

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

T.A., Appellant)	
)	
and)	Docket No. 23-0928
)	Issued: June 10, 2024
U.S. POSTAL SERVICE, POST OFFICE, Denver,)	
CO, 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
PATRICIA H. FITZGERALD, Deputy Chief Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On June 20, 2023 appellant filed a timely appeal from an April 12, 2023 merit decision and May 30 and June 8, 2023 nonmerit decisions 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 medical condition causally related to the accepted factors of her federal employment; (2) whether OWCP properly denied appellant's request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a); and (3) whether OWCP properly denied appellant's request for a review of the written record as untimely, pursuant to 5 U.S.C. § 8124(b).

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On January 31, 2023 appellant, then a 60-year-old mail handler, filed a notice of occupational disease (Form CA-2) alleging that she had developed right hip and leg pain with femoroacetabular impingement due to factors of her federal employment, including working on concrete floors with repetitive turning, bending, and lifting trays of mail weighing 30 pounds. She noted that she first became aware of her condition on December 8, 2021 and first realized its relation to her federal employment on September 16, 2022. Appellant stopped work on January 31, 2023 and returned on February 2, 2023.

Appellant submitted a January 31, 2023 narrative statement and asserted that she was diagnosed with greater trochanteric bursitis in December 2021 and began receiving steroid injections to treat her related pain symptoms. She noted that she received additional treatment in May and August 2022, but relief was temporary and her pain increased in September 2022.

In a February 2, 2023 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed to establish her claim. OWCP afforded appellant 30 days to submit the requested evidence.

Dr. Gergana P. Popova-Orahovats, a Board-certified family practitioner, provided treatment notes dated December 2, 2021 through January 19, 2023 indicating that she examined appellant due to hip and left foot pain. On physical examination she observed a positive impingement test and was consistent with trochanteric bursitis. Dr. Popova-Orahovats noted that diagnostic studies demonstrated degenerative changes.

On August 4, 2022 Dr. Bret Winter, a Board-certified orthopedic surgeon diagnosed large joint arthrocentesis and right greater trochanteric bursitis.

Dr. Robert J. Sachs, a Board-certified internist, examined appellant on November 11, 2022 for right hip pain. He listed her employment duties and reviewed diagnostic studies and noted impressions of mild femoral acetabular joint osteoarthritis. Dr. Sachs diagnosed right hip trochanteric bursitis and lumbar radiculopathy.

In a February 2, 2023 report, Dr. Joshua T. Snyder, a Board-certified orthopedic surgeon, recounted appellant's symptoms of right hip pain. He reviewed diagnostic studies and diagnosed right hip pain with femoroacetabular impingement with no evidence of arthritis. Dr. Snyder advised that appellant's symptoms were very consistent with gluteus tendinopathy and a labral tear.

By decision dated April 12, 2023, OWCP denied appellant's occupational disease claim, finding that the medical evidence of record was insufficient to establish causal relationship between her diagnosed medical condition and the accepted factors of her federal employment.²

² OWCP mailed the decision to appellant's last known address of record and there is no evidence that it was returned to OWCP as undeliverable.

By appeal request form postmarked May 22, 2023, and received by OWCP on May 24, 2023, appellant indicated that she was requesting both a review of the written record by a representative of OWCP's Branch of Hearings and Review and reconsideration by OWCP. She also provided a narrative statement of even date requesting reconsideration and provided additional medical evidence.

In notes dated March 2 through May 15, 2023, Dr. Snyder diagnosed femoroacetabular impingement, gluteus tendinopathy, and labral tear.

On April 4, 2023 appellant underwent right hip arthroscopy with labral repair, femoral neck osteochondroplasty, capsular closure, gluteus medius repair, and trochanteric bursectomy.

In a May 15, 2023 report, Dr. Snyder listed appellant's work duties including repetitive bending, stooping, twisting, and lifting. He opined, "These are higher risk activities for femoroacetabular impingement and labral detachment and could create a labral tear, however, I cannot firmly say that this is the cause of her labral tear and gluteus damage. However, I can say that these are high-risk activities for hip impingement, labral tearing, and gluteus tearing."

By decision dated May 30, 2023, OWCP denied appellant's request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a). By decision dated June 8, 2023, OWCP's Branch of Hearings and Review 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 her occupational disease claim.

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 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,⁴ 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.⁵ 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.⁶

To establish that an injury was sustained in the performance of duty in an occupational disease claim, an employee must submit the following: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the

³ *Supra* note 1.

⁴ *R.W.*, Docket No. 23-0527 (issued December 29, 2023); *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).

⁵ *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).

⁶ *T.D.*, Docket No. 23-0037 (issued August 23, 2023); *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).

disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.⁷

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.⁸ 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 the specific employment factor(s) identified by the employee.⁹ Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors is sufficient to establish causal relationship.¹⁰

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met her burden of proof to establish a medical condition causally related to the accepted factors of her federal employment.

Appellant submitted a series of notes from Dr. Popova-Orahovats dated December 2, 2021 through January 19, 2023, from Dr. Winter dated August 4, 2022, from Dr. Sachs dated November 11, 2022 and Dr. Snyder dated February 2, 2023. These physicians described appellant's employment duties, reviewed diagnostic studies, and diagnosed right hip trochanteric bursitis or right hip labrum tear. However, none of them provided 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 These reports are therefore insufficient to establish appellant's claim.

As the medical evidence of record is insufficient to establish causal relationship between the diagnosed medical conditions and 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.

⁷ *G.J.*, Docket No. 23-0577 (issued August 28, 2023); *T.D.*, Docket No. 20-0921 (issued November 12, 2020); *Ruby I. Fish*, 46 ECAB 276 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁸ *S.A.*, Docket No. 18-0399 (issued October 16, 2018); *Robert G. Morris*, 48 ECAB 238 (1996).

