWCP has jurisdiction only over FECA claims.¹⁹ Thus, she was not entitled to a review of the merits of her claim based on the first and second above-noted requirements under 20 C.F.R. § 10.606(b)(3).²⁰

The underlying issue in this case is medical in nature. Appellant did not submit any medical evidence on reconsideration. Because she did not provide relevant and pertinent new medical 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).²¹

The Board, therefore, finds that appellant has not met any of the requirements of 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 medical condition causally related to the accepted factors of her federal employment. The Board further finds that OWCP properly denied her request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

¹⁸ *Id.* at § 10.608(b); *B.S.*, Docket No. 20-0927 (issued January 29, 2021); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

¹⁹ *Supra* note 1.

²⁰ *See C.S.*, 19-0851 (issued November 18, 2019); *J.B.*, Docket No. 17-0628 (issued June 28, 2017).

²¹ *See* 20 C.F.R. § 10.606(b)(3)(iii).

ORDER

IT IS HEREBY ORDERED THAT the June 23 and August 1, 2023 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: April 18, 2024
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board