

FACTUAL HISTORY

On March 28, 2013 appellant, then a 48-year-old vocational rehabilitation specialist, filed a traumatic injury claim alleging that she sustained an injury in the performance of duty on February 7, 2013 when she was involved in a motor vehicle accident. She described the nature of her injury as a bruised right forearm, right elbow pain and low back pain.

In a decision dated May 10, 2013, OWCP denied appellant's injury claim. It found that the evidence supported that the incident occurred as alleged but that he had submitted no medical evidence providing a diagnosis resulting from the incident. Appeal rights attached to the decision advised that any hearing request must be made in writing, within 30 calendar days after the date of the decision, as determined by the postmark of the letter.

In correspondence postmarked June 11, 2013, appellant requested a review of the written record by an OWCP hearing representative.

In a decision dated July 25, 2013, OWCP denied appellant's hearing request. It found that the request was untimely, and therefore he was not entitled to a hearing as a matter of right. OWCP considered the request nonetheless, but denied a discretionary hearing on the grounds that the reconsideration process provided appellant an alternative appeal right.

Appellant argues that she sent her request in a timely manner on May 31, 2013.

LEGAL PRECEDENT -- ISSUE 1

FECA provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.² An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim. When an employee claims that he or she sustained an injury in the performance of duty, he or she must submit sufficient evidence to establish that he or she experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. He or she must also establish that such event, incident or exposure caused an injury.³

Causal relationship is a medical issue⁴ and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the claimant,⁵ must be one of reasonable medical certainty⁶ and must be supported by medical rationale explaining the

² *Id.* at § 8102(a).

³ *John J. Carlone*, 41 ECAB 354 (1989).

⁴ *Mary J. Briggs*, 37 ECAB 578 (1986).

⁵ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

⁶ *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

nature of the relationship between the diagnosed condition and the established incident or factor of employment.⁷

ANALYSIS -- ISSUE 1

OWCP accepts that the February 7, 2013 work incident occurred as alleged. Appellant has therefore met her burden to establish that she experienced a specific incident occurring at the time, place and in the manner alleged. The question becomes whether the February 7, 2013 work incident caused an injury.

Appellant has submitted no medical evidence providing a diagnosis of any medical condition. If OWCP wanted to accept her claim, it would not know what medical condition to accept or what medical treatment to authorize. Moreover, the record contains no narrative opinion from a physician soundly explaining how the February 7, 2013 employment incident caused any diagnosed medical condition.

As appellant has failed to support her claim with any medical opinion evidence, the Board finds that she has not met her burden to establish the critical element of causal relationship. The Board will therefore affirm the May 10, 2013 decision denying her claim for compensation benefits.

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:

“Before review under section 8128(a) of this title, a claimant for compensation not satisfied with a decision of the Secretary under subsection (a) of this section 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.”⁸

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 OWCP has discretion, however, to grant or deny a request that is made after this 30-day period.¹⁰ In such a

⁷ See *William E. Enright*, 31 ECAB 426, 430 (1980).

⁸ 5 U.S.C. § 8124(b)(1).

⁹ 20 C.F.R. § 10.616(a).

¹⁰ *Herbert C. Holley*, 33 ECAB 140 (1981).

case OWCP will determine whether a discretionary hearing should be granted or, if not, will so advise the claimant with reasons.¹¹

ANALYSIS -- ISSUE 2

OWCP denied appellant's claim on May 10, 2013. Appellant had 30 days or until June 10, 2013, to send her request for a hearing. She argues that she sent the request on May 31, 2013, but the record shows that her request was postmarked on June 11, 2013. As this was outside the 30-day window, the Board finds that appellant's request was untimely.

This means that appellant was not entitled to a hearing as a matter of right. Nonetheless, OWCP had discretion to grant one. Exercising that discretion, it denied appellant's request on the grounds that she could pursue the issue in her case equally well through the reconsideration process. The Board has held that the denial of a hearing on these grounds is a proper exercise of OWCP's discretion.¹²

As appellant may address the issue of causal relationship by requesting reconsideration from OWCP and submitting a physician's well-reasoned medical opinion on whether the February 7, 2013 employment incident caused a diagnosed medical condition, the Board finds that OWCP did not abuse its discretion in denying appellant's untimely hearing request. The Board will therefore affirm OWCP's July 25, 2013 decision.

CONCLUSION

The Board finds that appellant has not met her burden to establish that the February 7, 2013 employment incident caused an injury. The Board also finds that OWCP properly denied appellant's hearing request as untimely.

¹¹ *Rudolph Bermann*, 26 ECAB 354 (1975).

¹² *E.g., Jeff Micono*, 39 ECAB 617 (1988).

ORDER

IT IS HEREBY ORDERED THAT the July 25 and May 10, 2013 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: April 21, 2014
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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