United States Department of Labor
Employees' Compensation Appeals Board

D.F., Appellant	)	
and	)	**Docket No. 25-0042**
	)	**Issued: December 19, 2024**
DEPARTMENT OF DEFENSE, NORFOLK NAVAL AIR STATION, Portsmouth, VA, 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 October 17, 2024 appellant filed a timely appeal from a May 17, 2024 merit decision and a September 19, 2024 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (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 his burden of proof to establish a medical condition causally related to the accepted January 11, 2024 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).

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On January 30, 2024 appellant, then a 36-year-old distribution process worker, filed a traumatic injury claim (Form CA-1) alleging that on January 11, 2024 he sustained a lower back and right side injury when he lifted two 85-pound boxes from the back of his van while in the performance of duty. He stopped work on January 12, 2024.

In a January 14, 2024 emergency department report, Daniel Hooker, a physician assistant, reported that appellant was lifting a heavy box and felt a sharp pain in his back. He noted a January 11, 2024 date of injury and diagnosed sprain of the lumbar spine and pelvis. Mr. Hooker provided restrictions including no lifting, carrying, climbing, pushing, or pulling.

In a February 15, 2024 report, Dr. Mark B. Kerner, a Board-certified orthopedic surgeon, evaluated appellant and diagnosed lumbar pain, lumbar radiculopathy, and lumbar herniated nucleus pulposus (HNP). He held appellant off work. In a report of even date, Dr. Kerner reported that appellant was performing warehouse work on January 11, 2024, lifted an 85-pound box and twisted, with sudden onset of back pain that progressed with back, buttock, and radiating left leg pain. He noted that appellant had been undergoing physical therapy without improvement and that the left lower extremity pain was not strictly radicular. Dr. Kerner reported that appellant was describing what appeared to be a radicular syndrome on the left, which occurred after doing a classic lift and twist episode. He recommended a magnetic resonance imaging (MRI) scan of the lumbar spine and diagnosed lumbar HNP, lumbar pain, and lumbar radiculopathy. In an accompanying form report dated February 16, 2024, Dr. Kerner provided restrictions and held appellant off work.

In a February 27, 2024 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence required and provided a questionnaire for his completion. OWCP afforded appellant 60 days to submit the necessary evidence.

Appellant subsequently submitted a March 7, 2024 report, wherein Dr. Kerner noted a much-improved examination since his last visit, noting a positive straight leg raise, only minimally painful left. He noted improvement following physical therapy and an attempt to get appellant back to work. In a work status report of even date, Dr. Kerner diagnosed lumbar HNP and noted that appellant was still undergoing physical therapy. He released appellant to full-duty work without restrictions.

In a follow-up letter dated March 26, 2024, OWCP advised appellant that it had conducted an interim review, and the evidence remained insufficient to establish his claim. It noted that he had 60 days from the February 27, 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 additional evidence was received.

By decision dated May 17, 2024, OWCP denied appellant's traumatic injury claim, finding that the medical evidence of record was insufficient to establish an injury causally related to the accepted January 11, 2024 employment incident.

On September 12, 2024, OWCP received in its Employees' Compensation Operations & Management Portal (ECOMP), appellant's request for an oral hearing before a representative of OWCP's Branch of Hearings and Review. In support of his request, he submitted medical evidence previously of record.

Appellant also submitted a September 10, 2024 attending physician's report (Form CA-20), wherein Dr. Kerner diagnosed lumbar radiculopathy and HNP. He described the history of injury noting that the condition began after appellant picked up an 85-pound box and twisted with a sudden onset of back pain that radiated down the left lower extremity. Dr. Kerner indicated that the diagnosed condition appeared to be caused or aggravated by the employment activity. He opined that appellant was disabled from work from February 15 through March 7, 2024.

By decision dated September 19, 2024, OWCP denied appellant's request for an oral hearing, finding that the request was not made within 30 days of the May 17, 2024 decision and, therefore, was untimely filed. It further exercised its discretion and determined that the issue in the case could equally well be addressed through a request for reconsideration before OWCP along with the submission of new evidence.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA[2] 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 medical evidence to establish that the employment incident caused an injury.[6]

[2] *Id*.

