

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

S.S., Appellant)	
)	
and)	Docket No. 25-0026
)	Issued: December 2, 2024
DEPARTMENT OF JUSTICE, FEDERAL)	
BUREAU OF INVESTIGATION,)	
Washington, DC, 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 October 11, 2024 appellant filed a timely appeal from a July 8, 2024 merit decision and a September 18, 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. 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). Appellant contended that OWCP's lack of communication resulted in her inability to timely submit documents and to get the appropriate medical appointments thereby adversely the outcome of his claim. Additionally, appellant indicated that she wanted to ensure that OWCP received all of her documentation. 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 left knee condition causally related to the accepted March 20, 2024 employment incident; and (2) whether OWCP properly denied appellant's request for an oral hearing/review of the written record as untimely filed, pursuant to 5 U.S.C. § 8124(b).

FACTUAL HISTORY

On March 21, 2024 appellant, then a 52-year-old management and program analyst, filed a traumatic injury claim (Form CA-1) alleging that on March 20, 2024 she injured her left knee when she stepped into an employing establishment passenger van while in the performance of duty. She explained that as she lifted her left leg to step into the van, she heard a "pop" then "click" or "snap" behind her left knee. Appellant stopped work that same day.

OWCP received a March 20, 2024 x-ray of the left knee which revealed moderate joint effusion.

In March 22, 2024 progress notes and physical and occupational therapy prescriptions, Casey L. Ritter, a physician assistant, diagnosed sciatica on the left side, rupture of popliteal cyst left knee joint, and left knee osteoarthritis. In the March 22, 2024 progress note, she related that appellant had experienced intermittent pain and swelling in the left knee for several weeks on and off, had back pain radiating down her leg, and some foot pain. Ms. Ritter also related that appellant had sought chiropractic care and was taking over-the-counter medications on and off for her knee, but it had worsened over the prior 10 days. On March 20, 2024 appellant was entering a transport van at work when she felt a pop in her left knee and severe pain.

In an April 24, 2024 development letter, OWCP advised appellant of the deficiencies of her claim, and requested additional medical evidence. It afforded her 60 days to respond.

In an April 24, 2024 treatment note, Dr. Nigel Azer, a Board-certified orthopedic surgeon, related that on March 20, 2024, while at work, appellant injured her left knee while entering a passenger van. He noted that she had a history of some low back pain and was seeing a chiropractor, but since this injury, she had been having paresthesia down her left leg and swelling in the popliteal fossa, consistent with a Baker's cyst. Dr. Azer examined appellant and diagnosed chondromalacia of the patella on the left and medial meniscus tear, acute on the left, and Baker's cyst secondary to chondromalacia.

In a follow-up letter dated May 21, 2024, OWCP advised appellant that it had conducted an interim review, but that the evidence remained insufficient to establish her claim. It noted that she had 60 days from its April 24, 2024 development 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.

OWCP received physical therapy notes dated from March 28 through June 16, 2024.

By decision dated July 8, 2024, OWCP denied appellant's claim. It found that the medical evidence of record was insufficient to establish that the diagnosed medical condition was causally related to the accepted employment incident.

OWCP received a July 15, 2024 progress report, wherein Dr. Nizer concluded that appellant's March 20, 2024 injury did cause a meniscus tear, as well as aggravation and exacerbation of her chondromalacia. It also continued to receive physical therapy reports.

In a July 16, 2024 statement received by OWCP, on July 18 and 31, 2024, appellant described her work activities since 2021. She argued that the wear and tear, and constant physical exertion manifested into back and knee symptoms.³

On September 10, 2024 *via* Employees' Compensation & Management Portal (ECOMP), appellant submitted an undated request for an oral hearing/review of the written record. She included a cover page which explained that she had submitted a request for a hearing on July 31, 2024 electronically with supporting documents, and was resubmitting her hearing request because she had not heard back from OWCP.

By decision dated September 18, 2024, OWCP denied appellant's request for "an oral hearing or a review of the written record" as untimely filed, because it was received *via* ECOMP on September 10, 2024, which was more than 30 days after the July 28, 2024 decision. 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

An employee seeking benefits under FECA⁴ 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,⁵ 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.⁶ 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.⁷

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. The first component is whether the

³ Appellant did not request a hearing or review of the written record.

⁴ *Supra* note 2.

⁵ *See S.B.*, Docket No. 24-0710 (issued August 26, 2024); *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).

⁶ *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).

⁷ *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).

employee actually experienced the employment incident at the time and place, and in the manner alleged. The second component is whether the employment incident caused an injury.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 March 20, 2024 employment incident.

