

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

B.W., Appellant

and

**DEPARTMENT OF VETERANS AFFAIRS, VA
MEDICAL CENTER, Coatesville, PA, Employer**

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**Docket No. 21-0709
Issued: December 29, 2021**

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
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On April 9, 2021 appellant filed a timely appeal from a December 7, 2020 merit decision and a February 22, 2021 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.

ISSUES

The issues are: (1) whether appellant met her burden of proof to establish a right shoulder condition causally related to the accepted June 14, 2020 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 June 15, 2020 appellant, then a 67-year-old nurse, filed a traumatic injury claim (Form CA-1) alleging that, on that date, she injured her right shoulder while providing care to a patient in the performance of duty. She did not initially stop work.

By development letter dated June 26, 2020, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence necessary to establish her claim and provided a questionnaire for her completion. OWCP afforded appellant 30 days to provide the necessary evidence.

In a June 5, 2020 work capacity evaluation (Form OWCP-5c), Dr. Carl E. Becker, a Board-certified orthopedic surgeon, noted appellant's work restrictions with regard to reaching, pushing, and pulling.

A June 15, 2020 employing establishment report of employee's emergency treatment noted by checkmark that appellant had a work-related injury and that she had limited use of her right upper extremity with restrictions on lifting, pulling, and pushing. The signature on the form is illegible.

In a June 25, 2020 report, Dr. Becker related that appellant was seen for "shoulder pain after a pulling motion on June 14, 2020." He noted that she had a history of four prior surgeries on her right shoulder." Dr. Becker related that appellant's pain began after pulling a sheet when changing a patient at work and noted that x-rays revealed a high riding humeral head and anchors from a previous rotator cuff repair. He indicated that she related that she was doing well until "this most recent incident which I think may have exacerbated her pain." Dr. Becker indicated that he recommended a reverse total shoulder arthroplasty of the right shoulder.

A July 13, 2020 operative report indicated that Dr. Becker performed a right reverse total shoulder arthroplasty. A July 14, 2020 discharge summary noted a diagnosis of resolved rotator cuff insufficiency of the right shoulder. X-rays of appellant's right shoulder on July 31, 2020, revealed a reverse total shoulder arthroplasty in good shoulder position with no evidence of any wear, loosening, or subsidence.

By decision dated August 4, 2020, OWCP found that appellant had established that the incident occurred as alleged however, it denied the claim, finding that the evidence of record was insufficient to establish the medical component of the third basic element, fact of injury. It explained that pain was a symptom and not a diagnosis and that rotator cuff insufficiency was not a specific diagnosis.

In a July 29, 2020 treatment note, Dr. Becker noted that appellant was two weeks' status post right reverse total shoulder arthroplasty and was doing well.

In an August 4, 2020 attending physician's report (Form CA-20), Dr. Becker diagnosed rotator cuff insufficiency, marked a box "Yes" in response to whether he believed the condition was caused or aggravated by an employment activity, and indicated that he performed a reverse shoulder arthroplasty.

In an August 25, 2020 attending physician's first report, Dr. Becker diagnosed instability of right shoulder and advised that appellant could not use her right shoulder until approximately October 13, 2020. He noted that he was first consulted on June 25, 2020, appellant's condition developed due to an injury at work, and she underwent a right reverse total shoulder replacement on July 13, 2020.

On September 9, 2020 OWCP received appellant's request for reconsideration.

OWCP received a March 16, 2017 magnetic resonance imaging (MRI) scan of appellant's right shoulder read by Dr. Victor Longo, III, a Board-certified diagnostic radiologist and osteopath, who compared the findings to an MRI scan of the right shoulder from June 18, 2013. Dr. Longo noted a full-thickness rotator cuff tear of the supraspinatus and infraspinatus tendons, with retraction and fatty muscular infiltration, and severe biceps tendinosis.

In a September 14, 2020 Form CA-20, Dr. Becker diagnosed rotator cuff insufficiency, marked the box "Yes" in response to whether he believed the condition was caused or aggravated by an employment activity, and indicated that he performed a reverse shoulder arthroplasty. He completed a September 14, 2020 Form OWCP-5c indicating that appellant could not work from July 15 to October 22, 2020.

