

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

S.M., Appellant)	
)	
and)	Docket No. 22-0075
)	Issued: May 6, 2022
DEPARTMENT OF STATE, FOREIGN)	
SERVICE, Washington, DC, Employer)	
)	

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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On October 21, 2021 appellant filed a timely appeal from a May 24, 2021 merit decision and an October 15, 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 has met her burden of proof to establish a medical condition causally related to the accepted July 30, 2019 employment incident; and (2) whether OWCP properly denied appellant's request for review of the written record as untimely filed, pursuant to 5 U.S.C. § 8124(b).

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On March 11, 2020 appellant, then a 50-year-old storekeeper, filed a traumatic injury claim (Form CA-1) alleging that on July 30, 2019 she felt pain in her left thumb as she packed supplies into a warehouse truck while in the performance of duty. She did not stop work.

In an April 19, 2021 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her as to the type of factual and medical evidence required. OWCP afforded appellant 30 days to respond.

In a report dated August 5, 2019, Dr. Chris Van Selm, an occupational health and family physician, noted appellant's date of injury as July 30, 2019. He related that she experienced slight swelling of the left thumb with residual numbness along the digit, after lifting a heavy object, but no limitation of movement, or pain noted.

OWCP received an August 15, 2019 bill from a medical clinic.

In an undated witness statement, S.M., a coworker, confirmed that on July 30, 2019 he was procuring supplies for the employing establishment with appellant. He recounted that she was packing some of the heaviest boxes and when they were done, she indicated that "she was feeling pain in her thumb, but we thought it was going to subside."

By decision dated May 24, 2021, OWCP denied appellant's traumatic injury claim, finding that appellant had established that the incident occurred on July 30, 2019, as alleged. However, appellant did not submit any medical evidence containing a diagnosis in connection with the accepted July 30, 2019 employment incident. Consequently, OWCP found that she had not met the requirements to establish an injury as defined by FECA.

By appeal request form dated September 27, 2021, appellant requested a review of the written record before a representative of OWCP's Branch of Hearings and Review.²

OWCP received an August 16, 2021 report from Dr. Danie Ungerer, a family practice physician, who diagnosed a soft tissue injury of the thumb with numbness and full motor function. It also received a copy of the August 5, 2019 note from Dr. Van Selm, the witness statement from S.M., and the clinic bill.

By decision dated October 15, 2021, OWCP denied appellant's request for review of the written record as untimely filed, finding that her request was not made within 30 days of the May 24, 2021 OWCP decision as it was received on September 27, 2021. It further exercised discretion and determined that the issue in this case could equally well be addressed by a request for reconsideration before OWCP along with the submission of new evidence.

² The record does not contain a postmarked envelope.³ *Supra* note 1.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA³ 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,⁴ 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.⁵ 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.⁶

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. First, 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. Second, the employee must submit sufficient evidence to establish that the employment incident caused a personal injury.⁷

The medical evidence required to establish a causal relationship is rationalized medical opinion evidence.⁸ 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 incident identified by the employee.⁹

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met her burden of proof to establish a medical condition causally related to the accepted July 30, 2019 employment incident.

Appellant submitted an August 5, 2019 report from Dr. Van Selm. Dr. Van Selm noted a date of injury of July 30, 2019. He found that appellant had slight swelling of the left thumb, with residual numbness along the digit, but no limitation of movement, and no pain after lifting a heavy

³ *Supra* note 1.

⁴ *F.H.*, Docket No. 18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁷ *T.J.*, Docket No. 19-0461 (issued August 11, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

⁸ *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).

⁹ *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).

object. Dr. Van Selm did not provide a firm diagnosis of a medical condition. The Board has previously explained that numbness is a symptom and not a diagnosis of a medical condition.¹⁰ A medical report lacking a firm diagnosis is of no probative value.¹¹ As such, this evidence is insufficient to meet appellant's burden of proof.

As the medical evidence of record is insufficient to establish a medically diagnosed condition due to the accepted July 30, 2019 employment incident, the Board finds that appellant has not met her burden of proof.¹²

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."¹³ 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.¹⁴ 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.¹⁵ 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.¹⁶

ANALYSIS -- ISSUE 2

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

¹⁰ See *R.B.*, Docket No. 11-1163 (issued November 18, 2011); *D.M.*, Docket No. 09-1425 (issued January 12, 2010).

¹¹ See *S.E.*, Docket No. 21-0666 (issued December 28, 2021); *J.P.*, Docket No. 20-0381 (issued July 28, 2020); *R.L.*, Docket No. 20-0284 (issued June 30, 2020).

¹² *Id.*

¹³ *Supra* note 1 at § 8124(b)(1).

¹⁴ 20 C.F.R. §§ 10.617, 10.618.

¹⁵ *Id.* at § 10.616(a).

¹⁶ See *A.M.*, Docket No. 21-0256 (issued July 22, 2021); *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).

OWCP's regulations provide that a request for review of the written record must be made within 30 days of the date of the decision for which a review is sought.¹⁷ Appellant, therefore, had 30 days following OWCP's May 24, 2021 merit decision to request a review by a representative of OWCP's Branch of Hearings and Review. As her request was dated September 27, 2021, more than 30 days after OWCP's May 24, 2021 decision, it was untimely filed and she was, therefore, not entitled to a review of the written record as a matter of right.¹⁸

OWCP also has the discretionary power to grant a review of the written record even if the claimant is not entitled to a review as a matter of right. The Board finds that OWCP, in its October 15, 2021 decision, properly exercised its discretion by determining that the issue in the case could be equally well addressed through a request for reconsideration before OWCP, along with the submission of additional evidence. The Board has held that as 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.¹⁹ In this case, OWCP did not abuse its discretion by denying appellant's request for review of the written record.

Accordingly, the Board finds that OWCP properly denied appellant's request for review of the written record as untimely filed, pursuant to 5 U.S.C. § 8124(b)(1).

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a medical condition causally related to the accepted July 30, 2019 employment incident. The Board further finds that OWCP properly denied appellant's request for review of the written record as untimely filed, pursuant to 5 U.S.C. § 8124(b).

¹⁷ *Supra* note 15.

¹⁸ Under OWCP's regulations and procedures, the timeliness of a request for a hearing or review of the written record is determined on the basis of the postmark of the envelope containing the request. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.4a. (September 2020); *see W.N.*, Docket No. 20-1315 (issued July 6, 2021); *see also G.S.*, Docket No. 18-0388 (issued July 19, 2018). As the case record does not include the date of the postmark, OWCP utilized the date of the request.

¹⁹ *See T.G.*, Docket No. 19-0904 (issued November 25, 2019); *Daniel J. Perea*, 42 ECAB 214 (1990).

ORDER

IT IS HEREBY ORDERED THAT the October 15 and May 24, 2021 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: May 6, 2022
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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