



## **FACTUAL HISTORY**

On August 23, 2011 appellant, a 46-year-old drug enforcement agent, filed a claim for traumatic injury (Form CA-1), alleging that he developed an infection on his left hand and rashes on his hands and feet as a result of being bitten by an insect while engaged in a mission to eradicate marijuana in the jungles of Guam on August 16, 2011.

Appellant submitted an August 22, 2011 report from a nurse practitioner and laboratory test results dated August 22, 2011. The nurse's August 22, 2011 note related a history of fever and body chills for five days, and headache for two days. She noted that appellant's fever, chills, headache, and vomiting had resolved, but that he still had skin lesions on the soles of his feet and palms of his hands. The nurse related that blood tests and an echocardiogram were performed.

By letter to appellant dated February 12, 2014, OWCP advised that it required additional factual and medical evidence to determine whether he was eligible for compensation benefits. While it noted that his claim had been treated as a claim for minor injury and expenses up to \$1,500.00 had been paid, as expenses now exceeded \$1,500.00 additional evidence was necessary to substantiate the claim. OWCP asked appellant to submit a comprehensive medical report from his treating physician describing his symptoms and a medical opinion explaining the cause of any diagnosed condition. No response was received.

By decision dated March 26, 2014, OWCP denied the claim, finding that appellant failed to provide medical evidence sufficient to establish that he sustained an injury to his hands and feet causally related to the accepted August 16, 2011 work incident.

In a letter dated May 1, 2014, received by OWCP on May 20, 2014, appellant requested a review of the written record.

By decision dated June 17, 2014, OWCP's Branch of Hearings and Review denied appellant's request for a review of the written record finding that it was untimely filed. The Board, however, in its discretion, considered the request and determined that the case can equally well be addressed by requesting reconsideration.

## **LEGAL PRECEDENT -- ISSUE 1**

An employee seeking benefits under FECA<sup>3</sup> has the burden of establishing that 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 injury was sustained 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.<sup>4</sup> These are the essential elements of each and every

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<sup>3</sup> *Id.*

<sup>4</sup> *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>5</sup>

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. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident at the time, place, and in the manner alleged.<sup>6</sup> 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.<sup>7</sup>

The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.<sup>8</sup>

An award of compensation may not be based on surmise, conjecture, or speculation. Neither, the fact that appellant’s condition became apparent during a period of employment nor the belief that his condition was caused, precipitated, or aggravated by his employment is sufficient to establish causal relationship.<sup>9</sup> Causal relationship must be established by rationalized medical opinion evidence and appellant failed to submit such evidence.

#### **ANALYSIS -- ISSUE 1**

It is uncontested that appellant was engaged in a marijuana eradication mission in a jungle in Guam on August 16, 2011. The question of whether an employment incident caused a personal injury can only be established by probative medical evidence.<sup>10</sup> Appellant has not submitted rationalized, probative medical evidence to establish that his work on the date of the August 16, 2011 employment incident caused a personal injury. The weight of medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of physician’s knowledge of the facts of the case, the medical history provided, the care of analysis manifested, and the medical rationale expressed in support of stated conclusions.<sup>11</sup> Appellant did not provide a report from a physician containing a medical diagnosis or a probative, rationalized opinion regarding whether the August 16, 2011 work incident caused a personal injury. He did not submit an explanation from a physician of how it

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<sup>5</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>6</sup> *John J. Carlone*, 41 ECAB 354 (1989).

<sup>7</sup> *Id.* For a definition of the term “injury,” see 20 C.F.R. § 10.5(ee).

<sup>8</sup> *See Joe T. Williams*, 44 ECAB 518, 521 (1993).

<sup>9</sup> *Id.*

<sup>10</sup> *Supra* note 5.