In an October 27, 2020 Form CA-20, Dr. Becker indicated that appellant sustained a shoulder injury on June 14, 2020, and underwent a reverse total shoulder replacement on July 13, 2020. He noted that appellant had a preexisting condition and that she had undergone previous shoulder surgery. Dr. Becker noted that x-rays of appellant's right shoulder showed a high riding humeral head and anchors from the previous surgery. He again diagnosed right shoulder pain and insufficiency of right rotator cuff, and marked a box "Yes" indicating that he believed the condition was caused or aggravated by an employment activity. Dr. Becker noted that appellant aggravated the shoulder pain by pulling a sheet while changing a patient.

In an October 27, 2020 Form OWCP-5c, Dr. Becker indicated that appellant had permanent work restrictions.

By decision dated December 7, 2020, OWCP modified the August 4, 2020 decision to find that a diagnosis of right rotator cuff insufficiency and instability of right shoulder had been established. However, the claim remained denied as appellant had not established that the diagnosed conditions were causally related to the accepted work incident.

On January 8, 2021 appellant requested reconsideration.

On January 8, 2021 OWCP received an undated Form CA-20 from Dr. Becker, who repeated his prior findings. It also received a copy of Dr. Becker's June 25, 2020 report.

By decision dated February 22, 2021, OWCP denied reconsideration of the merits of appellant's claim.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA² 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,³ 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.⁴ 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.⁵

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) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.⁶

Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical evidence.⁷ 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 factors identified by the employee.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,

² *Id.*

³ *See H.H.*, Docket No. 20-0839 (issued May 25, 2021); *C.G.*, Docket No. 20-0957 (issued January 27, 2021); *J.W.*, Docket No. 18-0678 (issued March 3, 2020); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁴ *J.S.*, Docket No. 18-0657 (issued February 26, 2020); *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁵ *L.J.*, Docket No. 19-1343 (issued February 26, 2020); *R.R.*, Docket No. 18-0914 (issued February 24, 2020); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁶ *C.G.*, *supra* note 3; *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *R.H.*, 59 ECAB 382 (2008).

⁷ *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *T.H.*, 59 ECAB 388, 393 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

⁸ *R.G.*, Docket No. 18-0792 (issued March 11, 2020); *D.J.*, Docket No. 19-1301 (issued January 29, 2020); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

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

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met her burden of proof to establish a right shoulder condition causally related to the accepted June 14, 2020 employment incident.

In a June 25, 2020 report, Dr. Becker noted that appellant was seen for right shoulder pain after a pulling motion on June 14, 2020. He noted that appellant related that her pain began after pulling a sheet when changing a patient at work. Dr. Becker opined that it was “this most recent incident which I think may have exacerbated her pain.” The Board consistently has held that pain is a symptom and not a compensable medical diagnosis.¹⁰ In an August 25, 2020 attending physician’s first report, Dr. Becker diagnosed instability of right shoulder and indicated the condition developed due to an injury at work. These reports from Dr. Becker failed to provide a definitive diagnosis, distinguish the effects of appellant’s preexisting previous shoulder repair conditions from the claimed employment-related aggravation, and sufficiently explain how the June 14, 2020 employment incident caused an aggravation of a diagnosed condition.¹¹ These reports therefore are insufficient to establish that appellant had a diagnosed right shoulder condition causally related to the June 14, 2020 employment incident.

In CA-20 forms dated August 4, September 14, and October 27, 2020, Dr. Becker diagnosed right shoulder pain and insufficiency of right rotator cuff, marked the box “Yes” in response to whether he believed the condition was caused or aggravated by an employment activity, and indicated that appellant aggravated the right shoulder pain by pulling a sheet while changing a patient at work. The Board has held that an opinion on causal relationship which consists of a physician checking a box in response to a form question, without supporting medical rationale explaining how the employment activity caused the diagnosed condition, is of little probative value.¹² While Dr. Becker noted that appellant had previous right shoulder surgery, he did not explain with medical rationale how he concluded that the diagnosed condition was aggravated by the June 14, 2020 incident at work.¹³ These reports are therefore of diminished

⁹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013); *J.D.*, Docket No. 20-0404 (issued July 22, 2020); *K.G.*, Docket No. 18-1598 (issued January 7, 2020); *M.S.*, Docket No. 19-0913 (issued November 25, 2019).

¹⁰ *A.G.*, Docket No. 20-1319 (issued May 19, 2021); *T.S.*, Docket No. 20-0343 (issued July 15, 2020); *J.P.*, *supra* note 3; *Joe D. Cameron, supra* note 3.

