United States Department of Labor
Employees' Compensation Appeals Board

C.J., Appellant	)	
and	)	**Docket No. 25-0072**
	)	**Issued: January 17, 2025**
U.S. POSTAL SERVICE, BROOKLYN PROCESSING & DISTRIBUTION CENTER, Brooklyn, NY, 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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On October 30, 2024 appellant filed a timely appeal from May 6 and 21, 2024 merit decisions and an October 9, 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 has met her burden of proof to establish a diagnosed medical condition in connection with the accepted February 7, 2024 employment incident; and (2) whether OWCP properly denied appellant's request for an oral hearing, pursuant to 5 U.S.C. § 8124(b).

[1] 5 U.S.C. § 8101 *et seq*.

FACTUAL HISTORY

On February 15, 2024 appellant, then a 38-year-old mail clerk, filed a traumatic injury claim (Form CA-1) alleging that on February 7, 2024 she sustained a left wrist and hand injury when she was moving a metal rack while in the performance of duty. She stopped work on February 7, 2024.

In support of her claim, appellant submitted a February 7, 2024 attending physician's report (Form CA-20) from Susana Yakubova, a nurse practitioner, who noted that appellant struck her hand on a safety beam at work on February 7, 2024. She recommended an x-ray and magnetic resonance imaging (MRI) scan of the left wrist.

In duty status reports (Form CA-17) dated February 7 and 13, 2024, Ms. Yakubova diagnosed left wrist and hand pain and restricted appellant from working.

In a March 1, 2024 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence required and provided a questionnaire for her completion. OWCP afforded appellant 60 days to submit the requested evidence.

Following the development letter, appellant submitted a March 12, 2024 Form CA-17, wherein Ms. Yakubova diagnosed left wrist and hand pain. Ms. Yakubova reported that appellant was fit for moderate duty and provided work restrictions. Appellant also submitted a report which was illegible.

In a follow-up development letter dated April 4, 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 its March 1, 2024 letter to submit the necessary 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 to OWCP's development letter, appellant submitted another illegible report.

In a February 12, 2024 MRI scan of the left hand, Dr. Stephen Toder, a Board-certified diagnostic radiologist, noted findings of intact left hand without fracture; bone bruise in the base of the third metacarpal bone; intact joint spaces; tenosynovitis of the extensor tendons of the second, third, and fourth fingers; and no additional soft tissue abnormality.

By decision dated May 6, 2024, OWCP denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish a diagnosed medical condition in connection with the accepted February 7, 2024 employment incident. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On May 16, 2024, appellant requested reconsideration. In support thereof, she submitted a March 28, 2024 Form CA-17, wherein Dr. Oleg Olshanetskiy, an osteopath Board-certified in family medicine, diagnosed left wrist and hand pain due to the February 7, 2024 incident, and provided appellant light-duty work restrictions.

By decision dated May 21, 2024, OWCP denied modification of its May 6, 2024 decision.

On September 28, 2024, appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

Appellant subsequently submitted additional medical evidence, including physical therapy reports, nurse practitioner progress notes, diagnostic studies, surgical consultation reports, and progress reports from a treating physician.

By decision dated October 9, 2024, OWCP determined that appellant was not entitled to an oral hearing under 5 U.S.C. § 8124(b)(1) as a matter of right because she had previously requested reconsideration on the same issue. It further exercised its discretion and determined that the issue in the case could equally well be addressed through a request for reconsideration before OWCP along with the submission of new evidence.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA[2] 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 timely filed within the applicable time limitation of FECA,[3] 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.[4] 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.[5]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time and place, and in the manner alleged. Second, the employee must submit sufficient medical evidence to establish that the employment incident caused an injury.[6]

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.[7] The opinion of

[2] *Id*.

[3] *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).

[4] *S.H.*, Docket No. 22-0391 (issued June 29, 2022); *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[5] *E.H.*, Docket No. 22-0401 (issued June 29, 2022); *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

[6] *H.M.*, Docket No. 22-0343 (issued June 28, 2022); *T.J.*, Docket No. 19-0461 (issued August 11, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

[7] *S.M.*, Docket No. 22-0075 (issued May 6, 2022); *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

the physician must be based on a complete factual and medical background of the employee, 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 specific employment incident identified by the employee.[8]

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 February 7, 2024 employment incident.

In a March 25, 2024 Form CA-17, Dr. Olshanetskiy diagnosed left wrist and hand pain and provided appellant light-duty work restrictions. The Board, however, has held that pain is a symptom, not a diagnosis of a medical condition.[9] Medical reports lacking a firm diagnosis are of no probative value.[10] Therefore, this evidence is insufficient to establish the claim.

Appellant also submitted a February 12, 2024 MRI scan of the left hand. The Board, however, has held that diagnostic studies, standing alone, lack probative value.[11] Consequently, this evidence is insufficient to establish appellant's claim.[12]

Appellant also submitted form reports by Ms. Yakubova, a nurse practitioner. However, certain health care providers such as nurses, physician assistants, and physical therapists are not considered physicians under FECA and, therefore, are not competent to provide a medical opinion.[13] As such, this evidence is of no probative value and are insufficient to establish appellant's claim.

