United States Department of Labor
Employees' Compensation Appeals Board

P.S., Appellant	)	
and	)	**Docket No. 10-1560**
	)	**Issued: June 23, 2011**
DEPARTMENT OF HEALTH & HUMAN SERVICES, NATIONAL INSTITUTES OF HEALTH, Bethesda, MD, Employer	)	

Appearances:
Appellant, pro se
Hans K Wild, Esq., for the Director

Oral Argument May 11, 2011

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 25, 2010 appellant filed an appeal of a merit decision of the Office of Workers' Compensation Programs (OWCP) dated March 8, 2010 denying her claim and a May 12, 2010 decision denying her request for an oral hearing. Pursuant to the Federal Employees' Compensation Act (FECA)[1] and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.

ISSUES

The issues are: (1) whether appellant has met her burden of proof to establish that she sustained an injury in the performance of duty on January 15, 2010, as alleged; and (2) whether OWCP properly denied her request for an oral hearing as untimely.

On appeal, appellant requests that OWCP pay outstanding medical bills for services rendered in connection with the January 15, 2010 incident.

[1] 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

On January 26, 2010 appellant, then a 62-year-old biomedical librarian/informationist, filed a traumatic injury claim, Form CA-1, alleging that on January 15, 2010 she sustained back, neck and head trauma after being in an automobile accident in Boston, MA. She was a passenger in a taxi when the accident occurred. Appellant was transported to the emergency room at the local hospital and released the same day.

In support of her claim, appellant submitted a January 26, 2010 treatment note from Dr. Heike Bailin, a Board-certified family practice physician, who noted that she reported that on January 15, 2010 at approximately 1:20 p.m. in Boston, she was traveling by taxi from the airport to the hotel for work-related conference when her taxi collided with a sport utility vehicle (SUV). Dr. Bailin noted that she had been treated at Tufts Medical Center for lumbar-hip strain and was working full duty. Appellant reported neck pain and dizziness. Dr. Bailin provided an assessment of motor vehicle accident while on work travel with low back pain and hip pain, now resolved, cervical pain and dizziness.

In a February 4, 2010 letter, OWCP advised appellant that the information was insufficient to support her claim and requested that she provide additional factual and medical information within 30 days. It advised her that her physician must submit a detailed, narrative medical report and explain why the condition diagnosed was believed to have been caused or aggravated by her claimed injury.

In several statements, appellant advised that on January 15, 2010 she was on official duty in Boston when the taxi in which she was a passenger collided with an SUV. In support of her assertion she provided: January 13, 2010 travel authorization; e-mails from appellant to her supervisor, Susan Whitmore, dated January 15 and 17, 2010, which detailed her accident on January 15, 2010; a January 15, 2010 Boston Police Department Incident report; a February 16, 2010 statement from Carol M. Tobin, University of North Carolina at Chapel Hill University Library; and a February 17, 2010 statement from Ms. Whitmore, Chief, Information and Education Services Branch.

In the January 15, 2010 police incident report, Edward T. Norton, reporting officer, indicated that about 1:21 p.m. on Friday, January 15, 2010 he received a radio call for a motor vehicle accident with injuries. The report indicated that appellant was a passenger in the taxi which was involved in the motor vehicle accident and that she was taken by ambulance to Tufts New England Medical Center for treatment of injuries to her neck and back.

In a February 16, 2010 statement, Ms. Tobin indicated that appellant had called her around 1:21 p.m. on January 15, 2010 and told her that the cab she was riding in had been in an accident. She stated that she went outside the hotel and saw the cab and the SUV, both of which had damage, as well as rescue workers and security/police directing people around the accident. Ms. Tobin stated that appellant was in an ambulance and that the paramedics stated that she should go to the hospital. In a February 17, 2010 statement, Ms. Whitmore indicated that appellant was on official duty when she was traveling from Bethesda, MD, to Boston, MA, to attend the American Library Association mid-winter meeting when the motor vehicle accident occurred.