⁹ *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, *supra* note 6.

¹⁰ *K.M.*, Docket No. 23-1029 (issued December 26, 2023); *T.M.*, Docket No. 22-0220 (issued July 29, 2022); *S.S.*, Docket No. 18-1488 (issued March 11, 2019); *see also J.L.*, Docket No. 18-1804 (issued April 12, 2019).

¹¹ *K.M.*, *id.*; *D.K.*, Docket No. 21-0214 (issued September 29, 2021); *S.W.*, Docket No. 19-1579 (issued October 9, 2020); *see L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

LEGAL PRECEDENT -- ISSUE 2

Section 8128(a) of FECA does not entitle a claimant to review of an OWCP decision as a matter of right.¹² OWCP has discretionary authority in this regard and has imposed certain limitations in exercising its authority.¹³ One such limitation is that the request for reconsideration must be received by OWCP within one year of the date of the decision for which review is sought.¹⁴ A timely request for reconsideration, including all supporting documents, must set forth arguments and contain evidence that either: (i) shows that OWCP erroneously applied or interpreted a specific point of law; (ii) advances a relevant legal argument not previously considered by OWCP; or (iii) constitutes relevant and pertinent new evidence not previously considered by OWCP.¹⁵ When a timely request for reconsideration does not meet at least one of the above-noted requirements, OWCP will deny the request for reconsideration without reopening the case for a review on the merits.¹⁶

ANALYSIS -- ISSUE 2

The Board finds that OWCP improperly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

The underlying issue on reconsideration is the medical question of whether appellant's diagnosed right hip conditions were causally related to her accepted work duties. With her May 24, 2023 reconsideration request, she submitted a May 15, 2023 narrative report from Dr. Snyder wherein he listed appellant's work duties and opined that here are higher risk activities for femoroacetabular impingement and labral detachment and could create a labral tear. The Board finds that, as the May 15, 2023 report addresses the underlying issue of causal relationship between appellant's diagnosed medical conditions and the accepted employment duties, the report constitutes relevant and pertinent new evidence that is not substantially similar to evidence previously of record. Therefore, the submission of this evidence requires reopening of appellant's claim for merit review, pursuant to the third above-noted requirement of 20 C.F.R. § 10.606(b)(3).¹⁷

¹² This section provides in pertinent part: “[t]he Secretary of Labor may review an award for or against payment of compensation at any time on [his/her] own motion or on application.” 5 U.S.C. § 8128(a).

¹³ 20 C.F.R. § 10.607.

¹⁴ *Id.* at § 10.607(a). For merit decisions issued on or after August 29, 2011, a request for reconsideration must be received by OWCP within one year of OWCP's decision for which review is sought. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (September 2020). Timeliness is determined by the document receipt date of the request for reconsideration as indicated by the received date in the Integrated Federal Employees' Compensation System (iFECS). *Id.* at Chapter 2.1602.4b.

¹⁵ *Id.* at § 10.606(b)(3).

¹⁶ *Id.* at § 10.606(b)(3).

¹⁷ *See B.D.*, Docket No. 23-0240 (issued December 13, 2023); *R.L.*, Docket No. 21-0220 (issued October 19, 2021); *L.M.*, Docket No. 20-1185 (issued January 13, 2021); *C.H.*, Docket No. 17-1065 (issued December 14, 2017); *J.W.*, Docket No. 18-0822 (issued July 1, 2020); *D.M.*, Docket No. 10-1844 (issued May 10, 2011); *Kenneth R. Mroczkowski*, 40 ECAB 855 (1989).

The Board shall, therefore, reverse OWCP's May 30, 2023 decision and remand the case for an appropriate merit decision.

LEGAL PRECEDENT -- ISSUE 3

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.”¹⁸ 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.¹⁹ 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 and before the claimant has requested reconsideration.²⁰ 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.²¹

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly denied appellant's request for a review of the written record as untimely filed, pursuant to 5 U.S.C. § 8124(b).

OWCP's regulations provide that the request for a hearing or review of the written record must be made within 30 days of the date of the decision for which a review is sought.²² The evidence of record establishes that the April 12, 2023 decision was properly mailed to appellant at her last known address of record and was not returned to OWCP as undeliverable. Because her request for a review of the written record was postmarked May 22, 2023, more than 30 days after OWCP's April 12, 2023 decision, it was untimely filed. Appellant was, therefore, not entitled to an oral hearing as a matter of right.²³

OWCP, however, has the discretionary authority to grant the request and it must exercise such discretion.²⁴ The Board finds that, in the May 30, 2023 decision, OWCP properly exercised

¹⁸ *Supra* note 1 at § 8124(b)(1).

¹⁹ 20 C.F.R. §§ 10.616, 10.617.

²⁰ *Id.* at § 10.616(a).

²¹ *B.H.*, Docket No. 23-0497 (issued December 4, 2023); *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).

²² *Supra* note 27.

²³ *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).

²⁴ *Id.*

its discretion by determining that the issue in the case could be equally well addressed through a request for reconsideration, 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.²⁵ The Board finds that the evidence of record does not indicate that OWCP abused its discretion in connection with its denial of 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 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 medical condition causally related to the accepted factors of her federal employment. The Board further finds that OWCP improperly denied appellant's request for reconsideration of the merits of her claim. The Board also finds that OWCP properly denied appellant's request for a review of the written record as untimely filed, pursuant to 5 U.S.C. § 8124(b).

²⁵ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the April 12 and June 8, 2023 decisions of the Office of Workers' Compensation Programs are affirmed. The May 30, 2023 decision of the Office of Workers' Compensation Programs is reversed and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: June 10, 2024
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

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

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