

² The Board notes that, following the issuance of the November 4, 2010 OWCP decision and on appeal, appellant submitted new evidence. The Board is precluded from reviewing evidence which was not before OWCP at the time it issued its final decision. See 20 C.F.R. § 501.2(c)(1).

FACTUAL HISTORY

On January 4, 2010 appellant, then a 47-year-old customer service representative, filed a traumatic injury claim (Form CA-1) alleging that on January 4, 2010 she sustained a knee injury when she was walking to work, slipped and fell on ice, attempted to get back up and then fell again on both knees.

Appellant submitted a January 4, 2010 statement by a witness who indicated that he saw her slip on the ice and fall at approximately 7:15 a.m. on January 4, 2010.

In a January 6, 2010 medical report, Dr. Gina Day, a Board-certified internist, reported that appellant slipped and fell in the parking lot at work injuring both knees and the right side of her back.

By letter dated January 25, 2010, OWCP notified appellant that the evidence submitted was not sufficient to support her claim and requested additional factual and medical evidence. It allotted 30 days for appellant to respond to its inquiries.

Appellant submitted a medical note by Dr. Day excusing her from work from January 22 to 30, 2010.

In a January 9, 2010 medical report, Dr. Day diagnosed a bilateral knee and lower back injury due to a slip and fall and prescribed a lumbar and knee brace.

In a January 11, 2010 medical report, Dr. Day diagnosed chronic severe low back pain due to a work-related injury. She indicated that appellant's injuries included sprain/strain injuries, with possible disc injury and instability. Dr. Day opined that a rigid lumbar brace was imperative for appellant's recovery as it would lessen her pain, make her more functional and aid in the healing process by allowing additional tissue healing. It would help maintain the normal lordosis curve which was critical for a lumbar spine injury and would help slow the progression of appellant's condition.

In another January 11, 2010 medical report, Dr. Day diagnosed chronic severe bilateral knee pains due to a work-related injury. She indicated that appellant's injuries included sprain/strain injuries, with possible internal derangement injury and instability. Dr. Day again explained the benefits of rigid hinged knee braces with stop pins for appellant's recovery as they would lessen her pain, make her more functional and aid in the healing process by allowing additional tissue healing.

Appellant submitted a February 8, 2010 medical note by Dr. Day excusing appellant from physical activity until February 20, 2010 and restricting her to working only half days.

By decision dated February 25, 2010, OWCP denied appellant's claim on the basis that the medical evidence submitted was insufficient to establish fact of injury. It found that, although the described employment activities occurred as alleged, the medical evidence provided no firm diagnosis and did not establish causal relationship.

In a March 24, 2010 medical report, Dr. Day diagnosed bilateral erythema and ecchymosis of the patella region. She indicated that appellant was status post fall at work in the parking lot with trauma to bilateral knees and right back. Dr. Day indicated that there was significant tenderness and swelling of both knees, left greater than right and noted limited range of motion bilaterally. There was also significant right-sided tenderness in the lower region of the back. Dr. Day reported that appellant returned for follow-up visits on January 14, 21 and 30, 2010. During the course of those visits, she indicated that there was gradual improvement of the knees and back.

On March 25, 2010 appellant requested a review of the written record by an OWCP hearing representative and submitted a narrative statement.

By decision dated June 10, 2010, OWCP set aside the case and remanded it for further development.

On July 13, 2010 OWCP sent a request to Dr. Day, together with a statement of accepted facts, for a supplemental report with a firm diagnosis and an opinion regarding causal relationship between the employment incident and the claimed condition. It allotted 30 days for a response to its inquiries.

In an August 21, 2010 supplemental report, Dr. Day reiterated her diagnoses and opined that appellant had bilateral knee trauma and back trauma with associated back muscle spasm.

By decision dated September 14, 2010, OWCP denied appellant's claim on the basis that the medical evidence submitted was insufficient to establish fact of injury. It found that the medical evidence provided no firm diagnosis and did not establish causal relationship.

By letter postmarked October 21, 2010, appellant requested an oral hearing before an OWCP hearing representative and submitted additional evidence.

In a January 7, 2010 radiological report, Dr. Alan S. Lubitz, a radiologist, diagnosed tricompartmental degenerative changes of the right knee with minimal degenerative changes also noted in the left knee. He indicated that the x-ray of bilateral knees failed to demonstrate any evidence of fracture or dislocation. In a second January 7, 2010 radiological report, Dr. Lubitz diagnosed slight narrowing of the hip joints bilaterally. He indicated that the x-ray of the pelvis failed to demonstrate any evidence of fracture and no destructive lesions were seen. In a third January 7, 2010 radiological report, Dr. Lubitz diagnosed some straightening of the lumbar lordosis, which suggested muscle spasm and mild degenerative changes with some disc space narrowing at L4-5 and L5-S1. He indicated that the x-ray of the lumbar spine revealed no compression fractures and the vertebral bodies showed normal alignment.

