



properly denied appellant's request for an oral hearing before an OWCP hearing representative as untimely filed pursuant to 5 U.S.C. § 8124(b).

### **FACTUAL HISTORY**

On August 8, 2023 appellant, then a 41-year-old materials handler, filed an occupational disease claim (Form CA-2) alleging that he sustained stress and anxiety as a result of factors of his federal employment, including overwork and lack of tools or help for prolonged periods of time. He noted that he first became aware of his condition on July 18, 2023 and realized its relation to his federal employment on July 25, 2023. Appellant stopped work on August 7, 2023.

In an undated statement, appellant explained that over the last three to four months, he had performed work at three employing establishment locations, and that he had been working alone as his coworker was absent. He related that he had suffered from post-traumatic stress disorder (PTSD) from his military service and that overwork had aggravated his stress, anxiety, and PTSD. Appellant also alleged that he had recently suffered a shoulder and back injury due to heavy lifting of furniture into a truck without help. He stated that he was not afforded sufficient tools and help to perform the duties of his job. Appellant alleged stress due to poor leadership, lack of proper tools and equipment.

In a development letter dated August 16, 2023, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence necessary to establish his claim and provided a questionnaire for his completion. OWCP afforded appellant 60 days to respond. In a development letter of even date, it requested that the employing establishment provide comments from a knowledgeable supervisor regarding the accuracy of appellant's statements.

In a letter dated August 25, 2023, the employing establishment acknowledged that it had been short staffed for the last two months as appellant's coworker had been out of work and then had then left the employing establishment.

In a letter dated September 14, 2023, Justin Wirth, DNP, a nurse practitioner, specializing in psychiatric and mental health, noted that appellant had been under his care since January 12, 2023. He advised that appellant was under treatment for PTSD and to rule out bipolar disorder. Dr. Wirth opined that appellant suffered from emotional stressors including lifting heavy objects at work without sufficient equipment or time to do so, and that the emotional and physical stress of these duties exacerbated appellant's mental health conditions, leading to decompensation.

By decision dated January 23, 2024, OWCP accepted the following events as factors of employment: being required to move heavy furniture without adequate assistance or sufficient access to equipment; frequent inability to use a forklift to retrieve items leading to retrieval of items taking two hours; and not being permitted to use a forklift in contrast to other materials handlers of the same pay grade being allowed to use the forklift. However, it found that the medical evidence of record was insufficient to establish a diagnosed emotional condition in connection with accepted events that were factors of employment. It concluded that the requirements had not been met to establish an injury as defined by FECA.

In an appeal request form received by OWCP on February 29, 2024, appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. The date of his signature and the postmark were illegible.

By decision dated March 6, 2024, OWCP's hearing representative denied appellant's request for an oral hearing, finding that the request was untimely filed. The hearing representative further exercised 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 appellant sustained an injury in the performance of his federal employment.

### **LEGAL PRECEDENT -- ISSUE 1**

An employee seeking benefits under FECA 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 time limitation period of FECA,<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup>

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit: (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.<sup>6</sup>

The medical evidence required to establish causal relationship is rationalized medical opinion evidence.<sup>7</sup> A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background.<sup>8</sup> 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

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<sup>3</sup> *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>4</sup> *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>5</sup> *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

<sup>6</sup> *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).

<sup>7</sup> 20 C.F.R. § 10.115(e), (f); *see Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

<sup>8</sup> *Elaine Pendleton*, 40 ECAB 1143 (1989).

nature of the relationship between the diagnosed condition and appellant's specific employment factor(s).<sup>9</sup>

### **ANALYSIS -- ISSUE 1**

The Board finds that appellant has not met his burden of proof to establish a diagnosed emotional condition in connection with the accepted factors of employment.

Appellant submitted a letter dated September 14, 2023 from Dr. Wirth, a nurse practitioner. The Board has held that medical reports signed solely by nurse practitioners are of no probative value because these medical providers are not considered physicians as defined under FECA.<sup>10</sup> Therefore, the September 14, 2023 letter is of no probative value and is insufficient to establish appellant's claim.

