

**United States Department of Labor
Employees' Compensation Appeals Board**

C.J., Appellant

and

**U.S. POSTAL SERVICE, MAIN POST OFFICE,
Beverly Hills, CA, Employer**

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**Docket No. 14-2030
Issued: January 26, 2015**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On September 23, 2014 appellant filed a timely appeal from an April 14, 2014 merit decision and a June 11, 2014 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (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 established a right knee condition causally related to factors of her federal employment; and (2) whether OWCP properly denied her request for a review of the written record as untimely under 5 U.S.C. § 8124.

¹ 5 U.S.C. § 8101 *et seq.*

² Appellant submitted new evidence on appeal. The Board, however, has no jurisdiction to review new evidence on appeal. *See* 20 C.F.R. § 501.2(c)(1).

FACTUAL HISTORY

On February 18, 2014 appellant, then a 55-year-old carrier, filed an occupational disease claim alleging degeneration of the cartilage in her right knee and a torn meniscus causally related to factors of her federal employment. She related that she first became aware of her condition and its relationship to her federal employment on June 1, 2004. Appellant was last exposed to the conditions alleged to have caused her condition on February 18, 2014.

In an accompanying statement dated February 13, 2014, appellant related that she began experiencing knee pain while working as a letter carrier in 2004. She began working light duty in 2005. In 2007 appellant began working as a supervisor and again experienced knee pain when she walked routes to confirm street times. In 2013 supervisors had to stand and walk on concrete for three hours each day until carriers left the building, which aggravated her knee condition. Appellant related that she had no remaining cartilage in her right knee and needed a total knee replacement. She indicated that she delayed filing an occupational disease claim because she thought she could “make it until retirement.”

By letter dated February 21, 2014, OWCP requested that appellant submit additional factual and medical information, including a detailed medical report addressing the causal relationship between any diagnosed condition and the identified work factors.

A December 11, 2012 magnetic resonance imaging (MRI) scan study of appellant’s right knee revealed a small tear of the posterior horn of the lateral meniscus, degeneration of the posterior horn of the medial meniscus, degenerative changes of the knee with cartilaginous thinning especially at the patellofemoral compartment, and joint effusion.

In a progress report dated March 6, 2014, Dr. Amanuel Sima, a Board-certified internist, evaluated appellant for severe knee pain bilaterally that had worsened over the past three months. He reviewed MRI scan studies of the right and left knee dated July 2013. Dr. Sima stated, “She was taken off work on February 28, 2014 due to the severity of her bilateral knee pain and related debility. Of note, her knee arthritis dates back to 2004.” He diagnosed severe knee osteoarthritis bilaterally, debility, chronic pain, and low back pain. Dr. Sima found that appellant should remain off work and noted that she was being evaluated for a total right knee replacement.

By decision dated April 14, 2014, OWCP found that appellant established a timely claim, and that the employment factor occurred, and a medical condition had been diagnosed, however, it denied her claim on the grounds that the medical evidence was insufficient to establish that she sustained a diagnosed condition causally related to the identified work factors. The record indicates that appeal rights accompanied the decision.

In a report of telephone call dated April 22, 2014, appellant requested a copy of her appeal rights.

In a report dated April 22, 2014, received by OWCP on May 21, 2014, Dr. Sima attributed appellant’s bilateral knee arthritis to working for 24 years as a mail carrier.

By form dated May 15, 2014 and postmarked May 19, 2014, appellant requested a review of the written record by an OWCP hearing representative. In an accompanying statement dated May 15, 2014, she described her knee problems beginning in 2004 and the aggravation of her condition in 2013 when she had to stand for prolonged periods as a supervisor. Appellant related that she did not receive a copy of the appeal request form with the decision. She contacted OWCP for a copy, which she received on April 26, 2014. Appellant submitted a May 15, 2014 report from Dr. Man R. Shim, a Board-certified internist, who opined that she might require surgery due to her knee arthritis.

By decision dated June 11, 2014, OWCP denied appellant's request for a review of the written record as it was not postmarked within 30 days of the April 14, 2014 merit decision. It considered her request within its discretion but found that her case could be addressed equally well by a request for reconsideration and the submission of evidence showing a causal relationship between her claimed condition and the identified work factors.

On appeal appellant attributes her knee injury to performing her work duties as a letter carrier. She initially experienced pain in 2004 and in 2005 began working light duty. In 2013 appellant had to stand extensively on concrete which worsened her knee injury.

