

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

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L.C., Appellant)	
)	
and)	Docket Nos. 24-0567 &
)	24-0627
U.S. POSTAL SERVICE, DICKINSON POST)	Issued: June 28, 2024
OFFICE, Dickinson, TX, Employer)	
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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
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On May 6, 2024 appellant filed a timely appeal from a March 18, 2024 merit decision of the Office of Workers' Compensation Programs. The Clerk of the Appellate Boards assigned the appeal Docket No. 24-0567. On May 22, 2024 appellant filed a timely appeal from a May 13, 2024 nonmerit decision of OWCP. The Clerk of the Appellate Boards assigned the appeal Docket No. 24-0627. 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 disability from work from October 17 through November 20, 2022 causally related to her accepted August 15, 2022 employment injury; and (2) whether OWCP properly denied her request for a review of the written record before an OWCP hearing representative as untimely filed pursuant to 5 U.S.C. § 8124(b).

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On August 16, 2022 appellant, then a 38-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on August 15, 2022 she injured her left hand when it was pinned between a doorframe and an all-purpose container (APC) in the performance of duty. She stopped work on August 15, 2022 and returned to work full time at regular duty on August 17, 2022.

In a duty status report dated September 19, 2022, Dr. Dan Ung, a chiropractor, diagnosed left hand sprain/strain and recommended that appellant remain off work. In a work status report dated September 21, 2022, he recommended that she remain off work from that date through October 5, 2022. Dr. Ung continued to recommend that appellant remain off work in a work status report dated October 3, 2022. In a narrative report dated October 12, 2022, he related her physical examination findings and opined that she had a palpable tear around the carpal joint area and triangular fibrocartilage complex (TFCC). Dr. Ung recommended that appellant continue with modified work. In a work status report dated October 21, 2022, he indicated that she could return to work with restrictions specific to the left hand/wrist as of November 4, 2022.

On November 4 and 11, 2022 appellant filed claims for compensation (Forms CA-7) for disability from work during the period October 15 through November 11, 2022.

In a duty status report (Form CA-17) dated November 16, 2022, Dr. Ung recommended that appellant could resume full-time work with a restriction of lifting no more than 20 pounds. In a work status report of the same date, he noted that she was unable to return to work from November 16 through 20, 2022.

By decision dated November 16, 2022, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish a diagnosed medical condition in connection with the accepted August 15, 2022 employment incident.

On November 15, 2023 appellant, through counsel, requested reconsideration.

Appellant continued to submit physical therapy reports from Dr. Ung dated September 12 through December 30, 2022.

In a report dated November 14, 2023, Dr. Anibal Rossel, an internal and family medicine specialist, evaluated appellant for complaints of left wrist pain and left-hand weakness related to her August 15, 2022 work-related injury. He diagnosed left wrist sprain and strain and left wrist carpal tunnel syndrome. In a Form CA-17 of the same date, Dr. Rossel related that appellant was able to resume work at regular duty.

In a report dated November 28, 2023, Dr. Rossel related that appellant was seen in follow up for her left wrist conditions. He diagnosed left wrist sprain and strain and left wrist carpal tunnel syndrome. Dr. Rossel noted that appellant had no recommended work restrictions. An attached Form CA-17 similarly noted no work restrictions and ability to resume work at regular duty.

By decision dated December 22, 2023, OWCP vacated its November 16, 2022 decision and accepted the claim for left wrist sprain and strain.

In a report dated December 19, 2023, Dr. Rossel recounted that appellant related that she had returned to work and had difficulty lifting heavy items. He diagnosed left wrist sprain and strain and left wrist carpal tunnel syndrome. Dr. Rossel concluded that appellant was able to work with restrictions. In an attached Form CA-17, he noted that she was able to resume work with a restriction of lifting no more than 40 pounds.

On January 26, 2024 appellant filed a Form CA-7 claim for wage-loss compensation for disability from work during the period October 17 through November 20, 2022.

In a development letter dated February 1, 2024, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of medical evidence necessary and afforded her 30 days to submit the requested evidence.

In a Form CA-17 dated February 13, 2024, Dr. Rossel continued to recommend that appellant was able to resume work with a restriction of lifting no more than 40 pounds.

