

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

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| C.H., Appellant |) | |
| |) | |
| and |) | Docket No. 24-0212 |
| |) | Issued: April 22, 2024 |
| U.S. POSTAL SERVICE, CHEYENNE |) | |
| PROCESSING AND DISTRIBUTION CENTER, |) | |
| Cheyenne, WY, Employer |) | |
| |) | |

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On December 27, 2023 appellant filed a timely appeal from a July 31, 2023 merit decision and an October 13, 2023 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 left knee condition causally related to the accepted July 26, 2022 employment incident; and (2) whether OWCP properly denied appellant's request for a 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 July 28, 2022 appellant, then a 58-year-old custodian, filed a traumatic injury claim (Form CA-1) alleging that on July 26, 2022 she strained her left knee when she pushed a heavy wire container into a compactor while in the performance of duty. She stopped work on July 27, 2022.

In a July 28, 2022 authorization for examination and/or treatment (Form CA-16), the employing establishing authorized appellant to seek medical care. In Part B of the Form CA-16, attending physician's report, of the same date, Robin Duncan, a nurse practitioner, reported that appellant experienced left knee pain with no acute injury. She diagnosed left knee pain. Ms. Duncan noted that it was "unknown" whether the diagnosed condition was caused or aggravated by the described employment activity. In a July 28, 2022 report, she treated appellant for pain of the anterior aspect of the left knee commencing July 26, 2022 after pushing a heavy piece of work equipment. Ms. Duncan reported having left knee surgery in the past. She diagnosed left knee pain.

A July 28, 2022 x-ray of the left knee revealed no fracture or other acute osseous finding identified.

On August 2, 2022 Dr. Bret Winter, a Board-certified orthopedist, performed a large joint arthrocentesis of the left knee. He noted appellant's history was significant for a left knee arthroscopy to repair a meniscal tear. Dr. Winter diagnosed arthritis of the left knee. In duty status reports (Form CA-17) dated August 2, 6, and 9, 2022, he diagnosed knee strain and arthritis of the left knee and noted that appellant was able to perform modified work duties.

A magnetic resonance imaging (MRI) scan of the left knee dated August 13, 2022 revealed longitudinal tear of the inner margin of the medial meniscus body and posterior horn with a displaced fragment in the suprapatellar bursa, moderate knee effusion, partial thickness cartilage loss within the patellofemoral compartment, small tricompartmental osteophytes, longitudinal tear of the body and posterior horn of the medial meniscus, flipped meniscal fragment located within the suprapatellar bursa, moderate knee effusion, and mild tricompartmental degenerative joint disease.

On September 12, 2022 Dr. Natalie Winter, a Board-certified anesthesiologist, performed a left genicular nerve radiofrequency ablation of the left superior medial genicular nerve, superior lateral genicular nerve, and inferior medial genicular nerve radiofrequency ablation. She diagnosed chronic left knee pain.

In a September 30, 2022 development letter, OWCP informed appellant of the deficiencies in her claim. It advised her of the type of factual and medical evidence needed and provided a questionnaire for her completion. OWCP afforded appellant 30 days to provide the necessary evidence.

OWCP received additional evidence. In a Form CA-17 dated October 7, 2022, Dr. Winter diagnosed arthritis of the left knee and advised that appellant could not resume work. In a Form

CA-17 dated October 11, 2022 and a separate note of the same date, he diagnosed arthritis of the left knee and returned appellant to work full time without restrictions.

In an October 12, 2022 response to the development letter, appellant reported a prior work-related left knee condition. She noted that on July 26, 2022 she was pushing a heavy container and strained her left knee and aggravated the preexisting arthritis of the left knee.

By decision dated October 31, 2022, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish a medical condition causally related to the accepted July 26, 2022 employment incident.

OWCP received additional evidence. On October 11, 2022 Dr. Winter treated appellant in follow up and noted the left knee incisions were well healed, there was no effusion, and range of motion was intact. He diagnosed arthritis of the left knee and returned her to work full time without restrictions.

On February 1, 2023 appellant requested reconsideration.

By decision dated February 8, 2023, OWCP denied modification of the October 31, 2022 decision.

On July 25, 2023 appellant requested reconsideration.

In a July 14, 2023 report, Dr. Winter related that appellant was moving a large bin of mail and felt a tearing sensation in the inside part of her left knee. He noted that she had a history of degenerative arthritis. Dr. Winter opined that appellant sustained a new acute injury when she attempted to move a heavy piece of mail. He reported that she was subsequently off work until her injury healed. Dr. Winter acknowledged that appellant's degenerative arthritis was a contributing factor to the injury but opined that it was not the cause of her injury.