Appellant also submitted a January 20, 2010 receipt from Potomac Physician Associates; a Blue Cross, Blue Shield Statement -- Explanation of Benefits paid; January 15, 2010 discharge instructions from the Tufts Medical Center Emergency Department; and a January 21, 2010 computerized tomography (CT) scan. The January 15, 2010 discharge instructions from the Tufts Medical Center Emergency Department stated "care provided by Dr. Sanja Petrovic, [a Board-certified psychiatrist] with the diagnosis of Hip-Thigh Sprain -- s/p mva."

By decision dated March 8, 2010, OWCP denied appellant's claim. It found that the employment incident occurred as alleged but there was insufficient medical evidence to establish that the incident caused an injury.

In an appeal request form dated April 7, 2010, appellant requested an oral hearing before OWCP's hearing representative. The request was postmarked April 8, 2010. Appellant submitted an April 7, 2010 statement along with a January 15, 2010 medical report from Dr. Franklin Friedman, a Board-certified emergency physician.

By decision dated May 12, 2010, OWCP's Branch of Hearings and Review denied appellant's request for an oral hearing on the grounds that it was not timely filed. It considered the matter in relation to the issue involved and further denied the request for the reason that the issue in the case could be addressed by requesting reconsideration.[2]

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA has the burden of establishing 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, that an injury[3] 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]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a fact of injury has been established. A fact of injury determination is based on two elements. First, 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. Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused

[2] On appeal, appellant specifically referenced the January 15, 2010 report of Dr. Friedman, which was received in the record after OWCP issued its March 8, 2010 decision. The Board may not consider this evidence on appeal as OWCP did not consider it in reaching a decision. *See* 20 C.F.R. § 501.2(c)(1) (2010).

[3] OWCP's regulations define a traumatic injury as a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected. 20 C.F.R. § 10.5(ee).

[4] *See Steven S. Saleh*, 55 ECAB 169 (2003); *Elaine Pendleton*, 40 ECAB 1143 (1989); *E.K.*, Docket No. 09-1827 (issued April 21, 2010).

a personal injury.[5] An employee may establish that the employment incident occurred as alleged but fail to show that his or her condition relates to the employment incident.[6]

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the compensable employment factors. 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 the specific employment factors identified by the employee.[7]

ANALYSIS -- ISSUE 1

There is no dispute that appellant was in the performance of duty when the motor vehicle accident occurred on January 15, 2010, as alleged. Therefore, the issue is whether she submitted sufficient medical evidence to establish that the employment incident caused an injury.

Appellant submitted discharge instructions from Tufts Medical Center which reference Dr. Petrovic and note that she was diagnosed with hip/thigh sprain status post motor vehicle accident. However, Dr. Petrovic offers no opinion which addresses how the January 15, 2010 accepted motor vehicle accident caused her diagnosed conditions. The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[8] Thus, the discharge instructions are insufficient to establish appellant's claim.

In his January 26, 2010 progress notes, Dr. Bailin noted the history of the work incident. He provided an assessment of motor vehicle accident while on work travel with low back pain and hip pain, now resolved; cervical pain and dizziness. While he noted in general the motor vehicle accident, Dr. Bailin did not specifically state that the work incident caused appellant's pain and he failed to provide a well-rationalized opinion on causal relationship. Medical reports not containing adequate rationale on causal relationship are of diminished probative value and are insufficient to meet an employee's burden of proof.[9] Additionally, Dr. Bailin's assessment of resolved low back and hip pain, cervical pain and dizziness are descriptions of a symptom rather

[5] In clear-cut traumatic injury claims where fact of injury is established and competent to cause the condition described, such as a fall from a scaffold resulting in a broken arm, a physician's affirmative statement is sufficient and no rationalized opinion on causal relationship is needed. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3d(2) (June 1995). In all other traumatic injury claims, a rationalized medical opinion supporting causal relationship is required. *Id.* at Chapter 2.805.3d(3).

