

OWCP properly denied appellant's request for review of the written record before an OWCP hearing representative as untimely filed pursuant to 5 U.S.C. § 8124(b).

FACTUAL HISTORY

On June 17, 2018 appellant, then a 63-year-old specialized postal clerk, filed a traumatic injury claim (Form CA-1) alleging that on May 23, 2018 he sustained a right shoulder sprain and rotator cuff injury as a result of securing sacks with metal labels while in the performance of duty. He did not stop work.

On the date of injury, the employing establishment issued a properly executed authorization for examination and/or treatment (Form CA-16), which indicated that appellant was authorized to seek medical treatment at Caduceus USA for his May 23, 2018 right shoulder injury. The accompanying attending physician's report, Part B of the Form CA-16, was completed on May 24, 2018 by a physician with an illegible signature noting treatment for right shoulder pain and recommending minimizing repetitive use including pushing/pulling with the right hand.

In support of his claim, appellant submitted medical reports and progress notes from Caduceus USA dated May 23 through September 11, 2018 documenting treatment for his right shoulder condition. Initially, he was treated on May 23, 2018 by a nurse practitioner whose findings were countersigned by a Dr. Stephen A. Dawkins, specializing in occupational medicine. Dr. Dawkins noted a diagnosis of impingement and strain of the right shoulder. In an August 23, 2018 medical report, Dr. William Huey, a specialist in occupational medicine, reported that appellant presented for follow up of his right shoulder injury. He reported that over the last several months appellant noted increasing pain in the anterior right shoulder. Appellant reported his injury on May 23, 2018 and was referred for an evaluation on that date. Dr. Huey reported that a magnetic resonance imaging (MRI) scan of the right shoulder demonstrated a partial thickness supraspinatus and labrum tear. He diagnosed right shoulder impingement syndrome, unspecified sprain of right shoulder joint, and right shoulder synovitis and tenosynovitis. Dr. Huey opined that appellant's injury occurred over the last several months which he believed was due to repetitive opening of sealed mailbags containing high value items. He noted that opening the seals on these bags required "quite a bit" of force with the right arm and shoulder and that appellant performed this task repetitively and often while working.

In a development letter dated September 18, 2018, OWCP noted that when appellant's claim was first received it appeared to be a minor injury that resulted in minimal or no lost time from work. Based on this criteria, it had administratively approved payment of a limited amount of medical expenses. However, the merits of his claim had not been formally considered and OWCP advised appellant of the deficiencies of his claim. It requested additional factual and medical evidence and provided a questionnaire for his completion. OWCP afforded appellant 30 days to respond.

OWCP received additional reports from Dr. Huey dated September 11 and 18, 2018 documenting treatment for appellant's right shoulder condition, as well as physical therapy notes dated August 30 through September 13, 2018.

By decision dated November 2, 2018, OWCP denied appellant's claim finding that the medical evidence of record failed to establish that his diagnosed right shoulder condition was causally related to the accepted employment incident.

On December 8, 2018 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.

By decision dated December 19, 2018, an OWCP hearing representative determined that appellant was not entitled to a review of the written record as a matter of right because his request was not made within 30 days of the issuance of its November 2, 2018 decision. It exercised its discretion and determined that the issue in the case could equally well be addressed by requesting reconsideration and submitting evidence not previously considered on the issue of causal relationship.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA 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,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

In order to determine whether an employee actually sustained an injury in the performance of duty in a traumatic injury claim, OWCP begins with an analysis of whether fact of injury has been established.⁶ Fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.⁷ The second component is whether the employment incident caused a personal injury and can only be established by medical evidence.

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.⁸ A physician's opinion on whether there is a causal relationship

³ *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.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁵ *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁶ *D.B.*, Docket No. 18-1348 (issued January 4, 2019).