By decision dated July 31, 2023, OWCP denied modification of the February 8, 2023 decision.

On October 4, 2023 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review of OWCP's October 31, 2022 decision.

In an undated statement, appellant reiterated a history of the July 26, 2022 injury and subsequent medical treatment.

By decision dated October 13, 2023, OWCP denied appellant's request for a review of the written record, finding that it was untimely filed. It further exercised its discretion and determined that the issue in this case could equally well be addressed by requesting reconsideration before OWCP, along with the submission of new evidence.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA² 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,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

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 an injury.⁶

The medical evidence required to establish causal relationship is rationalized medical opinion evidence.⁷ 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.⁸

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met her burden of proof to establish a left knee condition causally related to the accepted July 26, 2022 employment incident.

On July 14, 2023 Dr. Winter related that appellant was moving a large bin of mail and felt a tearing sensation in the inside part of her left knee. He opined that the new injury was caused by her attempting to move a heavy piece of mail noting that she had an acute injury and experienced

² *Id.*

³ *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).

⁴ *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).

⁵ *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).

⁶ *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).

⁷ *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).

⁸ *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).

associated pain. Dr. Winter acknowledged that her degenerative arthritis was a contributing factor to the injury, but was not the cause of her injury. He did not offer medical rationale explaining the basis of his conclusory opinion regarding the causal relationship between appellant's left knee and the July 26, 2022 employment incident.⁹ The Board has held that a mere conclusion without the necessary rationale is insufficient to meet a claimant's burden of proof.¹⁰ Thus, this report is insufficient to meet appellant's burden of proof.

On August 2, 2022 Dr. Winter performed a large joint arthrocentesis of the left knee and diagnosed arthritis of the left knee. In CA-17 forms dated August 2, 6, 9, and October 7, 2022, he diagnosed knee strain and arthritis of the left knee and noted that appellant was totally disabled. Similarly, in a report and a Form CA-17 dated October 11, 2022, Dr. Winter diagnosed arthritis of the left knee and returned appellant to work. Likewise, on September 12, 2022, Dr. Natalie Winter performed a left genicular nerve radiofrequency ablation left superior medial genicular nerve, superior lateral genicular nerve, and inferior medial genicular nerve radiofrequency ablation and diagnosed chronic left knee pain. However, in these reports Dr. Bret Winter and Dr. Natalie Winter failed to offer an opinion on causal relationship. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition or disability is of no probative value on the issue of causal relationship.¹¹ Thus, the Board finds that these reports are insufficient to meet appellant's burden of proof.

Appellant further submitted reports signed by Ms. Duncan, a nurse practitioner. These medical reports do not constitute competent medical evidence because a nurse practitioner is not considered a "physician" as defined under FECA and is therefore not competent to provide medical opinions.¹² Consequently, this evidence is also insufficient to establish appellant's claim.

The record also contains an MRI scan and an x-ray. The Board has held, however, that diagnostic studies, standing alone, lack probative value on the issue of causal relationship as they do not address whether the accepted employment injuries resulted in appellant's diagnosed medical conditions.¹³

⁹ *P.L.*, Docket No. 19-1750 (issued March 26, 2020); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

¹⁰ *A.T.*, Docket No. 19-0410 (issued August 13, 2019); *E.L.*, Docket No. 17-1632 (issued January 3, 2018).

¹¹ *See S.H.*, Docket No. 19-1128 (issued December 2, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹² Section 8102(2) of FECA provides as follows: (2) physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. 5 U.S.C. § 8102(2); 20 C.F.R. § 10.5(t). *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA); *see also B.D.*, Docket No. 22-0503 (issued September 27, 2022) (nurse practitioners are not considered physicians as defined under FECA and their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits); *L.S.*, Docket No. 19-1231 (issued March 30, 2021) (a nurse practitioner is not considered a physician as defined under FECA).

¹³ *L.A.*, Docket No. 22-0463 (issued September 29, 2022); *D.K.*, Docket No. 21-0082 (issued October 26, 2021); *O.C.*, Docket No. 20-0514 (issued October 8, 2020); *R.J.*, Docket No. 19-0179 (issued May 26, 2020).

