

By letter dated September 9, 2009, the Office informed appellant that the evidence was insufficient to support her claim. Appellant was advised as to the medical and factual evidence to submit and given 30 days to provide the requested information.

Appellant subsequently submitted a statement and progress reports for the period June 8, 2000 through June 29, 2009 pertaining to treatment of both knees for arthritis from Dr. Jack H. Henry, a treating Board-certified orthopedic surgeon. An x-ray of both knees from Texas Tech University Health Services confirmed the diagnosis of bilateral arthritis. In a July 7, 2005 progress note, Dr. Henry diagnosed bilateral severe degenerative medial patellofemoral compartments arthritis. He opined that this condition was work related as it was due to appellant's carrying mail. A physical examination revealed decreased bilateral knee range of motion and an antalgic right gait. In a June 24, 2009 progress note, Dr. Henry provided physical findings and diagnosed left knee osteoarthritis.

By decision dated October 30, 2009, the Office denied appellant's claim on the grounds that the medical evidence was insufficient to establish that her knee condition was causally related to her employment.

On January 7, 2010 appellant requested a review of the written record by an Office hearing representative.

By decision dated February 4, 2010, the Office denied appellant's request for a review of the written record on the grounds that the request was not timely filed within 30 days on the October 30, 2009 decision. Further, it exercised its discretion and determined that the issue could be equally well resolved through a reconsideration request and the submission of new medical evidence.

LEGAL PRECEDENT -- ISSUE 1

To establish that an injury was sustained in the performance of duty in an occupational disease claim, an employee must submit the following: (1) medical evidence establishing the presence or existence of a condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the condition; and (3) medical evidence establishing that the employment factors identified by the employee were the proximate cause of the condition or illness, for which compensation is claimed or stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.¹

Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical evidence.² Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between an employee's diagnosed conditions and the implicated

¹ *D.D.*, 57 ECAB 734 (2006); *Donna L. Mims*, 53 ECAB 730 (2002).

² *I.R.*, 61 ECAB ____ (Docket No. 09-1229, issued February 24, 2010); *David Apgar*, 57 ECAB 137 (2005).

employment factors.³ 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 conditions and the specific employment factors identified by the employee.

ANALYSIS -- ISSUE 1

Appellant filed an occupational disease claim alleging that her bilateral knee condition and left knee replacement surgery were employment related. The issue is whether she submitted sufficient rationalized medical evidence to support this claim. The Board finds that appellant failed to establish her claim as the medical evidence of record does not contain a rationalized opinion explaining the relationship between her bilateral knee condition or left knee replacement surgery to her federal employment as a letter carrier.

Appellant submitted progress notes for the period June 2000 to June 2009 that diagnosed bilateral knee arthritis and x-rays supporting the diagnosis. The only evidence addressing the issue of whether her knee condition is employment related is a July 7, 2005 progress note from Dr. Henry, who provided a brief history of her condition, physical findings and diagnosed bilateral severe degenerative medial patellofemoral compartments arthritis. In response to appellant's question of whether the condition was employment related, Dr. Henry noted that this condition was due to her duties of carrying mail. The Board has held that a medical opinion not supported by medical rationale is of diminished probative value.⁴ Dr. Henry did not provide sufficient medical rationale explaining how or why appellant's duties as a letter carrier would cause or contribute to her bilateral knee conditions. He did not provide a full history of prior diagnosis or medical treatment of arthritis or discuss its relationship to employment factors, beyond noting that the condition was related to mail delivery duties. Dr. Henry did not explain how the mechanism of the letter carrier duties caused bilateral knee problems. The Board, therefore, finds that his reports are insufficient to establish appellant's claim.

The Board finds the medical evidence of record insufficiently rationalized to establish that appellant sustained bilateral knee conditions causally related to the accepted factors of her federal employment as a letter carrier. Appellant did not meet her burden of proof.

LEGAL PRECEDENT -- ISSUE 2

Section 8124(b)(1) of the Federal Employees' Compensation Act provides that a claimant is entitled to a hearing before an Office representative when a request is made within 30 days after issuance of an Office final decision.⁵ A claimant is not entitled to a hearing if the request is not made within 30 days of the date of issuance of the decision as determined by the postmark of the request.⁶ The Office has discretion, however, to grant or deny a request that is made after

³ *G.G.*, 58 ECAB 389 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

⁴ *Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006); *Caroline Thomas*, 51 ECAB 451 (2000).

⁵ 5 U.S.C. § 8124(b)(1). See *A.B.*, 58 ECAB 546 (2007).

⁶ 20 C.F.R. § 10.616(b).

this 30-day period.⁷ In such a case, it will determine whether a discretionary hearing should be granted or, if not, will so advise the claimant with reasons.⁸

ANALYSIS -- ISSUE 2

Appellant's request for a review of the written record by an Office hearing representative was dated January 7, 2010. The date of filing for her request for review of the written record was fixed by the date of her request, as the record does not contain an envelope with a postage date.⁹ The Board finds that, as appellant's January 7, 2010 hearing request for review of the written record was made more than 30 days after the date of issuance of the Office's October 30, 2009 decision, she was not entitled to a hearing as a matter of right.

The Office also has the discretionary power to grant a review of the written record when a claimant is not entitled to a review of the written record as a matter of right. The Board finds that the Office 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 her claim could be addressed through a reconsideration application. 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 abuse of discretion 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.

CONCLUSION

The Board finds that appellant has failed to establish that she sustained bilateral knee conditions in the performance of duty. The Board further finds that the Office did not abuse its discretion when it denied her request for a review of the written record as untimely.

⁷ *Hubert Jones, Jr.*, 57 ECAB 467 (2006).

⁸ *Teresa M. Valle*, 57 ECAB 542 (2006).

⁹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.4a (1992); *see e.g.*, *Carolyn O'Neal*, 53 ECAB 645 (2002).

¹⁰ *Id.*; *Daniel J. Perea*, 42 ECAB 214 (1990).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated February 4, 2010 and October 30, 2009 are affirmed.

Issued: February 8, 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