

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

K.M., Appellant)	
)	
and)	Docket No. 24-0587
)	Issued: August 13, 2024
U.S. POSTAL SERVICE, SAN FRANCISCO)	
PROCESSING AND DISTRIBUTION CENTER,)	
San Francisco, CA, 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
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On May 3, 2024 appellant filed a timely appeal from a January 24, 2024 merit decision and a March 21, 2024 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.²

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the March 21, 2024 decision, appellant submitted additional evidence to OWCP. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

ISSUES

The issues are: (1) whether OWCP properly denied appellant's request for authorization for bilateral lumbar injections at L5-S1; and (2) whether OWCP properly denied appellant's request for an oral hearing as untimely filed, pursuant to 5 U.S.C. § 8124(b).

FACTUAL HISTORY

On August 29, 2022 appellant, then a 63-year-old general expeditor, filed a traumatic injury claim (Form CA-1) alleging that on August 24, 2022 she injured her low back and left lower extremity when she fell when scanning a trailer while in the performance of duty. She stopped work on August 24, 2022.

In an August 24, 2022 report, Dr. Sara Gertler Schaaf, Board-certified in emergency medicine, noted her treatment of appellant for bilateral low back pain after falling approximately six feet off a truck at work. She noted mild bilateral lower lumbar tenderness and diagnosed fall, initial encounter, injury of the back, and spondylolisthesis at L5-S1 level.

A computerized tomography (CT) scan of the lumbar spine dated August 24, 2022 revealed bilateral pars defects at L5-S1 level with associated grade 2 spondylolisthesis and severe bilateral neural foraminal narrowing.

A magnetic resonance imaging (MRI) scan of the lumbar spine dated September 30, 2022 revealed well-defined lesion in S1 vertebral segment probably representing a fat poor hemangioma, no pathological fracture, bilateral L5 pars defects, unchanged grade 2 anterolisthesis at L5-S1, no significant spinal canal narrowing, and moderate-to-severe bilateral foraminal narrowing at L5-S1.

OWCP accepted appellant's claim for strain of muscle, fascia, and tendon of the lower back, contusion of the right shoulder, contusion of the left knee.

By decision dated March 17, 2023, OWCP expanded the acceptance of appellant's claim to include strain of the muscle/tendon of the rotator cuff of the right shoulder.

Dr. Joanne Sera, Board-certified in emergency medicine, treated appellant from July 17 through September 20, 2023, for back and shoulder injuries related to the accepted August 24, 2023 employment injury. She reported that appellant was treated by Dr. Abid Qureshi, a Board-certified orthopedist, for her lumbar injury, and he recommended treatment of her right rotator cuff before addressing her lumbar condition. Dr. Sera diagnosed aftercare for musculoskeletal surgery, traumatic right rotator cuff tear, congenital lumbar spondylolisthesis, stenosis of intervertebral foramen, and low back pain with sciatica. She returned appellant to modified sedentary-duty work and no use of the right arm. In work status reports dated July 17, 31, and August 25, 2023, Dr. Sera diagnosed aftercare for musculoskeletal surgery, traumatic right rotator cuff tear, congenital lumbar spondylolisthesis, and stenosis of intervertebral foramen. She advised that appellant was off work from July 31 through August 13, 2023 due to right shoulder surgery and could return to modified sedentary-duty work and no use of the right arm on August 14, 2023. In state workers' compensation form reports dated July 31, August 8 and 25, and September 20, 2023, Dr. Sera

diagnosed strain of muscle fascia and tendon of the low back, right shoulder contusion, left knee contusion, and traumatic right rotator cuff tear. She noted on the July 31, 2023 form report that appellant was totally disabled from work July 31 through August 13, 2023, but that she could return to modified sedentary-duty work and no use of the right arm on August 14, 2023.

In a report dated September 27, 2023, Dr. Qureshi diagnosed grade 2 isthmic spondylolisthesis at L5-S1. He related that she completed physical therapy but continued to experience low back, and buttock pain, which affected her lifestyle. Dr. Qureshi noted that findings on physical examination revealed intact motor examination in the lower extremities. He recommended bilateral L5-S1 intra-articular injections to relieve her symptoms. Dr. Qureshi advised that, if the injections provide significant but short-term relief, he would recommend decompression and transforaminal lumbar interbody fusion at L5-S1.

In a development letter dated October 11, 2023, OWCP informed appellant that the evidence of record was insufficient to authorize the proposed injections as it did not appear to be medically necessary for and/or causally related to the accepted conditions. It requested that she provide a detailed narrative report from her physician explaining how the requested injections were medically necessary for her accepted employment injury. OWCP afforded appellant 30 days to submit the necessary evidence.