¹¹ *Id.*; *L.R.*, Docket No. 16-0736 (issued September 2, 2016).

¹² *See O.N.*, Docket No. 20-0902 (issued May 21, 2021); *see A.R.*, Docket No. 19-0465 (issued August 10, 2020); *C.T.*, Docket No. 20-0020 (issued April 29, 2020); *M.R.*, Docket No. 17-1388 (issued November 2, 2017); *Gary J. Watling*, 52 ECAB 278 (2001).

¹³ 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).

probative value and insufficient to establish that appellant's diagnosed conditions should be accepted as employment related.¹⁴

Appellant submitted a June 5, 2020 Form OWCP-5c which revealed restrictions for work, a June 15, 2020 report of employee's emergency treatment which noted that appellant had limited use of her right upper extremity, a July 13, 2020 operative report which revealed that Dr. Becker performed a right reverse total shoulder arthroplasty, a July 14, 2020 discharge summary which revealed a resolved diagnosis of rotator cuff insufficiency of the right shoulder, a July 29, 2020 treatment note in which Dr. Becker noted that appellant was two weeks' status post right reverse total shoulder arthroplasty, a September 14, 2020 Form OWCP-5c from Dr. Becker which indicated no work from approximately July 15 to October 22, 2020, and an October 27, 2020 Form OWCP-5c from Dr. Becker which indicated that appellant had permanent work restrictions. These reports, however, did not offer a medical opinion regarding the cause of appellant's diagnosed conditions. 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.¹⁵

The July 31, 2020 x-rays and March 16, 2017 MRI scan also do not constitute probative medical evidence, as the Board has held that diagnostic tests lack probative value on the issue of causal relationship.¹⁶

As appellant has not submitted rationalized medical evidence establishing that her diagnosed medical conditions were causally related to the accepted employment incident of June 14, 2020, 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 own motion or on application.¹⁷

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

¹⁴ *Id.*

¹⁵ *See B.S.*, Docket No. 20-0895 (issued June 15, 2021); *see D.C.*, Docket No. 19-1093 (issued June 25, 2020); *see L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹⁶ *See V.W.*, Docket No. 20-0693 (issued June 2, 2021); *A.F.*, Docket No. 17-1514 (issued April 10, 2018); *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

¹⁷ 5 U.S.C. § 8128(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.¹⁸

A request for reconsideration must also be received by OWCP within one year of the date of OWCP's decision for which review is sought.¹⁹ If OWCP chooses to grant reconsideration, it reopens and reviews the case on its merits.²⁰ 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.²¹

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. It therefore properly determined that her request did not warrant a review of the merits of the claim based on the first and second requirements of section 10.606(b)(3).²²

In support of her reconsideration request, appellant submitted an undated Form CA-20 from Dr. Becker, who repeated his prior findings, and a copy of his June 25, 2020 report. The Board notes that this evidence is duplicative of evidence previously considered by OWCP. Evidence which repeats or duplicates evidence already of record has no evidentiary value and does not constitute a basis for reopening a case.²³ As appellant did not provide relevant and pertinent new evidence, she is not entitled to a merit review based on the third requirement under 20 C.F.R. § 10.606(b)(3).²⁴ Therefore, OWCP properly determined that her request did not warrant a review of the merits of the claim based on the third requirement of section 10.606(b)(3).

As appellant has not met any of the regulatory requirements under 20 C.F.R. § 10.606(b)(3), pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

¹⁸ 20 C.F.R. § 10.606(b)(3).

¹⁹ *Id.* at § 10.607(a).

²⁰ *Id.* at § 10.608(a).

²¹ *Id.* at § 10.608(b).

²² *See M.C.*, Docket No. 18-1278 (issued March 7, 2019); *see S.M.*, Docket No. 17-1899 (issued August 3, 2018).

²³ *R.B.*, Docket No. 21-0035 (issued May 13, 2021); *V.L.*, Docket No. 19-0069 (issued February 10, 2020); *A.K.*, Docket No. 19-1210 (issued November 20, 2019); *R.S.*, Docket No. 19-0312 (issued June 18, 2019); *Richard Yadron*, 57 ECAB 207 (2005).

²⁴ *See T.W.*, Docket No. 18-0821 (issued January 13, 2020).

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a right shoulder condition causally related to the accepted June 14, 2020 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 December 7, 2020 and February 22, 2021 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: December 29, 2021
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board