⁷ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁸ *J.F.*, Docket No. 19-0456 (issued July 12, 2014); *T.H.*, 59 ECAB 388, 393 (2008).

between the diagnosed condition and the accepted employment incident must be based on a complete factual and medical background.⁹ Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and the specific employment incident.¹⁰

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met his burden of proof to establish right shoulder conditions causally related to the accepted May 23, 2018 employment incident.¹¹

In support of his claim, appellant submitted medical documentation dated May 23 through September 18, 2018 from Caduceus USA. The Board finds that the Caduceus USA physician reports are not well rationalized and fail to establish appellant's right shoulder claim.¹² Amongst these medical reports, Dr. Huey and Dr. Dawkins discussed treatment for appellant's right shoulder beginning on May 23, 2018. While the physicians provided firm diagnoses of right shoulder impingement syndrome, unspecified sprain of right shoulder joint, and right shoulder synovitis and tenosynovitis, they failed to provide a probative rationalized opinion regarding the cause of appellant's conditions.¹³ Dr. Huey reported that over the last several months appellant had complained of increasing pain in the anterior right shoulder, causing him to report his injury and seek medical treatment on May 23, 2018. He opined that appellant's injury occurred over the last several months due to repetitive opening of sealed mailbags containing high value items, noting that opening the seals required quite a bit of force with the right arm and shoulder, and that appellant performed this task repetitively and often while working. The Board notes, however, that appellant alleged that his condition was causally related to a single incident on May 23, 2018. If he believes that his employment duties aggravated his condition over a period of days or shifts, this could be an occupational disease.¹⁴ The Board has found that a physician must provide a narrative description of the identified employment incident and a reasoned opinion on whether the employment incident described caused or contributed to appellant's diagnosed medical conditions.¹⁵ In this instance, Dr. Huey's generalized statements do not establish causal relationship because they are unsupported by adequate medical rationale explaining how the physical activity on May 23, 2018 actually caused the diagnosed right shoulder conditions.¹⁶ He did not provide a physiological explanation as to how appellant's employment incident as alleged

⁹ *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *Robert G. Morris*, 48 ECAB 238 (1996).

¹⁰ *Id.*; *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

¹¹ *T.S.*, Docket No. 17-1709 (issued May 7, 2018).

¹² *S.F.*, Docket No. 18-1030 (issued April 5, 2019).

¹³ *J.C.*, Docket No. 19-0310 (issued June 18, 2019).

¹⁴ *G.R.*, Docket No. 17-0669 (issued July 19, 2017).

¹⁵ *See V.J.*, Docket No. 17-0358 (issued July 24, 2018); *John W. Montoya*, 54 ECAB 306 (2003).

¹⁶ *T.W.*, Docket No. 18-1436 (issued April 10, 2019).

on May 23, 2018 either caused or contributed to his diagnosed right shoulder conditions.¹⁷ Thus, the Board finds that these reports are insufficient to establish appellant's traumatic injury claim.

The remaining medical evidence is also insufficient to establish appellant's claim. The Caduceus USA physical therapy notes have no probative medical value in establishing his claim. Physical therapists are not considered "physician[s]" as defined under FECA.¹⁸ Consequently, their findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.¹⁹

Additionally, the attending physician's report, Part B of Form CA-16, was completed by a health provider with an illegible signature. As such, this report has no probative value as it is not established that the author is a physician.²⁰

The Board finds that the record lacks rationalized medical evidence establishing a causal relationship between the accepted employment incident of May 23, 2018 and appellant's diagnosed right shoulder conditions.²¹ Thus, appellant has not met his 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 10.607.²²

LEGAL PRECEDENT -- ISSUE 2

Section 8124(b)(1) of FECA provides that 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 the issuance of the decision, to a hearing on his or her claim

¹⁷ *D.F.*, Docket No. 19-0067 (issued May 3, 2019).

¹⁸ 5 U.S.C. § 8102(2) of FECA provides that the term "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. *S.J.*, Docket No. 17-0783, n.2 (issued April 9, 2018) (a nurse practitioner is not a physician under FECA); *J.L.*, Docket No. 17-1207 (issued December 8, 2017) (a physical therapist is not a physician under FECA); *David P. Sachiko*, 57 ECAB 316, 320 n.11 (2006).

¹⁹ *N.B.*, Docket No. 19-0221 (issued July 15, 2019).

²⁰ *See S.G.*, Docket No. 18-1076 (issued April 11, 2019); *D.D.*, 57 ECAB 734 (2006); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

²¹ *K.L.*, Docket No. 18-1029 (issued January 9, 2019).