As appellant has not submitted rationalized medical evidence establishing a diagnosis of an emotional condition in connection with the accepted factors of his federal employment, the Board finds that he has not met his burden of proof to establish his claim.<sup>11</sup>

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."<sup>12</sup> 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.<sup>13</sup> 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.<sup>14</sup>

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<sup>9</sup> *John J. Carlone*, 41 ECAB 354 (1989).

<sup>10</sup> 5 U.S.C. § 8101(2) provides that a physician includes surgeons, osteopathic practitioners, podiatrists, dentists, clinical psychologists, optometrists, and chiropractors within the scope of their practice as defined by state law. *See id.* at § 8101(2); 20 C.F.R. § 10.5(t). *See also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a (May 2023); *L.S.*, Docket No. 19-1231 (issued March 30, 2021) (a physician assistant and nurse practitioner are not considered physicians as defined under FECA); *R.L.*, Docket No. 19-0440 (issued July 8, 2019) (a physical therapist is not considered a physician 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).

<sup>11</sup> *See T.B.*, Docket No. 23-0499 (issued August 14, 2023); *L.H.*, Docket No. 23-0326 (issued July 3, 2023); *W.O.*, Docket No. 22-0418 (issued February 15, 2023); *K.H.*, Docket No. 22-0489 (issued August 2, 2022).

<sup>12</sup> 5 U.S.C. § 8124(b).

<sup>13</sup> 20 C.F.R. §§ 10.616, 10.617.

<sup>14</sup> *Id.* at § 10.616(a).

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.<sup>15</sup>

### ANALYSIS -- ISSUE 2

The Board finds that OWCP improperly denied appellant's request for an oral hearing before an OWCP hearing representative as untimely filed.

OWCP procedures provide that a request for an oral hearing or review of the written record is timely if it was mailed (as determined by the postmark or other carrier's date marking) within 30 days of the date of OWCP's decision.<sup>16</sup> If the postmark is not legible, the request will be deemed timely unless OWCP has kept evidence of date of delivery on the record reflecting that the request is untimely.<sup>17</sup>

Appellant, therefore, had 30 days after issuance of OWCP's January 23, 2024 decision to timely request an oral hearing before a representative of OWCP's Branch of Hearings and Review. The thirtieth day after the issuance of OWCP's January 23, 2024 decision was February 22, 2024.

The Board finds that the Branch of Hearings and Review is required to retain an envelope in which a request for a hearing is made so as to determine the timeliness of the request for a hearing.<sup>18</sup> However, the date of appellant's signature and the postmark were illegible. The case record submitted on appeal does not contain a legible copy of the envelope from which the timeliness of the hearing can be determined.

As appellant submitted a request for an oral hearing and the record contains no envelope with a legible postmark, the Board finds that his request is timely filed and he is entitled to an oral hearing as a matter of right. Consequently, the case must be remanded for OWCP to provide appellant an oral hearing under section 8124.<sup>19</sup>

### CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a diagnosed medical condition in connection with the accepted events that are factors of employment. The Board further finds that OWCP improperly denied appellant's request for an oral hearing before an OWCP hearing representative as untimely filed.

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<sup>15</sup> *K.A.*, Docket No. 23-0519 (issued December 8, 2023); *V.S.*, Docket No. 22-1325 (issued December 16, 2022); *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).

<sup>16</sup> *Supra* note 10 Chapter 2.1601.4 (September 2020).

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* Chapter 2.1601.3.a (September 2020).

<sup>19</sup> *See J.P.*, Docket No. 15-790 (issued June 3, 2015); *Solomon R. Lee*, Docket No. 03-487 (issued June 24, 2003); *Diane B. Werner*, Docket No. 01-274 (issued September 10, 2001). *See also L.W.*, Docket No. 14-2055 (issued March 17, 2015).

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 23, 2024 decision of the Office of Workers' Compensation Programs is affirmed and the March 6, 2024 decision is reversed.

Issued: June 28, 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