As the medical evidence of record is insufficient to establish causal relationship between appellant's claimed left knee condition and the accepted July 26, 2022 employment incident, the Board finds that she has not met her 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, concerning a claimant's entitlement to a hearing before an OWCP representative, provides in pertinent part: "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 claim before a representative of the Secretary."¹⁴ Section 10.615 of OWCP's federal regulations, implementing this section of FECA, provides that a claimant who requests a hearing can choose between two formats, either an oral hearing or a review of the written record by an OWCP hearing representative.¹⁵ As section 8124(b)(1) is unequivocal in setting forth the time limitation for requesting a hearing, a claimant is not entitled to a hearing as a matter of right unless the request is made within the requisite 30 days,¹⁶ as determined by postmark or other carrier's date marking, and before the claimant has requested reconsideration.¹⁷

Specifically, the Board has held that OWCP has the discretion to grant or deny a hearing request on a claim involving an injury sustained prior to the enactment of the 1966 amendments to FECA, which provided the right to a hearing,¹⁸ when the request is made after the 30-day period for requesting a hearing,¹⁹ when the request is for a second hearing on the same issue,²⁰ and when the request is made after a reconsideration request was previously submitted.²¹ In these instances,

¹⁴ 5 U.S.C. § 8124(b)(1).

¹⁵ 20 C.F.R. § 10.615.

¹⁶ See *L.L.*, Docket No. 23-1179 (issued March 1, 2024); *Y.D.*, Docket No. 23-0971 (issued December 7, 2023); *Ella M. Garner*, 36 ECAB 238, 241-42 (1984).

¹⁷ 20 C.F.R. § 10.616(a).

¹⁸ *S.T.*, Docket No. 22-1018 (issued April 10, 2023); *Rudolph Bermann*, 26 ECAB 354, 360 (1975).

¹⁹ *E.R.*, Docket No. 20-1110 (issued December 23, 2020); *Herbert C. Holley*, 33 ECAB 140, 142 (1981).

²⁰ *D.M.*, Docket No. 19-0686 (issued November 13, 2019); *Johnny S. Henderson*, 34 ECAB 216, 219 (1982).

²¹ *L.L.*, *supra* note 16; *L.W.*, Docket No. 21-0607 (issued October 18, 2022); *D.H.*, Docket No. 23-0910 (issued November 30, 2023); *R.H.*, Docket No. 07-1658 (issued December 17, 2007); *S.J.*, Docket No. 07-1037 (issued September 12, 2007). Section 10.616(a) of OWCP's regulations provides that the claimant seeking a hearing must not have previously submitted a reconsideration request (whether or not it was granted) on the same decision. 20 C.F.R. § 10.616(a).

OWCP will determine whether a discretionary hearing should be granted or, if not, will so advise the claimant with reasons.²²

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied appellant's request for a review of the written record, as she had previously requested reconsideration.

On October 4, 2023 appellant requested a review of the written record of OWCP's October 31, 2022 decision, after she had previously requested reconsideration on February 1 and July 25, 2023. As she requested a review of the written record of OWCP's October 31, 2022 decision after having previously requested reconsideration, the Board finds that she was, therefore, not entitled to a review of the written record as a matter of right.²³ OWCP, in its discretion, then properly considered appellant's request and determined that the request was denied for the reason that the issue of the case could equally well be addressed by requesting reconsideration and submitting new evidence.²⁴

The Board has held that the only limitation on OWCP's authority is reasonableness.²⁵ An abuse of discretion is generally shown through proof of manifest error, a clearly unreasonable exercise of judgment, or actions taken, which are contrary to both logic and probable deductions from established facts.²⁶ The Board finds that the evidence of record does not indicate that OWCP abused its discretion by denying 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 she had previously requested reconsideration.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a left knee condition causally related to the accepted July 26, 2022 employment incident.²⁷ The Board further finds that OWCP properly denied appellant's request for a review of the written record, as she had previously requested reconsideration.

²² *See id.*

²³ *See id.*

²⁴ *See id.*; *S.T.*, Docket No. 22-1019 (issued April 10, 2023).

²⁵ *A.M.*, Docket No. 20-1575 (issued May 24, 2021); *R.M.*, Docket No. 19-1088 (issued November 17, 2020). *See also E.S.*, Docket No. 18-1750 (issued March 11, 2019); *Daniel J. Perea*, 42 ECAB 214, 221 (1990).

²⁶ *Id.*

²⁷ The Board notes that the employing establishment issued a Form CA-16. A completed Form CA-16 authorization may constitute a contract for payment of medical expenses to a medical facility or physician, when properly executed. The 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. *See* 20 C.F.R. § 10.300(c); *J.G.*, Docket No. 17-1062 (issued February 13, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).

ORDER

IT IS HEREBY ORDERED THAT the July 31, 2023 decision of the Office of Workers' Compensation Programs is affirmed. The October 13, 2023 decision of the Office of Workers' Compensation Programs is affirmed as modified.

Issued: April 22, 2024
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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

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