OWCP received additional evidence. Dr. Michael Sacco, a Board-certified orthopedist, treated appellant on May 9 and October 17, 2023 for strain of the muscles and tendons of the rotator cuff and traumatic complete tear of right rotator cuff. Appellant reported improvement in her symptoms.

On September 15, 2023 Dr. Qureshi provided diagnoses and findings similar to his September 27, 2023 report.

In reports dated October 20, November 17, and December 11, 2023, Dr. Sera diagnosed aftercare for musculoskeletal surgery, traumatic right rotator cuff tear, congenital lumbar spondylolisthesis, and stenosis of intervertebral foramen. She agreed with Dr. Qureshi's recommendation of bilateral L5-S1 intra-articular injections to return appellant to an increased activity level. Dr. Sera continued modified sedentary-duty work and no use of the right arm. In form reports dated October 20, 23, November 17, 20, December 11, and 15, 2023, she diagnosed strain of muscle fascia and tendon of the low back, right shoulder contusion, left knee contusion, and traumatic right rotator cuff tear. Dr. Sera returned appellant to sedentary duty on November 17, 2023. In work status reports dated October 20, November 17, and December 11, 2023, she diagnosed aftercare for musculoskeletal surgery, traumatic right rotator cuff tear, congenital lumbar spondylolisthesis, and stenosis of intervertebral foramen and returned appellant to modified sedentary-duty work.

On November 2, 2023 the employing establishment offered appellant a limited-duty position as a modified general expeditor, effective November 18, 2023. Appellant accepted the position and returned to work.

In a return of work status (Form CA-3) dated November 20, 2023, OWCP indicated that appellant returned to part-time, modified-duty work on November 18, 2023.

On November 28, 2023 Dr. Sacco treated appellant for strain of the muscles and tendons of the rotator cuff and traumatic complete tear of right rotator cuff. Appellant reported improvement in her symptoms and resumed light-duty work.

Dr. Sera treated appellant on January 12, 2024, and diagnosed aftercare for musculoskeletal surgery, traumatic right rotator cuff tear, congenital lumbar spondylolisthesis, and stenosis of intervertebral foramen. She concurred with Dr. Qureshi's recommendation of bilateral L5-S1 intra-articular injections to return appellant to an increased activity level. Dr. Sera returned appellant to modified sedentary-duty work. In a form report dated January 12, 2024, she diagnosed strain of muscle fascia and tendon of the low back, right shoulder contusion, left knee contusion, and traumatic right rotator cuff tear. Dr. Sera returned appellant to sedentary duty. In a work status report dated January 12, 2024, she diagnosed aftercare for musculoskeletal surgery, traumatic right rotator cuff tear, congenital lumbar spondylolisthesis, and stenosis of intervertebral foramen and returned appellant to modified sedentary duty.

By decision dated January 24, 2024, OWCP denied appellant's request for authorization of bilateral lumbar injections at L5-S1, finding that the medical evidence of record was insufficient to establish that the requested therapy was necessary to treat an accepted work-related condition.

On February 28, 2024 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

OWCP continued to receive medical evidence.

By decision dated March 21, 2024, OWCP 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 a request for reconsideration before OWCP along with the submission of new evidence.

LEGAL PRECEDENT -- ISSUE 1

Section 8103(a) of FECA states in pertinent part:

"The United States shall furnish to an employee who is injured while in the performance of duty, the services, appliances, and supplies prescribed or recommended by a qualified physician, which the Secretary of Labor considers likely to cure, give relief, reduce the degree or the period of disability, or aid in lessening the amount of the monthly compensation."³

The Board has found that OWCP has great discretion in determining whether a particular type of treatment is likely to cure or give relief.⁴ The only limitation on OWCP's authority is that of reasonableness.⁵ Abuse of discretion is generally shown through proof of manifest error, clearly

³ *Supra* note 1 at § 8103.

⁴ *R.C.*, Docket No. 18-0612 (issued October 19, 2018); *Vicky C. Randall*, 51 ECAB 357 (2000).

⁵ *B.L.*, Docket No. 17-1813 (issued May 23, 2018); *Lecil E. Stevens*, 49 ECAB 673, 675 (1998).

unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deductions from established facts. It is not enough to merely show that the evidence could be construed so as to produce a contrary factual conclusion.⁶ In order to be entitled to reimbursement of medical expenses, it must be shown that the expenditures were incurred for treatment of the effects of an employment-related injury or condition.⁷ Proof of causal relationship in a case such as this must include supporting rationalized medical evidence.⁸

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly denied appellant's request for authorization for bilateral lumbar injections at L5-S1.

