

condition on May 7, 1993 and did not stop work. She submitted a July 17, 2002 medical report from Dr. Jonathan L. Franklin, a Board-certified orthopedic surgeon, who advised that appellant was a clerk for the employing establishment and had right knee pain for 10 years and more recently had experienced left knee pain. Dr. Franklin related that appellant had arthroscopic shavings from her right knee nine years prior with temporary relief, but recently had increasing left knee pain. The physician advised that appellant experienced catching and swelling in both knees and had been on medication for these symptoms for 10 years. Dr. Franklin diagnosed tricompartmental osteoarthritis of both knees, more severe on the right than the left. In a duty status report, he noted that appellant could not lift more than 20 pounds, was not permitted to climb, kneel or squat and could not stand more than one hour at a time.

By letter dated March 28, 2003, the Office asked appellant to submit additional information, including a comprehensive medical report from her treating physician which included a reasoned explanation as to how the specific work factors identified by appellant had contributed to her claimed left knee condition.

In treatment notes dated February 19, 2003, Dr. Franklin diagnosed severe osteoarthritis in both knees and noted that appellant continued to experience bilateral knee pain when standing for prolonged periods of time at work. He recommended restrictions of no standing more than one hour, no lifting more than 20 pounds, and no squatting or kneeling. The physician noted in an April 9, 2003 report, that appellant had severe arthritis in both knees without specific injury; however, appellant advised that she has been standing and walking on cement floors for many years and that she related her arthritis to occupational exposure.

In a decision dated May 23, 2003, the Office denied appellant's claim on the grounds that the medical evidence was not sufficient to establish that her condition was caused by her federal employment.

In a letter postmarked June 25, 2003, appellant requested a review of the written record by an Office hearing representative and submitted various medical records in support of her claim.

By decision dated August 8, 2003, the Office denied appellant's request for a review of the written record. The Office found that the request was not timely filed. Appellant was informed that her case had been considered in relation to the issue involved and that the request was further denied for the reason that the issue in this case could be addressed by requesting reconsideration from the district office and submitting evidence not previously considered.

LEGAL PRECEDENT -- Issue 1

An employee seeking benefits under the Act 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 the Act, that the claim was timely filed within the applicable time limitation period of the Act, that the 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. 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.¹

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; (2) factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by claimant. The medical evidence required to establish causal relationship is generally rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence, which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, 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 claimant.²

ANALYSIS -- Issue 1

Appellant alleged that she developed a bilateral knee condition as a result of performing her clerk duties, which consisted of walking, lifting and bending.

Appellant submitted treatment notes from Dr. Franklin in support of her claim that she developed a bilateral knee condition in May 1993. The Board finds, however, that the medical evidence is insufficient to establish that appellant developed a bilateral knee condition due to her federal employment duties. Rather, the medical evidence submitted from Dr. Franklin referred to another unrelated condition involving the right knee where appellant underwent arthroscopic surgery on the right knee. He advised that appellant experienced catching and swelling in both knees and had been on medication for these symptoms for 10 years and diagnosed tricompartmental osteoarthritis of both knees, more severe on the right than left. Although the physician mentioned that appellant experienced bilateral knee pain in his reports, he did not address how this condition was work related nor did he provide a rationalized opinion regarding the causal relationship between appellant's bilateral knee condition and the factors of her employment believed to have caused or contributed to such condition.³ Dr. Franklin advised that appellant was treated for severe arthritis in both knees without sustaining a specific injury. Appellant advised that she stood and walked on cement floors for many years and related her arthritis to her employment. However, Dr. Franklin merely repeated the history of injury as reported by appellant without providing his own opinion on how standing or walking at work

¹ *Gary J. Watling*, 52 ECAB 357 (2001).

² *Solomon Polen*, 51 ECAB 341 (2000).

³ *Jimmie H. Duckett*, 52 ECAB 332 (2001); *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

caused appellant's left knee condition. He did not provide rationale explaining why appellant's bilateral knee condition was caused by her employment duties.⁴ Therefore, Dr. Franklin's opinion is insufficient to establish that she developed an employment-related bilateral knee injury in March 1993.

LEGAL PRECEDENT -- Issue 2

Section 8124(b)(1) of the Act 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."⁵ Section 10.617 and 10.618 of the federal regulations implementing this section of the Act provides that a claimant shall be afforded a choice of an oral hearing or a review of the written record by a representative of the Secretary.⁶ Although there is no right to a review of the written record or an oral hearing if not requested within the 30-day time period, the Office may within its discretionary powers grant or deny appellant's request and must exercise its discretion.⁷ The Office's procedures concerning untimely requests for hearings and review of the written record are found in the Federal (FECA) Procedure Manual, which provides:

"If the claimant is not entitled to a hearing or review (*i.e.* the request was untimely, the claim was previously reconsidered, etc.), H&R [Hearings and Review] will determine whether a discretionary hearing or review should be granted and, if not, will so advise the claimant, explaining the reasons."⁸

ANALYSIS -- Issue 2

In the present case, appellant requested a review of the written record by an Office representative in a letter postmarked June 25, 2003. Section 10.616 of the federal regulations provides: "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."⁹ As the postmark date of the request was more than 30 days after issuance of the May 23, 2003 Office decision, appellant's request for a review of the written record was untimely filed. Therefore, the Office was correct in finding in its August 8, 2003 decision, that appellant was not entitled to a review of the written record as a matter of right because her request was not made within 30 days of the Office's May 23, 2003 decision.

⁴ *Id.*

⁵ 5 U.S.C. § 8124(b)(1).

⁶ 20 C.F.R. §§ 10.616, 10.617.

⁷ *Delmont L. Thompson*, 51 ECAB 155 (1999); *Eddie Franklin*, 51 ECAB 223 (1999).

⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.4 (b)(3) (October 1992).

⁹ 20 C.F.R. § 10.616.

While the Office also 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, the Office in its August 8, 2003 decision, properly exercised its discretion by stating that it had considered the matter in relation to the issue involved and had 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 establish that a diagnosed condition was causally related to her employment. The Board has held that, as the only limitation on the Office's authority is reasonableness, 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.¹⁰ In the present case, the evidence of record does not indicate that the Office committed any act 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. For these reasons, the Office properly denied appellant's request for a review of the written record under section 8124 of the Act.

CONCLUSION

The Board, therefore, finds that the medical opinion of Dr. Franklin does not establish that appellant developed an employment-related injury in the performance of duty. Appellant failed to meet her burden of proof.¹¹ The Board further finds that the Office properly denied appellant's request for a review of the written record as untimely.

¹⁰ *Samuel R. Johnson*, 51 ECAB 612 (2000).

¹¹ *See Calvin E. King*, 51 ECAB 394 (2000).

ORDER

IT IS HEREBY ORDERED THAT the August 8 and May 23, 2003 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: January 28, 2004
Washington, DC

Alec J. Koromilas
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member