

FACTUAL HISTORY

On December 9, 2010 appellant, then a 58-year-old health technician, filed a traumatic injury claim alleging that on October 28, 2010 she was changing beds in the performance of duty and injured her back. The employing establishment controverted her claim noting that the injury was not reported within 30 days following the incident and that she provided different stories of what happened.

In a letter dated December 15, 2010, OWCP requested additional factual and medical information in support of appellant's claim. Appellant submitted a report dated December 16, 2010 from a Dr. Amarjit Singh noting that appellant reported an injury on October 28, 2010. She stopped work on October 30, 2010 and stated that she experienced pain all over her body. Dr. Singh diagnosed generalized pain and low back pain and advised that appellant could return to work with restrictions. He stated that appellant experienced pain all over her body after she lifted a bundle of two sheets, a comforter, two blankets and bed pan and put the objects in a hamper and twisted her body at work on October 28, 2010. Appellant felt she had lost her strength and that her condition was akin to having been struck from behind. Dr. Singh noted that she had a prior history of back pain in 2007 and on October 6, 2010. He found mild diffuse tenderness in the neck, back, shoulders and legs. Dr. Singh found that appellant had a slow gait and was occasionally antalgic on the right. He stated, "I do not think that the patient's complaints of pain all over her body is related to the injury as described by her." Dr. Singh did find that her activity could have resulted in low back pain and recommended that the claim be accepted only for the lower back.

On November 8, 2010 Dr. Singh repeated appellant's history of injury and diagnosed generalized pain and low back pain. He found that appellant could return to work with restrictions. In a note dated December 13, 2010, Dr. Singh reported appellant's statements of continuing low back pain radiating to the thighs with no abatement. On examination he found mild diffuse tenderness and mildly limited range of motion with poor effort. Dr. Singh again diagnosed low back pain and generalized pain. He recommended diagnostic testing. Dr. Singh repeated his findings and conclusions on December 15, 2010.

By decisions dated January 10, 2011, OWCP denied appellant's claim finding that she had not submitted sufficient medical evidence to establish a traumatic injury as a result of her accepted employment incident. It also denied her claim for continuation of pay by a decision of the same date noting that appellant did not report her traumatic injury on a form approved by OWCP within 30 days following the injury.

Appellant requested an oral hearing on February 16, 2011. By decision dated March 14, 2011, OWCP's Branch of Hearings and Review denied appellant's hearing request as untimely filed. OWCP considered appellant's request and determined that her case could equally well be addressed by requesting reconsideration and submitting new evidence.

LEGAL PRECEDENT -- ISSUE 1

In order to determine whether an employee actually sustained an injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been

established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.² The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.³ 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. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.⁴

ANALYSIS -- ISSUE 1

Appellant filed a claim alleging that she injured her back changing a bed in the performance of duty. She submitted a series of medical reports from Dr. Singh diagnosing low back pain and generalized pain. Dr. Singh stated that, while he believed that appellant's back pain was due to her accepted employment incident, he did not believe that the generalized pain was due to the incident.

The Board finds that appellant has submitted sufficient factual evidence to establish that the incident occurred as alleged; but Dr. Singh did not provide a firm medical diagnosis of any back condition resulting from the employment incident. The Board has held that the general diagnosis of "pain" does not constitute the basis for payment of compensation.⁵ Dr. Singh noted only general pain and low back pain resulting from the employment incident. His reports are not sufficient to meet appellant's 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(a) and 20 C.F.R. §§ 10.605 through 10.607.

² *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

⁴ *James Mack*, 43 ECAB 321 (1991).

⁵ *Robert Broome*, 55 ECAB 339 (2004).

LEGAL PRECEDENT -- ISSUE 2

Section 8118 of FECA⁶ provides for payment of continuation of pay, not to exceed 45 days, to an employee “who has filed a claim for a period of wage loss due to a traumatic injury with her immediate superior on a form approved by the Secretary of Labor within the time specified in section 8122(a)(2) of this title.” This latter section provides that “written notice of injury” shall be given within 30 days.

ANALYSIS -- ISSUE 2

In the instant case, appellant filed her notice of injury on December 8, 2010 alleging an injury on October 28, 2010. The date of filing is more than 30 days after her employment incident. There is no provision under FECA for excusing an employee’s failure to file a claim for continuation of pay within 30 days of the employment injury.⁷ Therefore, OWCP properly found that appellant was not entitled to continuation of pay.

LEGAL PRECEDENT -- ISSUE 3

Section 8124(b) of FECA,⁸ concerning a claimant’s entitlement to a hearing before an OWCP representative, states: “Before review under section 8128(a) of this title, a claimant ... not satisfied with a decision of the Secretary ... is entitled, on request made within 30 days after the date of issuance of the decision, to a hearing on [her] claim before a representative of the Secretary.”⁹

The Board has held that section 8124(b)(1) is “unequivocal” in setting forth the time limitation for requesting hearings. A claimant is entitled to a hearing as a matter of right only if the request is filed within the requisite 30 days.¹⁰ Even where the hearing request is not timely filed, OWCP may within its discretion, grant a hearing and must exercise this discretion.¹¹

ANALYSIS -- ISSUE 3

In the instant case, OWCP’s Branch of Hearings and Review properly determined that appellant’s February 16, 2011 request for a hearing was not timely filed as it was made more than 30 days after the issuance of OWCP’s January 10, 2011 decision. OWCP, therefore, properly denied appellant’s hearing as a matter of right.

⁶ 5 U.S.C. § 8118.

⁷ *Dodge Osborne*, 44 ECAB 849, 855 (1993).

⁸ 5 U.S.C. §§ 8101-8193.

⁹ *Id.* at § 8124(b)(1).

¹⁰ *Tammy J. Kenow*, 44 ECAB 619 (1993).

¹¹ *Id.*

OWCP then proceeded to exercise its discretion, in accordance with Board precedent, to determine whether to grant a hearing in this case. It determined that a hearing was not necessary as the issue in the case was medical and could be resolved through the submission of medical evidence in the reconsideration process. Therefore, OWCP properly denied appellant's request for a hearing as untimely and properly exercised its discretion in determining to deny appellant's request for a hearing as she had other review options available.

CONCLUSION

The Board finds that appellant has failed to meet her burden of proof in establishing a traumatic injury sustained in the performance of duty on October 28, 2010. The Board further finds that OWCP properly determined that appellant was not entitled to continuation of pay or an oral hearing as these requests were untimely filed.

ORDER

IT IS HEREBY ORDERED THAT the March 14 and January 10, 2011 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: December 9, 2011
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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