United States Department of Labor
Employees' Compensation Appeals Board

J.B., Appellant	)	
and	)	**Docket No. 24-0946**
	)	**Issued: November 4, 2024**
U.S. POSTAL SERVICE, MEDFORD POST OFFICE, Medford, MA, 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 September 26, 2024 appellant filed a timely appeal from a June 6, 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.[2]

ISSUES

The issues are: (1) whether appellant has met his burden of proof to establish a medical condition causally related to the accepted January 18, 2024 employment incident; and (2) whether OWCP properly denied appellant's request for a hearing as untimely.

[1] 5 U.S.C. § 8101 *et seq*.

[2] The Board notes that following the September 19, 2024 decision, appellant submitted additional evidence to OWCP. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id*.

FACTUAL HISTORY

On March 18, 2024 appellant, then a 46-year-old assistant rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on January 18, 2024 he sustained injuries to his wrist, back, and knee when he slipped on ice and fell to the ground when delivering mail while in the performance of duty. He did not stop work.[3]

Appellant submitted medical evidence in support of his claim, including a February 16, 2024 report of x-rays, which contained an impression of no visible right rib fracture and no pneumothorax.

In a February 16, 2024 report, Dr. Jessamyn Blau, a Board-certified internist, indicated that appellant worked for the employing establishment and that he hit his ribs when he fell on January 18, 2024. She provided physical examination findings and diagnosed rib pain on the right side, noting that it was unlikely that appellant sustained a rib fracture.

In a February 20, 2024 report, Dr. David W. Wing, a Board-certified orthopedic surgeon, indicated that appellant had presented for a follow-up visit regarding bilateral knee pain, left greater than right. He advised that appellant's list of orthopedic problems included chronic left knee pain status post January 8, 2022 work injury, chronic low back pain, and bilateral knee pain. Dr. Wing diagnosed chronic pain of the left knee and added the comment, "recent re-injury."

A March 13, 2024 magnetic resonance imaging (MRI) scan of appellant's left knee contained an impression of osteochondral lesion of the medial tibial plateau, with no loose fragment, and medial meniscus fraying.

In a March 14, 2024 report, Dr. Wing advised that appellant reported he injured his left knee during a January 8, 2022 work injury and "again in January of this year" when he slipped going down a step at work. He indicated that the physical examination revealed slight valgus alignment of the left knee. Dr. Wing discussed appellant's diagnostic testing, noting that an MRI scan showed a small focal area of chondromalacia of the lateral tibial plateau. He added "left knee lateral tibial plateau osteochrondral lesion" to appellant's list of orthopedic problems and diagnosed chronic pain of the left knee.

Appellant also submitted a series of documents which predated the claimed January 18, 2024 injury.

Appellant submitted several administrative documents, relating to medical care between January 2022 and March 2024, in the form of diagnostic testing authorization forms, lists of current medications/allergies, medication insurance records, lists of past medical visits, nurse triage instructions, and records relating to scheduling of medical visits. He also submitted documents, dated between October 2014 and October 2023, relating to his past employment.

[3] Appellant was terminated from the employing establishment, effective February 1, 2024, for failure to meet the requirements of his position in the areas of work practice and performance.

In a March 29, 2024 development letter, OWCP notified appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence needed and provided a questionnaire for his completion. OWCP afforded appellant 60 days to respond.

Appellant submitted an April 3, 2024 report by Erika Swanson, a physician assistant, who noted that appellant reported suffering a fall at work on January 18, 2024 and that he sustained a left knee sprain and a contusion of the right chest.

In an April 22, 2024 letter, the employing establishment challenged appellant's claim.

In a follow-up letter dated April 22, 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 March 29, 2024 development 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.

Appellant submitted a May 28, 2024 attending physician's report (Form CA-20) by Ms. Swanson who listed a date of injury of January 18, 2024 and diagnosed left knee sprain, left rib contusion, and low back strain. She opined that appellant had been totally disabled from January 18, 2024 to the present.

By decision dated June 6, 2024, OWCP accepted that appellant had established the occurrence of the January 18, 2024 employment incident, as alleged. However, it denied his claim, finding that he had not submitted sufficient medical evidence to establish a medical condition casually related to the accepted January 18, 2024 employment incident. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On September 11, 2024 appellant requested a hearing before a representative OWCP's the Branch of Hearings and Review.[4]

By decision dated September 19, 2024, OWCP denied appellant's request for a 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.

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 the individual is an employee of the United States within the meaning of FECA, that the claim was filed within the applicable time limitation of FECA,[5] 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

[4] Appellant's appeal request form indicated that he requested both an oral hearing and a review of the written record.

[5] *C.B.*, Docket No. 21-1291 (issued April 28, 2022); *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

employment injury.[6] 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.[7]

To determine if an employee has sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Fact of injury consists of two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred at the time and place, and in the manner alleged.[8] The second component is whether the employment incident caused an injury.[9]

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue. The opinion of the physician must be based on a complete factual and medical background, 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 incident.[10] 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 or incidents is sufficient to establish causal relationship.[11]

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 18, 2024 employment incident.

