United States Department of Labor
Employees' Compensation Appeals Board

L.W., Appellant	)	
and	)	**Docket No. 24-0947**
	)	**Issued: January 31, 2025**
U.S. POSTAL SERVICE, HAMPTON PARK POST OFFICE, Capitol Heights, MD, 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

JURISDICTION

On September 25, 2024 appellant filed a timely appeal from an April 17, 2024 merit decision and a June 11, 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.

ISSUES

The issues are: (1) whether appellant met her burden of proof to establish a medical condition causally related to the accepted December 7, 2023 employment incident; and (2) whether 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).

FACTUAL HISTORY

On December 8, 2023 appellant, then a 38-year-old bulk mail dock clerk, filed a traumatic injury claim (Form CA-1) alleging that on December 7, 2023 she sustained a right ankle fracture

[1] 5 U.S.C. § 8101 *et seq.*

when she was struck by a forklift vehicle while in the performance of duty. She stopped work on that date.

Appellant submitted a December 8, 2023 work status report by Dr. Mychelle Shegog, a Board-certified orthopedic surgeon, who treated appellant on that date. She placed appellant on modified work at home from December 8, 2023 through February 11, 2024 and provided work restrictions. In a January 25, 2024 work status report, Lawrence Waters, a physician assistant, placed appellant on modified work at home from February 12 through 25, 2024, provided work restrictions, and indicated that she could return to full capacity on February 26, 2024.

Appellant also submitted unsigned reports, dated January 4 and 25, 2024, each of which was entitled, "after visit summary," and referenced care received from physician assistants.

In a February 5, 2024 development letter, OWCP notified appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed and provided a questionnaire for her completion. OWCP afforded appellant 60 days to respond.

Appellant submitted a February 2, 2024 duty status report (Form CA-17), wherein Mr. Waters diagnosed right ankle fracture and provided work restrictions. She also submitted unsigned after-visit summaries dated December 8, 2023 and January 25, 2024 and resubmitted documents previously of record.

In a follow-up development letter dated February 27, 2024, 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 February 5, 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.

In response, appellant submitted a January 25, 2024 right ankle x-ray report, which contained an impression of no specific evidence of fracture, and an unsigned document listing current medications.

By decision dated April 17, 2024, OWCP accepted that the December 7, 2023 employment incident, occurred as alleged. However, it denied appellant's claim, finding that the medical evidence of record was insufficient to establish a medical condition causally related to the accepted December 7, 2023 employment incident.

On June 4, 2024 OWCP received *via* the Employees' Compensation Operations & Management Portal (ECOMP) appellant's request for a review of the written record by a representative of OWCP's Branch of Hearings and Review.

By decision dated June 11, 2024, OWCP denied appellant's request for a review of the written record, finding that she was not entitled to a review of the written record as a matter of right as her request was untimely filed. It advised that it had exercised its discretion, but further found that the case could equally well be addressed by requesting reconsideration and submitting 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 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,[2] 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.[3] 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.[4]

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 at the time and place, and in the manner alleged.[5] The second component is whether the employment incident caused an injury.[6]

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.[7] 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.[8]

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 December 7, 2023 employment incident.

Appellant submitted a December 8, 2023 work status report, wherein Dr. Shegog placed appellant on modified work at home from December 8, 2023 through February 11, 2024. However, she did not provide an opinion on causal relationship between the claimed disability and

[2] *E.K.*, Docket No. 22-1130 (issued December 30, 2022); *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).

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

[4] *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).

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

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

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

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

accepted December 7, 2023 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.[9] Therefore, this evidence is insufficient to establish appellant's claim.

Appellant also submitted a January 25, 2024 work status report and a February 2, 2024 Form CA-17 by Mr. Waters, a physician assistant. However, certain healthcare providers such as physician assistants, nurses, and physical therapists are not considered physicians as defined under FECA.[10] Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.[11] Therefore, this evidence is insufficient to establish appellant's claim.

OWCP also received a January 25, 2024 right ankle x-ray report. However, diagnostic studies, standing alone, lack probative value on causal relationship as they do not address whether employment factors caused the diagnosed condition.[12]

Appellant further submitted unsigned reports. However, the Board has held that reports that are unsigned or bear an illegible signature lack proper identification and cannot be considered probative medical evidence as the author cannot be identified as a physician.[13]

As the medical evidence of record is insufficient to establish a medical condition causally related to the accepted December 7, 2023 employment incident, 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.

[9] *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).

[10] 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).

[11] *See id*.

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

[13] *See A.B.*, Docket No. 25-0057 (issued November 26, 2024); *B.S.*, Docket No. 22-0918 (issued August 29, 2022); *S.D.*, Docket No. 21-0292 (issued June 29, 2021); *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

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."[14] 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.[15]

A claimant is entitled to an oral 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, or the date received in ECOMP, and before the claimant has requested reconsideration.[16] Although there is no right to an oral hearing or review of the written record 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.[17]

ANALYSIS -- ISSUE 2

The Board 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).

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.[18] Appellant, therefore, had 30 days after issuance of OWCP's April 17, 2024 decision to timely request a review of the written record before a representative of OWCP's Branch of Hearings and Review. Because her request for a review of the written record was received in ECOMP on June 4, 2024, more than 30 days after OWCP's April 17, 2024 decision, it was untimely filed. Appellant was, therefore, not entitled to a review of the written record as a matter of right.[19]

While OWCP also has the discretionary power to grant a hearing when a claimant is not entitled to a hearing as a matter of right, OWCP, in its June 11, 2024 decision, properly exercised its discretion by indicating that it had carefully considered appellant's June 4, 2024 request for a review of the written record, and had determined that the request was denied for the reason that

[14] 5 U.S.C. § 8124(b)(1).

[15] 20 C.F.R. §§ 10.616, 10.617.

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

[17] *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).

[18] *Supra* note 16.

[19] *See L.M.*, Docket No. 25-0048 (issued November 18, 2024).

the issue of the case could equally well be addressed by requesting reconsideration, and submitting new evidence which established she sustained a traumatic injury on December 7, 2023.

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 deduction from established facts.[20] The Board finds that the evidence of record does not establish that OWCP abused its discretion in denying 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 December 7, 2023 employment incident. The Board further finds that OWCP properly denied her request for a review of the written record as untimely filed pursuant to 5 U.S.C. § 8124(b).

ORDER

IT IS HEREBY ORDERED THAT the April 17 and June 11, 2024 decisions of the Office of Workers' Compensation Programs are affirmed.[21]

Issued: January 31, 2025
Washington, DC

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

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

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

[21] James D. McGinley, Alternate Judge, participated in the preparation of this decision, but was no longer a member of the Board effective January 12, 2025.