[3] *E.K.*, Docket No. 22-1130 (issued December 30, 2022); *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] *S.H.*, Docket No. 22-0391 (issued June 29, 2022); *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] *E.H.*, Docket No. 22-0401 (issued June 29, 2022); *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] *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); *John J. Carlone*, 41 ECAB 354 (1989).

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident 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 his burden of proof to establish a medical condition causally related to the accepted January 11, 2024 employment incident.

In support of his claim, appellant submitted medical reports from Dr. Kerner dated February 15 through March 7, 2024, wherein he documented appellant's treatment for his January 11, 2024 injury, clinical findings, and history of injury. He diagnosed lumbar radiculopathy, lumbar pain, and lumbar HNP and restricted appellant from returning to work from February 15 through March 7, 2024. While Dr. Kerner discussed appellant's history of injury and provided diagnoses, he did not provide an opinion on the cause of the diagnosed medical conditions. 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.[9] Therefore, this evidence is insufficient to establish appellant's claim.

Appellant also submitted a January 14, 2024 emergency department report from Mr. Hooker, a physician assistant. However, certain healthcare providers such as physician assistants are not considered physicians as defined under FECA and their reports do not constitute competent medical evidence.[10] Consequently, these medical findings or opinions are insufficient to meet appellant's burden of proof.

[7] *S.M.*, Docket No. 22-0075 (issued May 6, 2022); *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] *J.D.*, Docket No. 22-0935 (issued December 16, 2022); *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).

[9] *G.M.*, Docket No. 24-0388 (issued May 28, 2024); *C.R.*, Docket No. 23-0330 (issued July 28, 2023); *K.K.*, Docket No. 22-0270 (issued February 14, 2023); *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 as follows: the term 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* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (May 2023); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as nurses, physician assistants, and physical therapists are not competent to render a medical opinion under FECA). *See also*, *N.C.*, Docket No. 21-0934 (issued February 7, 2022) (nurse practitioners and physical therapists are not considered physicians as defined under FECA); *P.H.*, Docket No. 19-0119 (issued July 5, 2019) (physician assistants are not physicians under FECA).

As the medical evidence of record is insufficient to establish a medical condition causally related to the accepted January 11, 2024 employment incident, the Board finds that appellant has not met his 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) of FECA, concerning a claimant's entitlement to a hearing, states that: "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 issuance of the decision, to a hearing on his or her claim before a representative of the Secretary."[11] 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.[12] 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.[13] The date of filing is fixed by postmark or other carrier's date marking,[14] or the date received in ECOMP, 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.

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).

OWCP's regulations provide that a request for an oral hearing must be made within 30 days of the date of the decision for which a review is sought.[16] Appellant, therefore, had 30 days following OWCP's May 17, 2024 merit decision to request an oral hearing before a representative of OWCP's Branch of Hearings and Review. As appellant's request for an oral hearing was not received in ECOMP until September 12, 2024, more than 30 days after OWCP's May 17, 2024

[11] 5 U.S.C. § 8124(b)(1).

[12] 20 C.F.R. § 10.615.

[13] *T.A.*, Docket No. 18-0431 (issued November 7, 2018); *Ella M. Garner*, 36 ECAB 238, 241-42 (1984).

[14] 20 C.F.R. § 10.616(a).

[15] *Id.;* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.4a (February 2024); *D.W.*, Docket No. 25-0019 (issued November 22, 2024).

[16] *J.C. (S.C.)*, Docket No. 24-0576 (issued August 28, 2024).

decision, it was untimely filed and he was, therefore, not entitled to an oral hearing as a matter of right.[17]

OWCP also has the discretionary power to grant an oral hearing or review of the written record even if the claimant is not entitled to review as a matter of right. The Board finds that OWCP, in its September 19, 2024 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 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 deduction from established facts.[18] The Board finds that 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 appellant's request for an oral hearing, as untimely filed, pursuant to 5 U.S.C. § 8124(b).[19]

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a medical condition causally related to the accepted January 11, 2024 employment incident. The Board further finds that OWCP properly denied his request for an oral hearing as untimely filed, pursuant to 5 U.S.C. § 8124(b).

[17] 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).

[18] *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).

[19] *Id.; P.G.*, Docket No. 24-0447 (issued August 12, 2024); *D.S.*, Docket No. 21-1296 (issued March 23, 2022).

ORDER

IT IS HEREBY ORDERED THAT the May 17 and September 19, 2024 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: December 19, 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