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[8] *J.D.*, Docket No. 22-0935 (issued December 16, 2022); *T.L.*, Docket No. 18-0778 (issued January 22, 2020); *Y.S.*, Docket No. 18-0366 (issued January 22, 2020); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[9] *T.S.*, Docket No. 24-0605 (issued August 23, 2024); *R.D.*, Docket No. 24-002 (issued January 24, 2024); *K.S.*, Docket No. 19-1433 (issued April 26, 2021); *S.L.*, Docket No. 19-1536 (issued June 26, 2020); *D.Y.*, Docket No. 20-0112 (issued June 25, 2020).

[10] *See A.C.*, Docket No. 20-1510 (issued April 23, 2021); *J.P.*, Docket No. 20-0381 (issued July 28, 2020); *R.L.*, Docket No. 20-0284 (issued June 30, 2020).

[11] *K.A.*, Docket No. 23-613 (issued April 22, 2024); *W.L.*, Docket No. 20-1589 (issued August 26, 2021); *A.P.*, Docket No. 18-1690 (issued December 12, 2019).

[12] *D.S.*, Docket No. 24-0888 (issued November 6, 2024); *A.W.*, Docket No. 22-1196 (issued November 23, 2022); *S.W.*, Docket No. 21-1105 (issued December 17, 2021); *W.L.*, Docket No. 20-1589 (issued August 26, 2021).

[13] Section 8102(2) of FECA provides as follows: 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. § 8102(2); 20 C.F.R. § 10.5(t). *See* 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); *see also B.D.*, Docket No. 22-0503 (issued September 27, 2022) (nurse practitioners are not considered physicians as defined under FECA and their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits); *L.S.*, Docket No. 19-1231 (issued March 30, 2021) (nurse practitioners are not considered physicians as defined under FECA).

Appellant also submitted reports which were illegible. 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.[14] Thus, they are insufficient to establish appellant's claim.

As the medical evidence of record is insufficient to establish a diagnosed medical condition in connection with the accepted February 7, 2024 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.

LEGAL PRECEDENT -- ISSUE 2

A claimant dissatisfied with an OWCP decision shall be afforded an opportunity for either an oral hearing or a review of the written record.[15] Section 8124(b) of FECA, concerning a claimant's entitlement to a hearing, states that: "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 issuance of the decision, to a hearing on his or her claim before a representative of the Secretary."[16] OWCP's regulations further explain that the claimant must have not previously submitted a reconsideration request (whether or not it was granted) on the same decision.[17] Although a claimant who has previously sought reconsideration is not, as a matter of right, entitled to a hearing or review of the written record, the Branch of Hearings and Review may exercise its discretion to either grant or deny a hearing following reconsideration.[18]

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied appellant's request for an oral hearing, pursuant to 5 U.S.C. § 8124(b).

On May 16, 2024, appellant requested reconsideration of the May 6, 2024 decision. In its May 21, 2024 decision, OWCP denied modification of its May 6, 2024 decision as the evidence presented was of insufficient probative value. Subsequently, on September 28, 2024, appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. As

[14] *See C.W.*, Docket No. 25-0046 (issued December 19, 2024); *D.F.*, Docket No. 22-0904 (issued October 31, 2022); *see also R.C.*, Docket No. 19-0376 (issued July 15, 2019); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

[15] 5 U.S.C. § 8124(b)(1); 20 C.F.R. § 10.615.

[16] *Id.* at § 8124(b)(1).

[17] *Id.*

[18] *See H.T.*, Docket No. 20-1318 (issued April 27, 2021); *E.S.*, Docket No. 19-1144 (issued August 3, 2020); *J.C.*, Docket No. 19-1293 (issued December 16, 2019); *T.M.*, Docket No. 18-1418 (issued February 7, 2019); *M.W.*, Docket No. 16-1560 (issued May 8, 2017); *D.E.*, 59 ECAB 438 (2008); *Hubert Jones, Jr.*, 57 ECAB 467 (2006).

she had previously requested reconsideration of OWCP's May 6, 2024 merit decision under section 8128 of FECA, she was not entitled to an oral hearing as a matter of right under section 8124(b)(1).[19] OWCP properly exercised its discretion and determined that the issue in the case could be equally-well addressed through a request for reconsideration and the submission of new evidence.[20] Therefore, the Board finds that OWCP, in its October 9, 2024 decision, properly denied appellant's September 28, 2024 request for an oral hearing.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a diagnosed medical condition in connection with the accepted February 7, 2024 employment incident. The Board further finds that OWCP properly denied her request for an oral hearing, pursuant to 5 U.S.C. § 8124(b).

ORDER

IT IS HEREBY ORDERED THAT the May 21 and October 9, 2024 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: January 17, 2025
Washington, DC

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

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

[19] 20 C.F.R. § 10.616(a); *S.L.*, Docket No. 24-0312 (issued May 14, 2024); *R.B.*, Docket No. 22-0755 (issued October 28, 2022); *J.H.*, Docket No. 17-1796 (issued February 6, 2018).

[20] *Id*.