

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

A.D., Appellant)	
)	
and)	Docket No. 24-0377
)	Issued: June 3, 2024
U.S. POSTAL SERVICE, WILMETTE POST)	
OFFICE, Wilmette, IL, 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
JANICE B. ASKIN, Judge

JURISDICTION

On February 26, 2024 appellant filed a timely appeal from an October 4, 2023 merit decision and a February 7, 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.

ISSUES

The issues are: (1) whether appellant has met her burden of proof to establish a diagnosed medical condition in connection with the accepted factors of her federal employment; and (2) whether OWCP properly denied appellant's request for an oral hearing as untimely filed, pursuant to 5 U.S.C. § 8124.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On July 4, 2023 appellant, then a 31-year-old city carrier, filed an occupational disease claim (Form CA-2) alleging that she experienced low back pain when carrying mail while in the performance of duty. She noted that she first became aware of her condition on September 1, 2022 and realized its relationship to her federal employment on June 9, 2023. Appellant did not stop work.

OWCP received a May 16, 2023 lumbar magnetic resonance imaging (MRI) scan.

OWCP also received a June 9, 2023 physical therapy prescription note signed by Michael J. Meeker, a certified physician assistant, and from June 9 through 22, 2023 work notes signed by Wojciech J. Mika, a physical therapist.

In a June 22, 2023 work note, Jessica Schafer, a certified physician assistant, indicated that appellant had been under medical care and had taken extra time off work for the period January 31 through February 16, 2023.

In a development letter dated July 13, 2023, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence necessary to establish her claim and provided a questionnaire for her completion. OWCP afforded appellant 60 days to submit the necessary evidence. In a separate development letter of even date, it requested that the employing establishment provide comments from a knowledgeable supervisor regarding appellant's allegations. OWCP afforded the employing establishment 30 days to respond.

Thereafter, OWCP received an unsigned June 21, 2023 form report.

In a July 17, 2023 statement, P.L., an employing establishment postmaster, controverted the claim. She contended that appellant had irregular attendance, did not wear approved footwear to deliver her route, carried her mail in one bundle without using a mailbag, and did not perform her duties in a safe manner.

In a July 28, 2023 statement, the employing establishment noted that appellant worked up to 12 hours a shift and took breaks as needed. It provided appellant's official position description, which noted physical requirements of carrying mail weighing up to 35 pounds and loading or unloading containers of mail weighing up to 70 pounds.

In a follow-up letter dated August 7, 2023, OWCP advised appellant that it had conducted an interim review, and the evidence remained insufficient to establish her claim. It noted that she had 60 days from the July 13, 2023 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. Thereafter, OWCP received a September 23, 2022 report by Dr. George Thomas, a Board-certified family medicine physician, wherein he recounted his treatment of appellant during the period March 29, 2021 through April 22, 2022 for right hip

bursitis caused by an October 27, 2020 employment injury accepted under OWCP File No. xxxxxx028.²

In an August 31, 2023 report, Ms. Schaefer prescribed work restrictions.

In a September 1, 2023 response to OWCP's development letter, appellant attributed her lumbar condition to the October 27, 2020 employment injury accepted under OWCP File No. xxxxxx028, and repetitive heavy lifting and carrying at work.

In an undated report received by OWCP on September 5, 2023, Ms. Schaefer noted that appellant had been under treatment from March 29, 2021 through June 16, 2023.

By decision dated October 4, 2023, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish a medical diagnosis in connection with the accepted employment factors. It determined therefore that the requirements had not been met to establish an injury as defined by FECA.

On January 9, 2024 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review *via* the Employees' Compensation Operations & Management Portal (ECOMP).

Appellant also submitted reports dated July 11 and September 18, 2022, and September 29, 2023 wherein Dr. George Branovacki, a Board-certified orthopedic surgeon, diagnosed right hip pain.

In a June 9, 2023 report, Mr. Meeker discussed appellant's lumbar symptoms and diagnosed lumbar intervertebral disc disorder with radiculopathy.

By decision dated February 7, 2024, OWCP denied appellant's request for an oral hearing as untimely under 5 U.S.C. § 8124, finding that the request was not made within 30 days of the October 4, 2023 decision. It further exercised discretion and determined that the issue in this 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 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 timely filed within the applicable

² On August 4, 2021 appellant filed a traumatic injury claim (Form CA-1) for injuries to her right foot and right hip sustained on October 27, 2020 when she tripped and fell as she was chased by a dog while in the performance of duty. OWCP assigned the claim OWCP File No. xxxxxx028. It accepted the claim for right hip bursitis and right calcaneofibular ligament sprain.

³ *Supra* note 1.

time limitation period 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, a claimant must submit the following: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the 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 identified employment factors.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 claimant, 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 factors identified by the claimant.⁹

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 factors of her federal employment.