In a progress note dated February 15, 2024, Dr. Mark Khorsandi, a regenerative medicine and general surgeon, diagnosed carpal tunnel and cubital tunnel syndrome of the left upper extremity. He noted that appellant was currently working.

In unsigned reports dated February 17 and 26, 2024, Timothy Holcomb, a nurse practitioner, related that appellant had been unable to work from October 17 through November 20, 2022 due to left hand pain from a sprain and carpal tunnel syndrome. He indicated that his findings were in agreement with Dr. Omar Vidal, a pain medicine specialist, however, the reports were not countersigned by Dr. Vidal.

By decision dated March 18, 2024, OWCP denied appellant's claim for compensation for disability from work commencing October 17, 2022. It found that the medical evidence of record was insufficient to establish disability from work during the claimed period due to the accepted employment injury.

On May 6, 2024 OWCP scanned into the Employees' Compensation Operations and Management Portal (ECOMP) appellant's April 18, 2024 request for review of the written record by a representative of the Branch of Hearings and Review.

By decision dated May 13, 2024, OWCP denied appellant's request for a review of the written record as untimely filed, finding that her request was not made within 30 days of the March 18, 2024 decision as it was dated and received *via* ECOMP on May 6, 2024 as verified by the scanned date. 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 that the accepted employment conditions disabled her from work for the claimed period.

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 that any disability or specific condition for which

compensation is claimed is causally related to the employment injury.² For each period of disability claimed, the employee has the burden of proof to establish that he or she was disabled from work as a result of the accepted employment injury.³ Whether a particular injury causes an employee to become disabled from work, and the duration of that disability, are medical issues that must be proven by a preponderance of probative and reliable medical opinion evidence.⁴

Under FECA the term “disability” means the incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.⁵ Disability is thus not synonymous with physical impairment, which may or may not result in an incapacity to earn wages. An employee who has a physical impairment causally related to a federal employment injury, but who nevertheless has the capacity to earn the wages he or she was receiving at the time of injury, has no disability as that term is used in FECA.⁶

The Board will not require OWCP to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so, would essentially allow an employee to self-certify their disability and entitlement to compensation.⁷

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met her burden of proof to establish disability from work during the period October 17 through November 20, 2022 causally related to her accepted August 15, 2022 employment injury.

OWCP initially received reports from Drs. Ung, a chiropractor, dated September 19 through November 16, 2022 indicating dates that he recommended she remain off work. However, Dr. Ung did not diagnose a spinal subluxation as demonstrated by x-ray to exist, and thus, Dr. Ung is not considered a physician under FECA. Therefore, these reports are of no probative value in establishing appellant’s claimed period of disability.⁸

In reports dated November 14 and 28, 2023, Dr. Rossel related that appellant was able to resume work with no restrictions. On December 19, 2023 and February 13, 2024 he recommended work restrictions of no lifting over 40 pounds. Dr. Rossel noted that appellant had returned to

² See *D.S.*, Docket No. 20-0638 (issued November 17, 2020); *F.H.*, Docket No. 18-0160 (issued August 23, 2019); *C.R.*, Docket No. 18-1805 (issued May 10, 2019); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ *B.O.*, Docket No. 19-0392 (issued July 12, 2019); *D.W.*, Docket No. 18-0644 (issued November 15, 2018).

⁴ 20 C.F.R. § 10.5(f); *B.O.*, *id.*; *N.M.*, Docket No. 18-0939 (issued December 6, 2018).

⁵ *Id.* at § 10.5(f); see *B.K.*, Docket No. 18-0386 (issued September 14, 2018).

⁶ *Id.*

⁷ *A.W.*, Docket No. 18-0589 (issued May 14, 2019).

⁸ 5 U.S.C. § 8101(2) provides that the term physician includes chiropractors only if the treatment consists of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist; see also *G.P.*, Docket No. 23-1133 (issued March 19, 2024); *D.P.*, Docket No. 13-1721 (issued February 21, 2014); *P.D.*, Docket No. 13-2034 (issued May 8, 2014); *Paul Foster*, 56 ECAB 208 (2004).

work and had experienced difficulty lifting heavy items. These reports did not specifically address appellant's claimed period of disability from October 17 to November 20, 2022, but rather addressed appellant's work status in 2023 and 2024, after her return to work. As noted above, the Board will not require OWCP to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed.⁹ As such, these reports are of no probative value with regard to the issue of appellant's disability for the claimed period and are insufficient to establish her claim for wage-loss compensation.