<sup>11</sup> *See Anna C. Leanza*, 48 ECAB 115 (1996).

was medically possible appellant would have sustained an infection in his left hand and rashes on his hands and feet while on a marijuana eradication mission in the jungle on August 16, 2011.<sup>12</sup>

Appellant did not provide a report containing sufficient medical evidence demonstrating a causal connection between his August 16, 2011 work incident, his claimed left hand infection, and rashes on his hands and feet. The August 22, 2011 nurse's report does not constitute medical evidence under section 8101(2). Healthcare providers such as nurses, acupuncturists, physician assistants, and physical therapists are not considered "physicians" under FECA, their reports and opinions do not constitute competent medical evidence to establish a medical condition, disability, or causal relationship.<sup>13</sup>

OWCP advised appellant of the evidence required to establish his claim. However, appellant failed to submit such evidence. Causal relationship must be established by rationalized medical opinion evidence. Appellant did not provide a medical opinion which describes a medical diagnosis or explains the medical process through which appellant's work on August 16, 2011 would have caused the claimed injury. Accordingly, he did not establish that he sustained an injury to his hands and feet in the performance of duty. OWCP properly denied appellant's claim for compensation.

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 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.<sup>14</sup> 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.<sup>15</sup> The 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.<sup>16</sup> A hearing is a review of an adverse decision by an OWCP hearing representative. Initially, the claimant can choose between two formats: an oral hearing or a review of the written record. In addition to the evidence of record, the claimant may submit new evidence to the hearing representative.<sup>17</sup> A request for either an oral hearing or a review of the written record must be submitted, in writing, within 30 days of the

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<sup>12</sup> See *K.M.*, Docket No. 14-1691 (issued November 18, 2014).

<sup>13</sup> 5 U.S.C. § 8101(2); see also *G.G.*, 58 ECAB 389 (2007); *Jerre R. Rinehart*, 45 ECAB 518 (1994); *Barbara J. Williams*, 40 ECAB 649 (1989); *Jan A. White*, 34 ECAB 515 (1983).

<sup>14</sup> 5 U.S.C. § 8124(b)(1).

<sup>15</sup> 20 C.F.R. § 10.615.

<sup>16</sup> *Id.* at § 10.616(a).

<sup>17</sup> *Id.* at § 10.615.

date of the decision for which the hearing is sought.<sup>18</sup> A claimant is not entitled to a hearing if the request is not made within 30 days of the date of the decision.<sup>19</sup> OWCP has discretion, however, to grant or deny a request that is made after this 30-day period.<sup>20</sup> In such a case, it will determine whether a discretionary hearing should be granted and, if not, will so advise the claimant with reasons.<sup>21</sup>

While a claimant may not be entitled to a hearing 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.<sup>22</sup>

### **ANALYSIS -- ISSUE 2**

By letter dated May 1, 2014 and received by OWCP on May 20, 2014, appellant requested a review of the written record. Because he did not request the review within 30 days of the March 26, 2014 decision, he was not entitled to a hearing as a matter of right under section 8124(b)(1). OWCP exercised its discretion and determined that the issue raised could be resolved equally well through a request for reconsideration and the submission of additional evidence. The Board finds that OWCP did not abuse its discretion in denying appellant's request for a review of the written record in its June 18, 2014 decision.

### **CONCLUSION**

The Board finds that appellant has failed to establish that he sustained an injury to his hands and feet in the performance of duty on August 16, 2011. The Board finds that OWCP did not abuse its discretion in denying appellant's request for a review of the written record.

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<sup>18</sup> *Supra* note 15.

<sup>19</sup> *James Smith*, 53 ECAB 188 (2001).

<sup>20</sup> 20 C.F.R. § 10.616(b).

<sup>21</sup> *Supra* note 18.

<sup>22</sup> *See Cora L. Falcon*, 43 ECAB 915 (1992); *Mary B. Moss*; 40 ECAB 640 (1989); *Rudolph Bermann*, 26 ECAB 354 (1975).

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 17 and March 26, 2014 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: July 24, 2015  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

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

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