

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

L.S., Appellant)	
)	
and)	Docket No. 22-1238
)	Issued: May 19, 2023
U.S. POSTAL SERVICE, POST OFFICE,)	
Oklahoma City, OK, 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
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge

JURISDICTION

On August 8, 2022 appellant filed a timely appeal from an April 12, 2022 merit decision and a May 18, 2022 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 diagnosed medical condition in connection with the accepted December 22, 2021 employment incident; and

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the May 18, 2022 decision, OWCP received additional evidence. 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 December 28, 2021 appellant, then a 46-year-old mail clerk, filed a traumatic injury claim (Form CA-1) alleging that on December 22, 2021 she injured her head and neck due to traumatic force when a box fell from a machine onto her head while in the performance of duty. She stopped work on December 22, 2021.

In support of her claim, appellant submitted a December 23, 2021 work excuse note from an unidentified healthcare provider noting that she was treated that day and excusing her from work.

In treatment notes dated December 30, 2021 and January 16, 2022, Dr. Derek Lewis, a family practitioner, held appellant off work from December 30, 2021 to January 16, 2022, and from January 26, 2022 until after physical therapy. He provided work restrictions of no lifting over 20 pounds.

In a February 24, 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 afforded her 30 days to submit the necessary evidence.

Thereafter, appellant submitted a note with an illegible date from Dr. Lewis holding her off work until March 21, 2022 and providing work restrictions.

In a December 30, 2021 visit note, Dr. Lewis noted that appellant reported that a box fell on her head while at work on December 22, 2021 causing neck pain and a headache. He assessed neck pain, unspecified headache, and other chronic pain, and issued a referral for physical therapy.

In a February 25, 2022 note, Dr. Lewis related that appellant presented with neck pain that radiated down her neck and lower back that began two months ago after an automobile accident. He indicated that she also experienced swelling in her arms, headaches, and was involved in an accident a few days prior that caused arm pain. Dr. Lewis assessed right side neck pain and prescribed medication.

A March 23, 2022 report of work status (Form CA-3) noted that appellant stopped work on December 22, 2021 and returned full-time to modified-duty work with restrictions on March 21, 2022.

By decision dated April 12, 2022, OWCP accepted that the December 22, 2021 employment incident occurred, as alleged. However, it denied appellant's traumatic injury claim, finding that she had not submitted medical evidence containing a medical diagnosis from a qualified physician in connection with the accepted December 22, 2021 employment incident. Consequently, OWCP found that the requirements had not been met to establish an injury as defined by FECA.

On May 12, 2022 appellant requested reconsideration of the April 12, 2022 decision. In a May 5, 2022 statement in support of her request, she asserted that she did not receive any documentation to provide to her physician. Appellant noted that she experienced constant neck pain radiating down her back.

By decision dated May 18, 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 FECA³ 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 States within the meaning of FECA, that the claim was timely filed within the applicable time limitation of FECA,⁴ 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.⁶

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, 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.⁷

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.⁸ 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

³ *Supra* note 1.

⁴ *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).

⁵ *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).

⁶ *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).

⁷ *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).

⁸ *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).

nature of the relationship between the diagnosed condition and specific employment incident identified by the employee.⁹

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met her burden of proof to establish a diagnosed medical condition in connection with the accepted December 22, 2021 employment incident.

In support of her claim, appellant submitted a December 30, 2021 note from Dr. Lewis assessing neck pain, unspecified headache, and other chronic pain, as well as a February 25, 2022 note assessing right side neck pain. The Board has consistently held that pain and headache are symptoms and not a compensable medical diagnosis.¹⁰ A medical report lacking a firm diagnosis is of no probative value.¹¹ Accordingly, Dr. Lewis' reports are insufficient to satisfy appellant's burden of proof.¹²

Similarly, appellant submitted work excuse notes dated December 30, 2021 and January 16, 2022, in which Dr. Lewis held her off work and provided work restrictions. However, Dr. Lewis did not provide a diagnosis. The Board has held that a medical report is of no probative value if it does not provide a firm diagnosis of a particular medical condition.¹³ As Dr. Lewis did not diagnose a medical condition in these notes, this evidence is also insufficient to establish a diagnosed medical condition in connection with the accepted December 22, 2021 employment incident.¹⁴

The remaining medical evidence of record includes a December 23, 2021 work excuse note from an unidentified healthcare provider. The Board has held that reports that are unsigned or bear an illegible signature cannot be considered probative medical evidence as the author cannot be identified as a physician.¹⁵ Thus, this report has no probative value and is insufficient to establish the claim.