In a progress note dated February 15, 2024, Dr. Khorsandi diagnosed carpal tunnel and cubital tunnel syndrome of the left upper extremity. He noted that appellant was currently working. However, Dr. Khorsandi did not offer an opinion as to whether she had disability during the claimed period causally related to the accepted employment injury.¹⁰ Therefore, this evidence is insufficient to establish appellant's disability claim.

In unsigned reports dated February 17 and 26, 2024, nurse practitioner Timothy Holcomb, related that appellant had been unable to work from October 17 through November 20, 2022 due to left hand pain from sprain and carpal tunnel syndrome. Mr. Holcomb indicated that his findings were in agreement with those of Dr. Omar Vidal, a pain medicine specialist, however the reports were not countersigned by Dr. Vidal. A nurse practitioner does not qualify as a physician under FECA. Reports prepared by nurse practitioners do not qualify as probative medical evidence supportive of a claim, unless countersigned by a physician.¹¹ As such, these reports are of no probative value in establishing appellant's claimed period of disability.

As the medical evidence of record is insufficient to establish disability from work during the claimed period causally related to the accepted employment injury, 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

⁹ *Id.*

¹⁰ *J.M.*, Docket No. 19-1169 (issued February 7, 2020); *A.L.*, Docket No. 19-0285 (issued September 24, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹¹ Section 8101(2) 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) (May 2023); *M.M.*, Docket No. 23-0475 (issued July 27, 2023) (finding that a registered nurse and an advanced registered nurse practitioner are not considered physicians as defined under FECA); *B.L.*, Docket No. 22-1338 (issued January 20, 2023) (finding that nurse practitioners are not considered physicians as defined by FECA); *H.B.*, Docket No. 16-1753 (issued March 14, 2018); *C.J.*, Docket No. 15-1697 (issued February 5, 2016); *L.M.*, Docket No. 14-1352 (issued October 1, 2014); *B.W.*, Docket No. 07-1529 (issued December 3, 2007); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (finding that lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA).

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 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, or the date received in ECOMP .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 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 hearing is sought. Appellant, therefore, had 30 days after issuance of OWCP’s March 18, 2024 decision to timely request a review of the written record before a representative of OWCP’s Branch of Hearings and Review. Because appellant’s request for a review of the written record was received in ECOMP on May 6, 2024, the request was not made within 30 days of OWCP’s March 18, 2024 decision. Appellant was, therefore, not entitled to a review of the written record as a matter of right.¹⁶

OWCP, however, has the discretionary authority to grant the request and it must exercise such discretion.¹⁷ The Board finds that, in its May 13, 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, 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.¹⁸ The Board finds that the evidence of record does not indicate that OWCP

¹² *Supra* note 1 at § 8124(b)(1).

¹³ 20 C.F.R. §§ 10.616, 10.617.

¹⁴ *Id.* at § 10.616(a); *supra* note 11 at Chapter 2.1601.4a (February 2024).

¹⁵ *K.K.*, Docket No. 24-0205 (issued April 23, 2024); *W.H.*, Docket No. 20-0562 (issued August 6, 2020); *P.C.*, Docket No. 19-1003 (issued December 4, 2019); *M.G.*, Docket No. 17-1831 (issued February 6, 2018); *Eddie Franklin*, 51 ECAB 223 (1999); *Delmont L. Thompson*, 51 ECAB 155 (1999).

¹⁶ *Supra* note 13. *See also M.F.*, Docket No. 21-0878 (issued January 6, 2022); *P.C.*, Docket No. 19-1003 (issued December 4, 2019).

¹⁷ *Id.*

¹⁸ *Id.*

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 disability from work from October 17 through November 20, 2022 causally related to her accepted August 15, 2022 employment injury. The Board further finds that OWCP properly denied appellant's request for a review of the written record before an OWCP hearing representative as untimely filed pursuant to 5 U.S.C. § 8124(b).

ORDER

IT IS HEREBY ORDERED THAT the March 18 and May 13, 2024 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: June 28, 2024
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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