[6] *Id. See Shirley A. Temple*, 48 ECAB 404 (1997); *John J. Carlone*, 41 ECAB 354 (1989).

[7] *See Gary J. Watling*, 52 ECAB 278 (2001).

[8] *See K.W.*, 59 ECAB 271 (2007); *Michael E. Smith*, 50 ECAB 313 (1999).

[9] *Ceferino L. Gonzales*, 32 ECAB 1591 (1981).

than a clear diagnosis of the medical condition.[10] It becomes almost impossible to establish causal connection in appellant's claim because he has not identified a medical condition that causes her pain. Thus, Dr. Bailin's progress notes are insufficient to establish appellant's burden of proof.

The remainder of the medical evidence, which includes a CT scan, is insufficient to establish the claim as the diagnostic study does not address causal relationship. The other evidence of record, which includes a receipt from Potomac Physician Associates, a statement from Blue Cross, Blue Shield, the travel authorization, the police report, as well as the various statements from appellant and others, are insufficient as they fail to provide a physician's opinion on the medical issue of causal relationship.

As appellant has not submitted any rationalized medical evidence to support her claim that she sustained an injury causally related to the January 15, 2010 employment incident, she has failed to meet her burden of proof to establish a claim. The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference of causal relation.[11] An award of compensation may not be based on surmise, conjecture, speculation or on the employee's own belief of causal relation.[12] Causal relationships must be established by rationalized medical opinion evidence. Appellant failed to submit such evidence and OWCP properly denied her claim for compensation.

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.

The Board further finds that OWCP did not adjudicate the issue of appellant's medical expenses incurred on January 15, 2010. On appeal, appellant requested payment of medical bills for emergency care services rendered on January 15, 2010 at Tufts Medical Center emergency department. Ordinarily, the employing establishment will authorize treatment of a job-related injury by providing the employee a properly executed (Form CA-16) within four hours.[13] In this case, the record does not contain a Form CA-16 or any other authorization from OWCP for medical treatment. However, under section 8103 of the Act, OWCP has broad discretionary authority to approve unauthorized medical care which it finds necessary and reasonable in cases of emergency or other unusual circumstances.[14]

[10] The Board has consistently held that pain is a symptom, rather than a compensable medical diagnosis. *C.F.*, Docket No. 08-1102 (issued October 10, 2008).

[11] *Daniel O. Vasquez*, 57 ECAB 559 (2006).

[12] *D.D.*, 57 ECAB 734 (2006).

[13] *Val D. Wynn*, 40 ECAB 666 (1989); *see also* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Authorizing Examination and Treatment*, Chapter 3.300.3(a)(3) (September 1995).

[14] 5 U.S.C. § 8103; 20 C.F.R. § 10.304. *See L.B.*, Docket No. 10-469 (issued June 2, 2010); *D.R.*, Docket No. 10-1280 (issued February 1, 2011); *see also* Federal (FECA) Procedure Manual Chapter 3.300.3(a)(3), *supra* note 7.

Appellant was transported to the emergency room at Tufts Medical Center for examination immediately after the employment incident. OWCP did not adjudicate whether emergency or unusual circumstances were present.[15] Although it adjudicated and denied appellant's claim of injury, OWCP did not adjudicate the issue of whether she should be reimbursed for medical expenses incurred. OWCP is required to exercise its discretion to determine whether medical care has been authorized, or whether unauthorized medical care involved emergency or unusual circumstances, and is therefore reimbursable regardless of whether the underlying claim for benefits has been accepted or denied.[16] The case will be remanded for further development of this issue.