²² The record contains a Form CA-16 signed by the employing establishment official on May 23, 2018. When the employing establishment properly executes a Form CA-16 which authorizes medical treatment as a result of an employee's claim for an employment-related injury, the CA-16 Form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. The period for which treatment is authorized by a Form CA-16 is limited to 60 days from the date of issuance, unless terminated earlier by OWCP. *See* 20 C.F.R. §§ 10.300 and 10.304; *R.W.*, Docket No. 18-0894 (issued December 4, 2018).

before a representative of the Secretary.²³ Section 10.615 of the federal regulations implementing this section of FECA provides that a claimant shall be afforded a choice of an oral hearing or a review of the written record.²⁴ OWCP regulations provide that the 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, and also that the claimant must not have previously submitted a reconsideration request (whether or not it was granted) on the same decision.²⁵

The Board has held that OWCP, in its broad discretionary authority in the administration of FECA,²⁶ has the power to hold hearings in certain circumstances where no legal provision was made for such hearings and that OWCP must exercise this discretionary authority in deciding whether to grant a hearing.²⁷ OWCP procedures, which require OWCP to exercise its discretion to grant or deny a hearing when the request is untimely or made after reconsideration, are a proper interpretation of FECA and Board precedent.²⁸

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied appellant's December 8, 2018 request for a review of the written record before an OWCP hearing representative as untimely filed under 5 U.S.C. § 8124(b).

A request for a hearing must be made within 30 days after the date of the issuance of an OWCP final decision. Appellant submitted an appeal request form dated December 8, 2018 requesting a review of the written record. As the request was submitted more than 30 days following issuance of the November 2, 2018 merit decision, the Board finds that it was untimely filed and appellant was not entitled to a review of the written record as a matter of right.²⁹ Section 8124(b)(1) is unequivocal on the time limitation for requesting a hearing.³⁰

The Board further finds that OWCP properly exercised its discretion in denying appellant's request for a review of the written record by determining that the issue in the case could equally well be addressed by requesting reconsideration and submitting new evidence or argument relevant to the issue of causal relationship. The Board has held that the only limitation on OWCP's authority is reasonableness, and an abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to

²³ 5 U.S.C. § 8124(b)(1).

²⁴ 20 C.F.R. § 10.615.

²⁵ *Id.* at § 10.616(a).

²⁶ *Supra* note 1.

²⁷ *R.K.*, Docket No. 17-0151 (issued December 12, 2018); *Marilyn F. Wilson*, 52 ECAB 347 (2001).

²⁸ *D.W.*, Docket No. 17-1413 (issued December 18, 2018); *Teresa M. Valle*, 57 ECAB 542 (2006).

²⁹ *W.C.*, Docket No. 18-1651 (issued March 7, 2019).

³⁰ 5 U.S.C. § 8124(b)(1); *see R.H.*, Docket No. 18-1602 (issued February 22, 2019); *William F. Osborne*, 46 ECAB 198 (1994).

both logic and probable deduction from established facts.³¹ Because reconsideration exists as an alternative appeal right to address the issue raised by OWCP's November 2, 2018 decision, the Board finds that OWCP has not abused its discretion in denying appellant's untimely request for a review of the written record.³²

Accordingly, the Board finds that OWCP properly denied appellant's December 8, 2018 request for a review of the written record as untimely filed pursuant to 5 U.S.C. § 8124(b).³³

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish right shoulder conditions causally related to the accepted May 23, 2018 employment incident. The Board also finds that OWCP did not abuse its discretion by denying appellant's request for a review of the written record before an OWCP hearing representative as untimely filed pursuant to 5 U.S.C. § 8124(b).

ORDER

IT IS HEREBY ORDERED THAT the December 19 and November 2, 2018 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: September 4, 2019
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

³¹ *M.K.*, Docket No. 19-0428 (issued July 15, 2019); *Daniel J. Perea*, 42 ECAB 214, 221 (1990).

³² *See J.N.*, Docket No. 18-0646 (issued January 28, 2019).

³³ *R.P.*, Docket No. 16-0554 (issued May 17, 2016); *D.P.*, Docket No. 14-308 (issued April 21, 2014); *D.J.*, Docket No. 12-1332 (issued June 21, 2013).