

On May 8, 2005 appellant, then a 46-year-old forestry technician, filed an occupational disease claim (Form CA-2) alleging that he sustained a left knee condition as a result of his federal employment. Appellant stated that he had been carrying 25 to 65 pounds up steep slopes

and rugged terrain during 25 years of firefighting. In a narrative statement dated September 11, 2005, appellant noted that his job duties included prolonged standing, walking over uneven ground, bending, reaching and carrying items weighing over 50 pounds. Appellant indicated that he had left knee surgery to repair torn ligaments and remove bone chips.

The medical evidence includes a radiology report dated March 31, 2005 with a diagnosis of osteoarthritis of the knees. In a June 8, 2005 form report, Dr. David Anderson, an orthopedic surgeon, indicated that appellant should not engage in running or jumping. A June 30, 2005 form report indicated that appellant had outpatient knee surgery on June 29, 2005 and was limited to desk duties.

The Office requested that appellant submit additional evidence by letter dated October 12, 2005. By decision dated January 30, 2006, the Office denied compensation. The Office found that the medical evidence was not sufficient to establish the claim.

In a letter dated March 3, 2006 and postmarked March 25, 2006, appellant requested an oral hearing with the Branch of Hearings and Review. By decision dated May 3, 2006, the Branch of Hearings and Review found that the request was untimely and therefore appellant was not entitled to a hearing as a matter of right. The Branch of Hearings and Review stated it had considered the request and determined that the issue could equally well be addressed by requesting reconsideration and submitting additional relevant evidence.

LEGAL PRECEDENT -- ISSUE 1

A claimant seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence, including that an injury was sustained in the performance of duty as alleged and that any specific condition or disability claimed is causally related to the employment injury.²

To establish that an injury was sustained in the performance of duty, a claimant must submit a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition, as well as medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed and establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.³ Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence.⁴ A physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors must be based on a complete factual and medical background of

¹ 5 U.S.C. §§ 8101-8193.

² 20 C.F.R. § 10.115(e), (f) (2005); see *Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

³ *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

⁴ See *Robert G. Morris*, 48 ECAB 238 (1996).

the claimant.⁵ Additionally, in order to be considered rationalized, the opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factors.⁶

ANALYSIS -- ISSUE 1

The medical evidence of record does not contain a report with a rationalized opinion on causal relationship between appellant's left knee condition and the identified employment factors. Appellant alleged that his job duties, including carrying items weighing up to 65 pounds over uneven terrain, had contributed to a left knee condition and surgery. There is, however, no medical evidence of record with a complete factual and medical background and a rationalized medical opinion on causal relationship between a diagnosed condition and his federal employment. The diagnostic tests and form reports do not address the issue and are of little probative value in establishing the claim. It is appellant's burden of proof. The Board finds that appellant did not submit sufficient medical evidence in this case.

LEGAL PRECEDENT -- ISSUE 2

The statutory right to a hearing under 5 U.S.C. § 8124(b)(1) follows the initial final merit decision of the Office. Section 8124(b)(1) provides as follows: "Before review under section 8128(a) of this title, a claimant for compensation not satisfied with a decision of the Secretary under subsection (a) of this section is entitled, on request made within 30 days after the date of issuance of the decision, to a hearing on his claim before a representative of the Secretary...."

If the request is not made within 30 days or if it is made after a reconsideration request, a claimant is not entitled to a hearing as a matter of right.⁷ The Board has held that the Office, in its broad discretionary authority in the administration of the Act, has the power to hold hearings in certain circumstances where no legal provision was made for such hearings and that the Office must exercise this discretionary authority in deciding whether to grant a hearing.⁸ The Office's procedures, which require the Office to exercise its discretion to grant or deny a hearing when the request is untimely or made after reconsideration, are a proper interpretation of the Act and Board precedent.⁹

⁵ *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁶ *Id.*

⁷ *Claudio Vazquez*, 52 ECAB 496 (2001).

⁸ *Marilyn F. Wilson*, 52 ECAB 347 (2001).

⁹ *Claudio Vazquez*, *supra* note 7. See also Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Review of the Written Record*, Chapter 2.1601.4(b)(3) (June 1997).

ANALYSIS -- ISSUE 2

The merit decision denying the claim was dated January 30, 2006. Appellant's request for an oral hearing was dated March 3, 2006 and the envelope was retained in the record with a postmark dated March 25, 2006. Office procedures indicate that the postmark date will be used to establish the timeliness of the request.¹⁰ Since appellant's request was more than 30 days after January 30, 2006, it is untimely and appellant is not entitled to a hearing as a matter of right.

As noted above, the Office has power to hold hearings where no legal provision was made for such hearings and must exercise its discretionary authority. In this case, the Office advised appellant that he could submit additional relevant evidence on the issue through the reconsideration process. This is considered a proper exercise of the Office's discretionary authority.¹¹ The Board finds that the Office properly denied the request for an oral hearing in this case.

CONCLUSION

Appellant did not establish a left knee condition causally related to his federal employment and the Office properly denied his request for an oral hearing before an Office hearing representative under 5 U.S.C. § 8124.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated May 3 and January 30, 2006 are affirmed.

Issued: October 16, 2006
Washington, DC

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

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

¹⁰ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Review of the Written Record*, Chapter 2.1601.4(a) (June 1997).

¹¹ See *Mary E. Hite*, 42 ECAB 641, 647 (1991).