

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

S.B., Appellant)	
)	
and)	Docket No. 24-0710
)	Issued: August 26, 2024
U.S. POSTAL SERVICE, POST OFFICE,)	
West Sacramento, CA, 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
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On June 20, 2024 appellant filed a timely appeal from an April 10, 2024 merit decision and a June 12, 2024 nonmerit decision of the Office of Workers' Compensation Programs (OWCP).¹ Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

¹ Appellant submitted a timely request for oral argument before the Board. 20 C.F.R. § 501.5(b). Pursuant to the Board's *Rules of Procedure*, oral argument may be held in the discretion of the Board. 20 C.F.R. § 501.5(a). In support of appellant's oral argument request, she asserted that she had an unpaid bill and requested assistance. The Board, in exercising its discretion, denies appellant's request for oral argument because the arguments on appeal can adequately be addressed in a decision based on a review of the case record. Oral argument in this appeal would further delay issuance of a Board decision and not serve a useful purpose. As such, the oral argument request is denied, and this decision is based on the case record as submitted to the Board.

² 5 U.S.C. § 8101 *et seq.*

ISSUES

The issues are: (1) whether appellant has met her burden of proof to establish a diagnosed medical condition in connection with the accepted December 2, 2023 employment incident; 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 January 29, 2024 appellant, then a 58-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on December 2, 2023 she injured the upper right side of her chest when she tripped and fell on a rock in a walkway while in the performance of duty. She stopped work on December 4, 2023 and returned to work on December 6, 2023. The employing establishment acknowledged on the form that appellant was injured in the performance of duty.

In a work status report dated December 2, 2023, Dr. Matthew Dallas Stevenson, Board-certified in emergency medicine, placed appellant off work from December 3 to 5, 2023.

In a development letter dated February 7, 2024, OWCP informed appellant of the deficiencies of her claim and requested that she submit additional factual and medical evidence, including an opinion from a physician addressing how the identified work incident caused or contributed to a diagnosed medical condition and attached a questionnaire for her completion. It afforded her 60 days to submit the requested evidence. No additional evidence was received.

In a follow-up letter dated March 5, 2024, OWCP advised appellant that it had conducted an interim review and determined that the evidence remained insufficient to establish her claim. It noted that she had 60 days from the February 7, 2024 letter to submit the requested supporting evidence. OWCP further advised that if the evidence was not received during this time, it would issue a decision based on the evidence contained in the record. No further evidence was received.

By decision dated April 10, 2024, OWCP denied appellant's traumatic injury claim. It found that she had failed to submit medical evidence sufficient to establish causation between a diagnosed medical condition and the accepted employment incident.

Subsequently, OWCP received an emergency department report dated December 2, 2023.

In correspondence dated June 5, 2024 and postmarked June 6, 2024, appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

By decision dated June 12, 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 supporting that she sustained an injury in the performance of her federal employment.

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 the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was filed within the applicable time limitation of FECA,⁴ that an injury was sustained while in the performance of duty as alleged; and that any disability or specific 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 on 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 an injury.⁷

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 between the diagnosed condition and the employment injury 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 appellant's employment incident.¹⁰

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met her burden of proof to establish a diagnosed medical condition in connection with the accepted December 2, 2023 employment incident.

³ *Supra* note 2.

⁴ *C.B.*, Docket No. 21-1291 (issued April 28, 2022); *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *T.H.*, Docket No. 18-1736 (issued March 13, 2019); *R.C.*, 59 ECAB 427 (2008).

⁶ *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *T.E.*, Docket No. 18-1595 (issued March 13, 2019); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁷ *M.T.*, Docket No. 24-0439 (issued May 30, 2024); *H.M.*, Docket No. 22-0343 (issued June 28, 2022); *T.J.*, Docket No. 19-0461 (issued August 11, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019).

⁸ *R.P.*, Docket No. 21-1189 (issued July 29, 2022); *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

⁹ *R.P.*, *id.*; *F.A.*, Docket No. 20-1652 (issued May 21, 2021); *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

¹⁰ *Id.*

In support of her claim, appellant submitted a December 2, 2023 work status report from Dr. Stevenson, who opined that she was unable to work from December 3 to 5, 2023. However, Dr. Stevenson did not provide a diagnosis or 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 is of no probative value.¹¹ This evidence is, therefore, insufficient to establish the claim.

As the medical evidence of record received prior to OWCP's last merit decision does not contain a medical diagnosis in connection with the accepted employment factors, the Board finds that appellant 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 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."¹² 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.¹³ 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 if mailed, or the date received in the Employees' Compensation Operations & Management Portal (ECOMP), and before the claimant has requested reconsideration.¹⁴ 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.¹⁵

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).

¹¹ *J.G.*, Docket No. 24-0403 (issued May 20, 2024); *O.R.*, Docket No. 24-0184 (issued February 27, 2024); *J.H.*, Docket No. 23-0250 (issued December 19, 2023).

¹² 5 U.S.C. § 8124(b).

¹³ 20 C.F.R. §§ 10.616, 10.617.

¹⁴ *Id.* at § 10.616(a).

¹⁵ *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).

In correspondence dated June 5, 2024 and postmarked June 6, 2024, appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review; however, this request was made more than 30 days after OWCP's April 10, 2024 decision. Section 8124(b)(1) is unequivocal on the time limitation for filing a request for a hearing.¹⁶ As such, the request was untimely filed, and appellant was not entitled to an oral hearing as a matter of right.¹⁷

OWCP, however, has the discretionary authority to grant the request and it must exercise such discretion.¹⁸ The Board finds that OWCP, in its June 12, 2024 decision, properly exercised its discretionary authority, explaining that it had considered the matter and denied appellant's request for an oral hearing as her claim could be equally well addressed through a reconsideration request before OWCP 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.¹⁹ In this case, the evidence of record does not indicate that OWCP abused its discretion by denying appellant's request for an oral hearing. Accordingly, the Board finds that OWCP properly denied her request for an oral hearing pursuant to 5 U.S.C. § 8124(b) as untimely filed.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a diagnosed medical condition in connection with the accepted December 2, 2023 employment incident. 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).

¹⁶ 5 U.S.C. § 8124(b)(1); *K.N.*, Docket No. 22-0647; *G.H.*, Docket No. 22-0122 (issued May 20, 2022).

¹⁷ *See D.R.*, Docket No. 22-0361 (issued July 8, 2022); *D.S.*, Docket No. 21-1296 (issued March 23, 2022); *P.C.*, Docket No. 19-1003 (issued December 4, 2019).

¹⁸ *See A.D.*, Docket No. 24-0377 (issued June 3, 2024); *P.C.*, Docket No. 19-1003 (issued December 4, 2019).

¹⁹ *See S.I.*, Docket No. 22-0538 (issued October 3, 2022); *T.G.*, Docket No. 19-0904 (issued November 25, 2019); *Daniel J. Perea*, 42 ECAB 214 (1990).

ORDER

IT IS HEREBY ORDERED THAT the June 12 and April 10, 2024 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: August 26, 2024
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