In April 24, 2024 treatment note and order, Dr. Azer diagnosed chondromalacia of the patella on the left, medial meniscus tear, acute on the left, and Baker's cyst secondary to chondromalacia. He noted that on March 20, 2024, appellant experienced left knee pain while getting into a passenger van, and since then had been experiencing paresthesia down her left leg and swelling in the popliteal fossa, consistent with a Baker's cyst. However, Dr. Azer did not 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 is of no probative value on the issue of causal relationship.⁹ Therefore, the report from Dr. Azer is insufficient to establish the claim.

The Board notes that OWCP also received reports from physical therapists and a physician assistant. However, certain healthcare providers such as physician assistants, nurse practitioners, and physical therapists are not considered physicians as defined under FECA.¹⁰ Consequently, these notes and reports will not suffice for purposes of establishing entitlement to FECA benefits.

OWCP also received x-rays of appellant's left knee dated March 20, 2024. However, the Board has held that diagnostic studies, standing alone, lack probative value regarding causal relationship as they do not provide an opinion as to whether the accepted employment incident caused a diagnosed condition.¹¹

As the medical evidence of record is insufficient to establish a left knee condition causally related to the accepted March 20, 2024 employment incident, the Board finds that appellant has not met her burden of proof.

⁸ See *A.H.*, Docket No. 22-0912 (issued October 26, 2023); *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).

⁹ *S.J.*, Docket No. 19-0696 (issued August 23, 2019); *M.C.*, Docket No. 18-0951 (issued January 7, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹⁰ Section § 8101(2) of FECA provides that 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. § 8101(2); 20 C.F.R. § 10.5(t). See also Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *S.R.*, Docket No. 24-0839 (issued October 30, 2024) (physical therapists are not considered physicians as defined under FECA); *M.F.*, Docket No. 19-1573 (issued March 16, 2020) (medical reports signed solely by a physician assistant or a nurse practitioner are of no probative value as these care providers are not considered physicians as defined under FECA); *N.B.*, Docket No. 19-0221 (issued July 15, 2019) (physician assistants are not defined as physicians under FECA); *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).

¹¹ *M.B.*, Docket No. 19-1638 (issued July 17, 2020); *T.S.*, Docket No. 18-0150 (issued April 12, 2019).

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 an oral 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 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/review of the written record as untimely filed, pursuant to 5 U.S.C. § 8124.

OWCP’s regulations provide that a request for an oral hearing, or a review of the written record, must be made within 30 days of the date of the decision for which a review is sought. On September 10, 2024 OWCP received *via* ECOMP an undated request for an oral hearing/review of the written record. On the cover page, appellant indicated that she had submitted the request on July 31, 2024, and was resubmitting it because she had not heard from OWCP. The case record contains medical records and a copy of appellant’s July 16, 2024 statement, both received on July 21, 2024. However, it does not contain a request for either an oral hearing or a review of the written record. As appellant submitted her undated request for an oral hearing/review of the written record *via* ECOMP on September 10, 2024, it postdated OWCP’s July 8, 2024 decision by more than 30 days, and accordingly, was untimely. Appellant was, therefore, not entitled to either an oral hearing or a review of the written record as a matter of right.¹⁶

¹² *Supra* note 2 at § 8124(b)(1).

¹³ 20 C.F.R. §§ 10.616, 10.617.

¹⁴ *Id.* at § 10.616(a); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.4a (February 2024).

¹⁵ *See P.G.*, Docket No. 24-0447 (issued August 12, 2024); *W.H.*, Docket No. 20-0562 (issued August 6, 2020); *Eddie Franklin*, 51 ECAB 223 (1999); *Delmont L. Thompson*, 51 ECAB 155 (1999).

¹⁶ *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.¹⁷ 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.¹⁸ In this case, the Board finds that OWCP did not abuse its discretion in connection with its denial of appellant's request for an oral hearing/review of the written record.

Accordingly, the Board finds that OWCP properly denied appellant's request for an oral hearing/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 her burden of proof to establish a left knee condition causally related to the accepted March 20, 2024 employment incident. The Board further finds that OWCP properly determined that her request for an oral hearing/review of the written record was untimely filed, pursuant to 5 U.S.C. § 8124(b).

ORDER

IT IS HEREBY ORDERED THAT the July 8 and September 18, 2024 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: December 2, 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

¹⁷ *Id.*

¹⁸ *Id.*; *Daniel J. Perea*, 42 ECAB 214, 221 (1990).