Appellant submitted a February 20, 2024 report, wherein Dr. Wing advised that appellant's list of orthopedic problems included chronic left knee pain status post January 8, 2022 work injury, chronic low back pain, and bilateral knee pain. Dr. Wing diagnosed chronic pain of the left knee and added the comment, "recent re-injury." In a March 14, 2024 report, he advised that appellant reported he injured his left knee during a January 8, 2022 work injury and "again in January of this year" when he slipped going down a step at work. Dr. Wing added "left knee lateral tibial plateau osteochrondral lesion" to appellant's list of orthopedic issues and diagnosed chronic pain of the left knee. However, he did not provide an opinion that appellant sustained an injury causally related to the accepted January 18, 2024 employment incident. 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.[12] Therefore, this evidence is insufficient to establish appellant's claim.

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[6] *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[7] *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).

[8] *B.P.*, Docket No. 16-1549 (issued January 18, 2017); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[9] *M.H.*, Docket No. 18-1737 (issued March 13, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

[10] *S.S.*, Docket No. 18-1488 (issued March 11, 2019).

[11] *J.L.*, Docket No. 18-1804 (issued April 12, 2019).

[12] *See F.S.*, Docket No. 23-0112 (issued April 26, 2023); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

Appellant also submitted a February 16, 2024 report, wherein Dr. Blau indicated that appellant reported striking his ribs when falling at work on January 18, 2024. Dr. Blau diagnosed right-sided rib pain. This report is of no probative value because he did not provide an opinion that appellant sustained an injury causally related to the accepted January 18, 2024 employment incident.[13] Therefore, this evidence is insufficient to establish appellant's claim.

Appellant also submitted documents from a period prior to the claimed January 18, 2024 injury. These reports also are of no probative value given that they predate the accepted January 18, 2024 employment incident.[14] Therefore, this evidence is insufficient to establish appellant's claim.

OWCP also received a January 3, 2024 report by Ms. Anselmo, a nurse practitioner; and April 3 and May 28, 2024 reports by Ms. Swanson, a physician assistant. However, certain healthcare providers such as physician assistants, nurses, and nurse practitioners are not considered physicians as defined under FECA.[15] Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.[16] Therefore, this evidence is insufficient to establish appellant's claim.

Appellant also submitted x-rays and an MRI scan. However, diagnostic studies, standing alone, lack probative value on causal relationship as they do not address whether employment factors caused the diagnosed condition.[17] Therefore, this evidence is insufficient to establish appellant's claim.

Appellant submitted numerous administrative documents, relating to medical care between January 2022 and March 2024, in the form of diagnostic testing authorization forms, lists of current medications/allergies, medication insurance records, lists of past medical visits, nurse triage instructions, and records relating to scheduling of medical visits. He also submitted documents, dated between October 2014 and October 2023, relating to his past employment. However, these documents were not signed by a physician within the meaning of FECA and therefore are of no probative value regarding appellant's traumatic injury claim.[18]

[13] *Id*.

[14] *Id*.

[15] 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); *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); *H.S.*, Docket No. 20-0939 (issued February 12, 2021) (physician assistants are not considered physicians as defined under FECA); *P.S.*, Docket No. 17-0598 (issued June 23, 2017) (registered nurses and nurse practitioners are not considered physicians as defined under FECA).

[16] *See id*.

[17] *C.S.*, Docket No. 19-1279 (issued December 30, 2019).

[18] *See B.S.*, Docket No. 22-0918 (issued August 29, 2022); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

As the medical evidence of record is insufficient to establish causal relationship between a diagnosed medical condition and the accepted January 18, 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)(1) of FECA, concerning a claimant's entitlement to a hearing before an OWCP representative, provides in pertinent part: "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 the issuance of the decision, to a hearing on his claim before a representative of the Secretary."[19] 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.[20] A claimant is entitled to an oral hearing or a 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, or the date received in the Employees' Compensation Operations and Management Portal (ECOMP), and before the claimant has requested reconsideration.[21] Although there is no right to a hearing, either in the form of an oral hearing or a review of the written record, if the hearing is 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.[22]

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied appellant's request for a hearing as untimely.

On September 11, 2024 appellant requested a hearing. As this request was received more than 30 days after OWCP's June 6, 2024 decision, it was untimely as filed. Hence, OWCP was correct in noting in its September 19, 2024 decision that appellant was not entitled to a hearing as a matter of right.[23]

Although appellant was not entitled to a hearing as a matter of right, OWCP's Branch of Hearings and Review has discretionary authority to grant the request, and it must exercise such

[19] 5 U.S.C. § 8124(b)(1).

[20] 20 C.F.R. § 10.615.

[21] *Id*. at §§ 10.616, 10.617; Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.4a (February 2024).

[22] *A.M.*, Docket No. 24-0413 (issued July 31, 2024); *G.H.*, Docket No. 22-0122 (issued May 20, 2022); *J.T.*, Docket No. 18-0664 (issued August 12, 2019); *Eddie Franklin*, 51 ECAB 223 (1999); *Delmont L. Thompson*, 51 ECAB 155 (1999).

[23] *See supra* note 20.

discretion.[24] The Board has held that the only limitation on OWCP's authority is reasonableness.[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 hearing. Accordingly, the Board finds that OWCP properly exercised discretionary authority in denying his request for a hearing as untimely filed.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a medical condition causally related to the accepted January 18, 2024 employment incident. The Board further finds that OWCP properly denied appellant's request for a hearing as untimely.

ORDER

IT IS HEREBY ORDERED THAT the June 6 and September 19, 2024 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: November 4, 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

[24] *See supra* note 21.

[25] *Daniel J. Perea*, 42 ECAB 214, 221 (1990).