

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

FACTUAL HISTORY

On October 24, 2019 appellant, then a 34-year-old city carrier assistant, filed a traumatic injury claim (Form CA-1) alleging that on October 14, 2019 he suffered brief unconsciousness, a laceration to the right eyebrow, concussion, and loss of memory after tripping over a curb when walking inside to clock in for work while in the performance of duty. On the reverse side of the claim form the employing establishment controverted appellant's claim, contending that he was not injured in the performance of duty as he was injured prior to starting his shift. It further asserted that the injury was caused by appellant's possible intoxication. Appellant did not stop work.

In a development letter dated October 30, 2019, OWCP informed appellant that the evidence of record was insufficient to establish his claim. It advised him of the type of factual and medical evidence needed and provided a questionnaire for his completion. OWCP noted that documentation had not been received to establish that appellant actually experienced the incident alleged to have caused injury. It also indicated that medical evidence had not been received, which supported a medical diagnosis in connection with the alleged employment incident. In a separate development letter of even date, OWCP requested that the employing establishment provide additional information, including evidence regarding appellant's possible intoxication and his tour of duty. It afforded both parties 30 days to respond.

OWCP subsequently received a request for authorization for a magnetic resonance imaging (MRI) scan of appellant's brain from Dr. Gary Weiss, a Board-certified anatomic and clinical pathologist.

By decision dated December 3, 2019, OWCP accepted that the incident occurred as alleged, but denied appellant's claim, finding that the medical evidence of record was insufficient to establish a medical diagnosis in connection with the accepted October 14, 2019 employment incident. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On December 31, 2019 OWCP received appellant's November 3, 2019 response to the development questionnaire. Appellant noted that he was not impaired in any way when the injury occurred. He indicated that he tripped on the sidewalk outside of the employing establishment before he began his tour of duty. Appellant reported that he fell on his right knee and shoulder and that he struck his head on the brick wall of the building. He noted that his right eye was cut open above his eyebrow and that he briefly lost consciousness. Appellant indicated that his coworker notified the postmaster of the incident. He stated that he stopped work for two days and that he delayed filing his Form CA-1 because the postmaster informed him that he might not be eligible to file a claim. Appellant noted that he experienced brief unconsciousness, confusion, pain, and loss of balance immediately after the employment incident and that he went inside the employing establishment to wash the blood from his face after the incident. He indicated that he did not have any similar disability or symptoms prior to the employment incident.

In an October 14, 2019 state workers' compensation form report, Dr. Pierce Arnold, a Board-certified family practitioner, diagnosed laceration of the right eyebrow and mild concussion. He checked a box to indicate that the conditions for which treatment was sought were work related.

In an October 24, 2019 form report, Dr. Arnold diagnosed laceration of the right eyebrow. He indicated that appellant had his sutures removed and that he had reached maximum medical improvement.

On January 31, 2020 appellant requested reconsideration. He asserted that he had previously submitted medical evidence by fax and mail.

By decision dated April 3, 2020, OWCP modified the December 3, 2019 decision, finding that appellant had established valid medical diagnoses. However, the claim remained denied because the medical evidence of record was insufficient to establish a causal relationship between the diagnosed medical conditions and the accepted October 14, 2019 employment incident.

On April 16, 2020 appellant requested reconsideration. In support of his request, he submitted an October 24, 2019 narrative report from Dr. Arnold who examined appellant and diagnosed laceration of the right eyebrow. Dr. Arnold noted that the encounter was related to appellant's workers' compensation claim and that his sutures were removed without complication.³

By decision dated April 24, 2020, OWCP denied appellant's request for reconsideration of the merits of his 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 period of FECA,⁵ 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.⁶ 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.⁷

³ Appellant also resubmitted form reports from Dr. Arnold dated October 14 and 24, 2019.

⁴ *Supra* note 1.

⁵ *M.O.*, Docket No. 19-1398 (issued August 13, 2020); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁶ *J.R.*, Docket No. 20-0496 (issued August 13, 2020); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁷ *B.M.*, Docket No. 19-1341 (issued August 12, 2020); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

To determine if an employee has sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Fact of injury consists of two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred.⁸ The second component is whether the employment incident caused a personal injury.⁹

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.¹⁰ The opinion of the physician must be based on a complete factual and medical background of the claimant, 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 incident identified by the claimant.¹¹

OWCP's procedures recognize that a claim may be accepted without a medical report when the condition is a minor one which can be identified on visual inspection.¹² In clear-cut traumatic injury claims, such as a fall resulting in a broken arm, a physician's affirmative statement is sufficient and no rationalized opinion on causal relationship is needed. In all other traumatic injury claims, a rationalized medical opinion supporting causal relationship is required.¹³

ANALYSIS -- ISSUE 1

The Board finds that appellant has met his burden of proof to establish a laceration causally related to the accepted October 14, 2019 employment incident.

In support of his claim, appellant submitted reports dated October 14 and 24, 2019 from Dr. Arnold. Dr. Arnold diagnosed laceration of the right eyebrow and opined that the condition was work related. OWCP accepted that the October 14, 2019 employment incident occurred as alleged, that a medical condition had been diagnosed, and that appellant was injured in the performance of duty. As noted above, OWCP's procedures recognize that a claim may be accepted without a medical report when the condition is a minor one which can be identified on visual inspection.¹⁴ The Board, thus, finds that this evidence is sufficient to meet appellant's burden of proof that he sustained a right eyebrow laceration on October 14, 2019.¹⁵ Upon return of the case

⁸ *T.J.*, Docket No. 19-0461 (issued August 11, 2020); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁹ *D.M.*, Docket No. 20-0386 (issued August 10, 2020); *John J. Carlone*, 41 ECAB 354 (1989).

