

FACTUAL HISTORY

On October 26, 2021 appellant, then a 58-year-old physical security specialist, filed a traumatic injury claim (Form CA-1) alleging that on October 7, 2021 he injured his left biceps tendon when removing equipment from a rack while in the performance of duty. He stopped work on October 29, 2021.

In support of his claim, appellant submitted a referral note dated October 11, 2021 from Dr. John A. Rog, a Board-certified family medicine specialist, who diagnosed a spontaneous rupture of the bicep tendon and referred appellant to an orthopedic surgeon.

OWCP also received an employing establishment position description for physical security specialist and a surgical consent form signed by appellant on October 25, 2021.

In a November 15, 2021 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence needed and provided a questionnaire for his completion. OWCP afforded appellant 30 days to respond.

OWCP thereafter received a form report dated November 2, 2021 by Dr. Alfred Hess, a Board-certified orthopedic and hand surgeon, who noted that appellant had undergone left distal bicep surgery on October 29, 2021 and should remain out of work for four to six weeks.

By decision dated December 21, 2021, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish that his left bicep condition was causally related to the accepted October 7, 2021 employment incident.

OWCP thereafter received additional medical evidence and an employing establishment incident report.

On January 24, 2022 appellant submitted a request for a telephonic oral hearing before a representative of OWCP's Branch of Hearings and Review. The request was dated January 18, 2022 and was electronically signed by appellant on January 24, 2022.

By decision dated February 7, 2022, OWCP's Branch of Hearings and Review denied appellant's request for an oral hearing, finding that it was untimely filed. It further 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, which established a medical condition causally related to his federal employment.

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,² that the claim was timely filed within the applicable

² *K.R.*, Docket No. 20-0995 (issued January 29, 2021); *A.W.*, Docket No. 19-0327 (issued July 19, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

time limitation period of FECA, 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.³ 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.⁴

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 and 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.⁵

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.⁶ 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.⁷

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met his burden of proof to establish a left bicep condition causally related to the accepted October 7, 2021 employment incident.

In his October 11, 2021 referral note, Dr. Rog diagnosed a spontaneous rupture of the bicep tendon. In his November 2, 2021 form report, Dr. Hess noted that appellant had undergone surgery on October 29, 2021 to his left distal bicep. However, neither of these reports contained an opinion as to the cause of the diagnosed condition. The Board has held that a medical report that does not render an opinion on causal relationship is of no probative value and, thus, is insufficient to establish the claim.⁸ Therefore, these reports are insufficient to meet appellant's burden of proof.

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

⁴ *J.B.*, Docket No. 20-1566 (issued August 31, 2021); *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).

⁵ *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).

⁶ *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).

⁷ *T.L.*, Docket No. 18-0778 (issued January 22, 2020); *Y.S.*, Docket No. 18-0366 (issued January 22, 2020); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁸ *T.D.*, Docket No. 19-1779 (issued March 9, 2021).

As appellant has not submitted rationalized medical evidence to establish a left bicep condition causally related to the accepted October 7, 2021 employment incident, the Board finds that he 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.

LEGAL PRECEDENT -- ISSUE 2

Section 8124(b)(1) of FECA provides that “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 before a representative of the Secretary.”⁹ Sections 10.617 and 10.618 of the federal regulations implementing this section of FECA provide that a claimant shall be afforded a choice of an oral hearing or a review of the written record by a representative of the Secretary.¹⁰ 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 and before the claimant has requested reconsideration.¹¹ Although there is no right to a review of the written record or an oral hearing, if not requested within the 30-day time period, OWCP may within its discretionary powers grant or deny appellant’s request and must exercise its discretion.¹²

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied 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.

OWCP’s regulations provide that the request for a hearing or review of the written record must be made within 30 days of the date of the decision for which a review is sought. Because appellant’s request for a review of the written record was electronically signed and submitted on January 24, 2022, it postdated OWCP’s December 21, 2021 decision by more than 30 days and, accordingly, was untimely. Appellant was, therefore, not entitled to a review of the written record as a matter of right.¹³

⁹ *Supra* note 1 at § 8124(b)(1).

¹⁰ 20 C.F.R. §§ 10.616, 10.617.

¹¹ *Id.* at § 10.616(a).

¹² *W.H.*, Docket No. 20-0562 (issued August 6, 2020); *P.C.*, Docket No. 19-1003 (issued December 4, 2019); *M.G.*, Docket No. 17-1831 (issued February 6, 2018); *Eddie Franklin*, 51 ECAB 223 (1999); *Delmont L. Thompson*, 51 ECAB 155 (1999).

¹³ *See K.B.*, Docket No. 21-1038 (issued February 28, 2022); *M.F.*, Docket No. 21-0878 (issued January 6, 2022); *see also P.C.*, Docket No. 19-1003 (issued December 4, 2019).

OWCP, however, has the discretionary authority to grant the request and it must exercise such discretion.¹⁴ The Board finds that, in the February 7, 2022 decision, OWCP properly exercised its discretion by determining that the issue in the case could be equally well addressed through a request for reconsideration, along with the submission of additional evidence.

The Board has held that the only limitation on OWCP's authority is reasonableness. An 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 deductions from established facts.¹⁵ The Board finds that the evidence of record does not indicate that OWCP abused its discretion in connection with its denial of appellant's request for a review of the written record.

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

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a left bicep condition causally related to the accepted October 7, 2021 employment incident. The Board further finds that OWCP properly denied appellant's request for an oral hearing by an OWCP hearing representative as untimely filed, pursuant to 5 U.S.C. § 8124(b).

¹⁴ *Id.*

¹⁵ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the February 7, 2022 and December 21, 2021 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: July 20, 2022
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board