By decision dated November 4, 2010, OWCP denied appellant's request for an oral hearing. It found that her request was untimely because it was not made within 30 days of its September 14, 2010 decision. OWCP further indicated that it had exercised its discretion and further denied appellant's request for the reason that the relevant issue of the case could be addressed by requesting reconsideration and submitting evidence not previously considered by OWCP.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA³ has the burden of establishing 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, that an injury⁴ 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.⁵

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a “fact of injury” has been established. A fact of injury determination is based on two elements. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged. Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician’s rationalized opinion on whether there is a causal relationship between the employee’s diagnosed condition and the compensable employment factors. The opinion of 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 the specific employment factors identified by the employee.⁶

ANALYSIS -- ISSUE 1

OWCP has accepted that the employment incident of January 4, 2010 occurred at the time, place and in the manner alleged. The issue is whether appellant sustained an injury which resulted from the January 4, 2010 employment incident. The Board finds that she did not meet her burden of proof to establish that she sustained an injury in the performance of duty on January 4, 2010.⁷

³ 5 U.S.C. §§ 8101-8193.

⁴ OWCP’s regulations define a traumatic injury as a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected. 20 C.F.R. § 10.5(ee).

⁵ See *T.H.*, 59 ECAB 388 (2008). See also *Steven S. Saleh*, 55 ECAB 169 (2003); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁶ *Id.* See also *Gary J. Watling*, 52 ECAB 278 (2001).

⁷ See *T.S.*, Docket No. 09-2184 (issued June 9, 2010).

In progress reports spanning the period January 6 through August 21, 2010, Dr. Day reported that appellant slipped and fell in the parking lot at work injuring both knees and the right side of her back. She indicated that appellant's injuries included sprain/strain injuries, with possible disc and internal derangement injuries and instability. Dr. Day opined that a rigid lumbar brace and rigid hinged knee braces with stop pins were imperative for appellant's recovery. Although the Board finds that she did provide firm diagnoses, she failed to directly address the issue of causal relationship as they did not explain how the mechanism of the January 4, 2010 employment incident caused or aggravated appellant's condition and necessitated surgical intervention. Dr. Day also did not provide rationale explaining how the conditions were so debilitating as to disable appellant for work. The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.⁸ Lacking thorough medical rationale on the issue of causal relationship, the reports are of limited probative value and not sufficient to establish that appellant sustained an employment-related injury in the performance of duty on January 4, 2010.

Similarly, Dr. Lubitz provided firm diagnoses on x-ray examination. However, due to the diagnostic nature of his reports, he did not address causal relationship. As such, the Board finds that they are insufficient to establish appellant's claim.

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: "Before review under section 8128(a) of this title [relating to reconsideration], 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 the issuance of the decision, to a hearing on [her] claim before a representative of the Secretary."⁹

Section 10.615 of Title 20 of the Code of Federal Regulations provides, "A hearing is a review of an adverse decision by a hearing representative. Initially, the claimant can choose between two formats: An oral hearing or a review of the written record."¹⁰ The hearing request must be sent within 30 days (as determined by postmark or other carrier's date marking) of the date of the decision for which a hearing is sought.¹¹ OWCP has discretion, however, to grant or

⁸ See *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

⁹ 5 U.S.C. § 8124(b)(1).

¹⁰ 20 C.F.R. § 10.615.

¹¹ *Id.* at § 10.616(a).

deny a request that is made after this 30-day period.¹² In such a case, it will determine whether to grant a discretionary hearing and, if not, will so advise the claimant with reasons.¹³

ANALYSIS -- ISSUE 2

Appellant had 30-calendar days from OWCP's September 14, 2010 decision or until October 14, 2010, to request an oral hearing before an OWCP hearing representative. Because her request was postmarked October 21, 2010, her request was untimely. Appellant was not entitled to an oral hearing as a matter of right under section 8124(b)(1) of FECA. Exercising its discretion to grant an oral hearing, OWCP denied her request on the grounds that she could equally well address any issues in her case by requesting reconsideration. Because reconsideration exists as an alternative appeal right to address the issues raised by OWCP's September 14, 2010 decision, the Board finds that OWCP did not abuse its discretion in denying appellant's untimely request for an oral hearing.¹⁴

CONCLUSION

The Board finds that, while appellant established that the incident occurred as alleged, she did not establish that she sustained an injury in the performance of duty on January 4, 2010, as alleged. The Board further finds that OWCP properly denied her request for an oral hearing as untimely filed.

¹² G.W., Docket No. 10-782 (issued April 23, 2010). See also *Herbert C. Holley*, 33 ECAB 140 (1981).

¹³ *Id.* See also *Rudolph Bermann*, 26 ECAB 354 (1975).

¹⁴ See *Gerard F. Workinger*, 56 ECAB 259 (2005).

ORDER

IT IS HEREBY ORDERED THAT the November 4 and September 14, 2010 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: October 12, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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