⁹ See *S.A.*, Docket No. 20-1498 (issued March 11, 2021); *A.H.*, Docket No. 20-0730 (issued October 27, 2020); *B.C.*, Docket No. 20-0079 (issued October 16, 2020).

¹⁰ *J.P.*, Docket No. 20-0381 (issued July 28, 2020); *S.L.*, Docket No. 19-1536 (issued June 26, 2020); *D.Y.*, Docket No. 20-0112 (issued June 25, 2020), *Deborah L. Beatty*, 54 ECAB 340 (2003). See also *Larry M. Leudtke*, Docket 03-1564 (issued September 2, 2003) (where the Board found that headache described a symptom and did not constitute a firm diagnosis of a medical condition).

¹¹ *J.P.*, *id.*; *R.L.*, Docket No. 20-0284 (issued June 30, 2020).

¹² *R.H.*, Docket No. 21-1382 (issued March 7, 2022); *S.E.*, Docket No. 21-0666 (issued December 28, 2021).

¹³ *A.R.*, Docket No. 19-1560 (issued March 2, 2020); *V.B.*, Docket No. 19-0643 (issued September 6, 2019).

¹⁴ *Id.*

¹⁵ See *T.P.*, Docket No. 21-0868 (issued December 21, 2021); *R.L.*, *supra* note 11; *M.A.*, Docket No. 19-1551 (issued April 30, 2020); *T.O.*, Docket No. 19-1291 (issued December 11, 2019); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

As appellant has not submitted medical evidence establishing a diagnosed medical condition in connection with the accepted December 22, 2021 employment incident, 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 does not entitle a claimant to review of an OWCP decision as a matter of right.¹⁶ OWCP has discretionary authority in this regard and has imposed certain limitations in exercising its authority.¹⁷ 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.¹⁸ A timely application for reconsideration, including all supporting documents, must set forth 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.¹⁹ 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.²⁰

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 did not show that OWCP erroneously applied or interpreted a specific point of law and did not advance a relevant legal argument not previously considered by OWCP. In support of her request, she submitted a May 5, 2022 statement describing her symptoms and asserting that she did not receive documentation to provide to her physician regarding her claim. The underlying issue was whether appellant had provided sufficient proof from a qualified physician of a medical diagnosis made in connection with the accepted December 22, 2021 employment incident.

¹⁶ 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/her] own motion or on application.” 5 U.S.C. § 8128(a).

¹⁷ 20 C.F.R. § 10.607.

¹⁸ *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 decision for which review is sought. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (February 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.

¹⁹ *Id.* at § 10.606(b)(3).

²⁰ *Id.* at § 10.608(a), (b).

Therefore, the Board finds her argument irrelevant.²¹ Consequently, appellant was not entitled to a review of the merits based on the first and second above-noted requirements under 20 C.F.R. § 10.606(b)(3).

Further, appellant did not submit any additional evidence with her May 12, 2022 request for reconsideration. Because she did not provide any relevant and pertinent new evidence not previously considered by OWCP, she is not entitled to a review of the merits based on the third requirement under 20 C.F.R. § 10.606(b)(3).²²

The Board, accordingly, finds that appellant did not meet 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.²³

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a diagnosed medical condition in connection with the accepted December 22, 2021 employment incident. 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).

²¹ *M.M.*, Docket Nos. 21-0482 & 21-1051 (issued April 19, 2023).

²² 20 C.F.R. § 10.606(b)(3)(iii); *see also S.H.*, Docket No. 19-1897 (issued April 21, 2020); *M.K.*, Docket No. 18-1623 (issued April 10, 2019); *Edward Matthew Diekemper*, 31 ECAB 224-25 (1979).

²³ *See D.M.*, Docket No. 18-1003 (issued July 16, 2020); *D.S.*, Docket No. 18-0353 (issued February 18, 2020); *Susan A. Filkins*, 57 ECAB 630 (2006) (when a request for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b), OWCP will deny the request for reconsideration without reopening the case for a review on the merits).

ORDER

IT IS HEREBY ORDERED THAT the April 12 and May 18, 2022 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: May 19, 2023
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