LEGAL PRECEDENT -- ISSUE 2

Section 8124(b)(1) of FECA provides in pertinent part as follows:

> Before review under section 8128(a) of this title, a claimant for compensation not satisfied with a decision of the Secretary is entitled, on request made within 30 days after the date of issuance of the decision, to a hearing on her claim before a representative of the Secretary.[17]

The claimant can choose between two formats: an oral hearing or a review of the written record.[18] The requirements are the same for either choice.[19] The Board has held that section 8124(b)(1) is unequivocal in setting forth the time limitation for requesting hearings or reviews of the written record. A claimant is entitled to a hearing or review of the written record as a matter of right only if the request is filed within the requisite 30 days as determined by postmark or other carrier's date marking[20] and before the claimant has requested reconsideration.[21] However, when the request is not timely filed or when reconsideration has previously been requested, OWCP may within its discretion, grant a hearing or review of the written record, and must exercise this discretion.[22]

ANALYSIS -- ISSUE 2

OWCP denied appellant's claim on March 8, 2010. Appellant's request for an oral hearing before an OWCP hearing representative was dated April 7, 2010 and postmarked

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[15] *E.K., supra* note 4.

[16] *Michael L. Malone*, 46 ECAB 957 (1995). *See Herbert J. Hazard*, 40 ECAB 973 (1989).

[17] 5 U.S.C. §§ 8101-8193, § 8124(b)(1).

[18] 20 C.F.R. § 10.615.

[19] *Claudio Vazquez*, 52 ECAB 496, 499 (2001).

[20] 20 C.F.R. § 10.616(a); *Tammy J. Kenow*, 44 ECAB 619 (1993).

[21] *Martha A. McConnell*, 50 ECAB 129, 130 (1998).

[22] *Id.*

April 8, 2010. The date of filing of her hearing request is determined by the date of the postmark.[23] Appellant's April 8, 2010 hearing request was made more than 30 days after the date of OWCP's March 8, 2010 decision. Therefore, the Board finds that her request for an oral hearing was not timely. The 30-day time period for determining the timeliness of appellant's request for an oral hearing or review commences on the first day following the issuance of OWCP's decision.[24] As OWCP's decision was issued March 8, 2010, the 30-day period for requesting an oral hearing began to run on March 9, 2010 and the last or 30th day was April 7, 2010. Since appellant's request for an oral hearing was postmarked April 8, 2010, it was untimely as it fell on the 31st day after the issuance of OWCP's decision. Accordingly, she was not entitled to a hearing as a matter of right.

OWCP has the discretionary authority to grant a hearing even though a claimant is not entitled as a matter of right. In its May 12, 2010 decision, OWCP properly exercised its discretion. OWCP considered the issue involved and denied appellant's request for a hearing on the basis that her claim on the issue of whether she established an injury on January 15, 2010, as alleged, could be adequately addressed through the reconsideration process and the submission of additional evidence. The Board has held that the only limitation on OWCP's authority is reasonableness. Abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment or actions taken which are contrary to both logic and probable deduction from established facts.[25] In the present case, OWCP did not abuse its discretion in denying a discretionary hearing. For these reasons, it properly denied appellant's request for an oral hearing under section 8124 of FECA.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she sustained an injury on January 15, 2010, as alleged. The Board also finds that OWCP properly denied appellant's request for an oral hearing as untimely. The case will be returned to OWCP for consideration of whether appellant's medical expenses related to her treatment on January 15, 2010 should be reimbursed.

[23] *See N.M.*, 59 ECAB 511 (2008) (a hearing request must be sent within 30 days of the date of the decision for which a hearing is sought as determined by postmark or other carrier's date marking).

[24] *See Donna A. Christley*, 41 ECAB 90, 91 (1989); *see also John B Montoya*, 43 ECAB 1148, 1151-52 (1992).

[25] *Teresa M. Valle*, 57 ECAB 542 (2006); *Daniel J. Perea*, 42 ECAB 214 (1990).

ORDER

IT IS HEREBY ORDERED THAT the May 12, 2010 the Office of Workers' Compensation Programs' decision is affirmed and March 8, 2010 decision is affirmed in part and set aside and remanded for further development consistent with this decision.

Issued: June 23, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board