¹⁰ *A.R.*, Docket No. 19-0465 (issued August 10, 2020); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

¹¹ *W.L.*, Docket No. 19-1581 (issued August 5, 2020); *Leslie C. Moore*, 52 ECAB 132 (2000).

¹² See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.800.6(a) (June 2011); Chapter 2.805.3(c) (January 2013). See also *M.F.*, Docket No. 19-0578 (issued January 26, 2021); *S.S.*, Docket No. 20-0509 (issued August 18, 2020).

¹³ *Id.* at Chapter 2.805.3(d) (January 2013).

¹⁴ *Supra* note 12; see also *K.P.*, Docket No. 18-0350 (issued February 11, 2020); *A.P.*, Docket No. 19-0224 (issued July 11, 2019).

¹⁵ *Id.*

record OWCP shall make payment and/or reimbursement of medical expenses with regard to the accepted laceration of the right eyebrow.¹⁶

The Board further finds, however, that appellant has not established additional conditions as causally related to the accepted employment injury.

In his October 14 and 24, 2019 form reports, Dr. Arnold also diagnosed a mild concussion. In an October 14, 2019 state workers' compensation form report, he checked a box to indicate that the conditions for which treatment was sought were work related. However, the Board has held that an opinion on causal relationship with an affirmative check mark, without more, by way of medical rationale, is insufficient to establish the claim.¹⁷ In October 24, 2019 report, Dr. Arnold noted that he examined appellant and diagnosed laceration of the right eyebrow. He opined that the encounter was related to appellant's workers' compensation claim. However, Dr. Arnold did not offer medical rationale to explain how or why the accepted employment injury caused or contributed to appellant's diagnosed concussion. 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.¹⁸ As such, Dr. Arnold's reports are insufficient to establish additional conditions as causally related to the accepted employment injury.

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 FECA¹⁹ 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 payment of compensation at any time on his own motion or on application.²⁰

To require OWCP to reopen a case for merit review under 5 U.S.C. § 8128(a), OWCP regulations provide that the evidence or argument submitted by a claimant must: (1) show that OWCP erroneously applied or interpreted a specific point of law; (2) advance a relevant legal

¹⁶ See *B.C.*, Docket No. 20-0498 (issued August 27, 2020) (the Board accepted lumbar contusion as causally related to the accepted employment incident); *S.H.*, Docket No. 20-0113 (issued June 24, 2020) (the Board accepted a right ankle contusion as causally related to the accepted employment incident); *M.A.*, Docket No. 13-1630 (issued June 18, 2014).

¹⁷ *C.S.*, Docket No. 18-1633 (issued December 30, 2019); *D.S.*, Docket No. 17-1566 (issued December 31, 2018).

¹⁸ See *Y.D.*, Docket No. 16-1896 (issued February 10, 2017) (a report is of limited probative value regarding causal relationship if it does not contain medical rationale describing the relationship between work factors and a diagnosed condition/disability).

¹⁹ *Supra* note 1

²⁰ 5 U.S.C. § 8128(a).

argument not previously considered by OWCP; or (3) constitute relevant and pertinent new evidence not previously considered by OWCP.²¹

A request for reconsideration must be received by OWCP within one year of the date of its decision for which review is sought.²² If it chooses to grant reconsideration, it reopens and reviews the case on its merits.²³ 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.²⁴

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied appellant's request for reconsideration with regard to his claim that he sustained a concussion causally related to the accepted employment injury.

Appellant's April 16, 2020 request for reconsideration did not establish that OWCP erroneously applied or interpreted a specific point of law, or advance a relevant legal argument not previously considered by OWCP. Consequently, the Board finds that he is not entitled to a review of the merits based on either the first or second requirement under 20 C.F.R. § 10.606(b)(3).²⁵

In support of his request, appellant submitted an October 24, 2019 report from Dr. Arnold who examined him and diagnosed laceration of the right eyebrow. Dr. Arnold noted that the encounter was related to appellant's workers' compensation claim and that his sutures were removed without complication. Appellant also resubmitted form reports from Dr. Arnold, dated October 14 and 24, 2019. Providing additional medical evidence that either duplicates or is substantially similar to evidence of record does not constitute a basis for reopening a case.²⁶ As appellant did not provide relevant and pertinent new evidence, he is not entitled to a merit based on the third requirement under 20 C.F.R. § 10.606(b)(3).²⁷

²¹ 20 C.F.R. § 10.606(b)(3); *see also H.H.*, Docket No. 18-1660 (issued March 14, 2019); *L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008)

²² *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 its 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

²³ *Id.* at § 10.608(a); *see also M.S.*, 59 ECAB 231 (2007).

²⁴ *Id.* at § 10.608(b); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

²⁵ *Supra* note 23.

²⁶ *M.O.*, Docket No. 19-1677 (issued February 25, 2020); *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

²⁷ *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).

CONCLUSION

The Board finds that appellant has met his burden of proof to establish a laceration causally related to the accepted October 14, 2019 employment incident. The Board further finds, however, that appellant has not established that his diagnosed concussion was causally related to the accepted employment injury and OWCP properly denied appellant's request for reconsideration of the merits of his claim with regard to the diagnosed concussion.

ORDER

IT IS HEREBY ORDERED THAT the December 3, 2019 and April 3 and 24, 2020 decisions of the Office of Workers' Compensation Programs are affirmed in part and reversed in part and the case is remanded for further proceedings consistent with this decision of the Board.²⁸

Issued: February 11, 2021
Washington, DC

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

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

²⁸ Christopher J. Godfrey, Deputy Chief Judge, who participated in the preparation of the decision, was no longer a member of the Board after January 20, 2021.