Appellant requested authorization for bilateral lumbar intra-articular injections at L5-S1 referred by Dr. Qureshi. She submitted reports dated September 15 and 27, 2023 from Dr. Qureshi, who diagnosed grade 2 isthmic spondylolisthesis at L5-S1. Dr. Qureshi recommended bilateral L5-S1 injections to relieve her symptoms. Similarly, in reports dated October 20, November 17, December 11, 2023, and January 12, 2024, Dr. Sera concurred with Dr. Qureshi's recommendation of bilateral L5-S1 intra-articular injections to return appellant to an increased activity level. However, Drs. Qureshi and Sera failed to provide medical rationale explaining how the requested injections were medically necessary to treat appellant's accepted strain of muscle, fascia, and tendon of the lower back, and/or were causally related to the accepted August 24, 2022 employment injury, their reports are of diminished probative value.⁹

The only limitation on OWCP's authority to authorize medical treatment is one of reasonableness.¹⁰ As none of the medical evidence explained how the proposed bilateral lumbar intra-articular injections at L5-S1 were medically necessary and causally related to the accepted conditions under this claim, the Board finds that OWCP acted reasonably in denying appellant's request for bilateral lumbar injections at L5-S1.

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.

⁶ *S.W.*, Docket No. 18-1529 (issued April 19, 2019); *Rosa Lee Jones*, 36 ECAB 679 (1985); *Daniel J. Perea*, 42 ECAB 214, 221 (1990).

⁷ *J.R.*, Docket No. 17-1523 (issued April 3, 2018); *Bertha L. Arnold*, 38 ECAB 282, 284 (1986).

⁸ *C.L.*, Docket No. 24-0249 (issued April 15, 2024); *Zane H. Cassell*, 32 ECAB 1537, 1540-41 (1981); *John E. Benton*, 15 ECAB 48, 49 (1963).

⁹ *M.P.*, Docket No. 19-1557 (issued February 24, 2020); *M.M.*, Docket No. 19-0563 (issued August 1, 2019); *N.G.*, Docket No. 18-1340 (issued March 6, 2019).

¹⁰ *B.L.*, Docket No. 17-1813 (issued May 23, 2018); *Lecil E. Stevens*, 49 ECAB 673, 675 (1998).

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.”¹¹ 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.¹² 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, or the date received in the Employees’ Compensation Operations and Management Portal (ECOMP), and before the claimant has requested reconsideration.¹³ 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.¹⁴

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied appellant’s request for an oral hearing as untimely filed, pursuant to 5 U.S.C. § 8124(b).

On February 28, 2024 appellant requested an oral hearing before a representative of OWCP’s Branch of Hearings and Review. As this request was made more than 30 days after OWCP’s January 24, 2024 decision, it was untimely filed, and appellant was not entitled to an oral hearing as a matter of right.

Although appellant was not entitled to an oral hearing as a matter of right, OWCP’s Branch of Hearings and Review may exercise its discretion to either grant or deny a hearing following reconsideration.¹⁵ 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.¹⁶ In this instance, OWCP denied a discretionary review of the written record because appellant could instead submit new evidence and request reconsideration before OWCP. Accordingly, the Board finds that OWCP properly exercised discretionary

¹¹ *Id.* at § 8124(b).

¹² 20 C.F.R. §§ 10.616, 10.617.

¹³ *Id.* at § 10.616(a); Federal (FECA) Procedure Manual (FECA), *Hearings and Review of the Written Record*, Chapter 2.1601.4a (February 2024).

¹⁴ *M.F.*, Docket No. 21-0878 (issued January 6, 2022); *W.H.*, Docket No. 20-0562 (issued August 6, 2020); *P.C.*, Docket No. 19-1003 (issued December 4, 2019); *Eddie Franklin*, 51 ECAB 223 (1999); *Delmont L. Thompson*, 51 ECAB 155 (1999).

¹⁵ *T.D.*, Docket No. 21-1063 (issued April 17, 2023); *A.S.*, Docket No. 22-1227 (issued April 6, 2023).

¹⁶ *Supra* note 6.

authority in denying her request for an oral hearing as untimely filed, pursuant to 5 U.S.C. § 8124(b).

CONCLUSION

The Board finds that OWCP properly denied appellant's request for authorization for bilateral lumbar injections at L5-S1. The Board further finds that OWCP properly denied appellant's request for an oral hearing as untimely filed, pursuant to 5 U.S.C. § 8124(b).

ORDER

IT IS HEREBY ORDERED THAT the January 24 and March 21, 2024 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: August 13, 2024
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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