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 filed within the applicable time limitation; that an injury was sustained while in the performance of duty as alleged; and that any disability and/or specific condition for which compensation is claimed are 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 on a traumatic injury or an occupational disease.⁵

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed;⁶ (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;⁷ and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.⁸ The medical opinion must be one of reasonable medical certainty and must be supported by

³ 5 U.S.C. § 8101 *et seq.*

⁴ *Tracey P. Spillane*, 54 ECAB 608 (2003); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁵ *See Alvin V. Gadd*, 57 ECAB 172 (2005); *Ellen L. Noble*, 55 ECAB 530 (2004).

⁶ *Michael R. Shaffer*, 55 ECAB 386 (2004).

⁷ *Marlon Vera*, 54 ECAB 834 (2003); *Roger Williams*, 52 ECAB 468 (2001).

⁸ *D.D.*, 57 ECAB 734 (2006); *Roy L. Humphrey*, 57 ECAB 238 (2005).

medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁹

ANALYSIS -- ISSUE 1

Appellant attributed her condition to her employment as a letter carrier in 2004, walking routes to confirm street times as a supervisor beginning in 2007, and standing and walking on concrete as a supervisor in 2013. OWCP accepted the occurrence of the claimed employment factors. The issue, therefore, is whether the medical evidence establishes a causal relationship between the claimed conditions and the identified employment factors.

On March 6, 2014 Dr. Sima discussed appellant's complaints of bilateral severe knee pain that had increased over the past three months. He noted that she had knee arthritis beginning in 2004 and stopped work on February 28, 2013 due to debilitating knee pain. Dr. Sima diagnosed bilateral severe knee osteoarthritis, debility, chronic pain, and low back pain. He found that appellant should remain off work. Dr. Sima, however, did not address the cause of the diagnosed conditions or relate them to the identified work factors. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship.¹⁰

On appeal appellant describes the work factors to which she attributed her knee condition. However, as explained above, the record does not contain rationalized medical evidence supporting that she sustained a right knee condition as a result of her work duties. Consequently, 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 and 20 C.F.R. §§ 10.605 through 10.607.

ANALYSIS -- ISSUE 2

Section 8124(b) 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 claim before a representative of the Secretary.¹¹ Section 10.615 of the federal regulations implementing this section of FECA provides that a claimant shall be afforded a choice of an oral hearing or a review of the written record.¹² The request must be sent within 30 days (as determined by postmark or other carrier's date marking) of the

⁹ *Id.*

¹⁰ *S.E.*, Docket No. 08-2214 (issued May 6, 2009); *Conard Hightower*, 54 ECAB 796 (2003).

¹¹ 5 U.S.C. § 8124(b)(1).

¹² 20 C.F.R. § 10.615.

date of the decision for which a hearing is sought.¹³ A claimant is entitled to a hearing or review of the written record as a matter of right if the request is filed within 30 days.¹⁴

While a claimant may not be entitled to a hearing or review of the written record as a matter of right if the request is untimely, OWCP has the discretionary authority to grant the request and must properly exercise such discretion.¹⁵

ANALYSIS -- ISSUE 2

In a decision dated April 14, 2014, OWCP denied appellant's occupational disease claim. The record indicates that appeal rights accompanied the decision. Appellant sought a review of the written record on a form postmarked May 19, 2014. By decision dated June 11, 2014, OWCP denied her request for a review of the written record as untimely under section 8124 of FECA. As appellant's request for a hearing was postmarked May 19, 2014, more than 30 days after OWCP issued its April 14, 2014 decision, she was not entitled to a hearing as a matter of right.

OWCP has the discretionary power to grant a hearing or review of the written record when a claimant is not entitled to a hearing or review as a matter of right.¹⁶ It properly exercised its discretion by stating that it had considered the matter in relation to the issue involved and denied appellant's request for a review of the written record on the basis that the case could be resolved by submitting additional evidence to OWCP with a reconsideration request. The Board has held that the only limitation on OWCP's discretionary 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.¹⁷ In this case, the evidence of record does not establish that OWCP committed any action in connection with its denial of appellant's request for a review of the written record which could be found to be an abuse of discretion. Consequently, OWCP properly denied her request for an oral hearing as untimely under section 8124 of FECA.

CONCLUSION

The Board finds that appellant has not established that she sustained a right knee condition causally related to factors of her federal employment. The Board further finds that OWCP properly denied her request for a review of the written record as untimely under section 8124 of FECA.

¹³ *Id.* at § 10.616(a).

¹⁴ *See Leona B. Jacobs*, 55 ECAB 753 (2004).

¹⁵ 20 C.F.R. § 10.616(b); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.4(a) (October 2011).

¹⁶ *Afegalai L. Boone*, 53 ECAB 533 (2002).

¹⁷ *See L.W.*, 59 ECAB 471 (2008).

ORDER

IT IS HEREBY ORDERED THAT the June 11 and April 14, 2014 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: January 26, 2015
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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