Dr. Thomas, in his September 23, 2022 report, noted treating appellant for right hip bursitis as accepted under OWCP File No. xxxxxx028. However, he did not attribute his diagnosis to the accepted employment factors under the present claim. 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.¹⁰ This evidence is, therefore, insufficient to establish the claim.

⁴ See *R.W.*, Docket No. 22-0043 (issued April 25, 2022); *S.S.*, Docket No. 19-1815 (issued June 26, 2020); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *M.H.*, Docket No. 19-0930 (issued June 17, 2020); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ *S.A.*, Docket No. 19-1221 (issued June 9, 2020); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁷ *S.B.*, Docket No. 24-0064 (issued February 28, 2024); *R.G.*, Docket No. 19-0233 (issued July 16, 2019); see also *Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁸ *L.F.*, Docket No. 19-1905 (issued April 10, 2020); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

⁹ *S.B.*, *supra* note 7; *A.S.*, Docket No. 19-1955 (issued April 9, 2020); *Leslie C. Moore*, 52 ECAB 132 (2000).

¹⁰ *O.R.*, Docket No. 24-0184 (issued February 27, 2024); *J.H.*, Docket No. 23-0250 (issued December 19, 2023); *D.C.*, Docket No. 19-1093 (issued June 25, 2020); see *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

OWCP received reports from Mr. Meeker and Ms. Schaefer, certified physician assistants, and work notes from Mr. Mika, a physical therapist. The Board has held that medical reports signed by physician assistants or physical therapists are of no probative value, as such healthcare providers are not considered physicians as defined under FECA and, therefore, are not competent to provide a medical opinion.¹¹ Their medical findings, reports and/or opinions, unless cosigned by a qualified physician, will not suffice for purposes of establishing entitlement to FECA benefits.¹²

OWCP also received an unsigned June 21, 2023 form report. The Board has held that reports that are unsigned cannot be considered probative medical evidence as the author cannot be identified as a physician.¹³

Additionally, OWCP received a May 16, 2023 lumbar MRI scan. The Board has held that diagnostic studies, standing alone, lack probative value, and are insufficient to establish the claim.¹⁴ Therefore, this report is also insufficient to establish the claim.

As the medical evidence of record 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.”¹⁵ Sections 10.617 and 10.618 of the federal regulations implementing this section of FECA provide

¹¹ 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); *M.T.*, Docket No. 23-0251 (issued February 22, 2024) (physical therapists and physician assistants are not considered physicians as defined under FECA); *C.G.*, Docket No. 20-0957 (issued January 27, 2021) (physician assistants are not considered physicians as defined 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).

¹² *M.T.*, *id.*; *K.A.*, Docket No. 18-0999 (issued October 4, 2019); *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk*, *id.*

¹³ *T.L.*, Docket No. 23-1039 (issued February 23, 2024); *C.S.*, Docket No. 20-1354 (issued January 29, 2021); *D.T.*, Docket No. 20-0685 (issued October 8, 2020); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

¹⁴ *H.A.*, Docket No. 24-0004 (issued January 26, 2024); *J.K.*, Docket No. 20-0591 (issued August 12, 2020); *A.B.*, Docket No. 17-0301 (issued May 19, 2017).

¹⁵ 5 U.S.C. § 8124(b)(1).

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.¹⁶ 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 of marking if mailed, or the date received in ECOMP, and before the claimant has requested reconsideration.¹⁷ 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.¹⁸

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 the request for an oral hearing must be made within 30 days of the date of the decision for which review is sought.¹⁹ The record indicates that on January 9, 2024 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review *via* ECOMP. As appellant's hearing request was received in ECOMP on January 9, 2024, it postdated OWCP's October 4, 2023 decision by more than 30 days and, therefore, was untimely. Consequently, appellant was not entitled to an oral hearing as a matter of right.²⁰

OWCP, however, has the discretionary authority to grant the request and it must exercise such discretion.²¹ The Board finds that, in the February 7, 2024 decision, OWCP 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 deductions from established facts.²² The evidence of record does not indicate that OWCP abused its discretion

¹⁶ 20 C.F.R. § § 10.616, 10.617.

¹⁷ *Id.* at § 10.616(a). *See also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Review of the Written Record*, Chapter 2.1601.4(a) (February 2024).

¹⁸ *J.T.*, Docket No. 18-0664 (issued August 12, 2019); *Eddie Franklin*, 51 ECAB 223 (1999); *Delmont L. Thompson*, 51 ECAB 155 (1999).

¹⁹ *Supra* note 18.

²⁰ *R.L.*, Docket No. 23-0885 (issued January 17, 2024); *see D.S.*, Docket No. 21-1296 (issued March 23, 2022).

²¹ *See P.C.*, Docket No. 19-1003 (issued December 4, 2019).

²² *T.B.*, Docket No. 20-0158 (issued March 18, 2022).

by denying appellant's request for an oral hearing. Accordingly, the Board finds that OWCP properly denied her request for a 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 factors of her federal employment. 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 October 4, 2023 and February 7, 2024 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: June 3, 2024
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board