

On appeal appellant generally asserts that his claim should be accepted.

FACTUAL HISTORY

On September 9, 2013 appellant, then a 42-year-old city carrier, filed an occupational disease claim asserting that his employment duties caused a stiff and sore neck and shoulder. He indicated that his work duties required him to use his arms and shoulders. Appellant stated that he first realized the condition and its relationship to his employment on August 21, 2013. By letter dated September 23, 2013, OWCP informed him of the evidence needed to support his claim, to include a physician's opinion as to how his employment duties caused, contributed to or aggravated any diagnosed condition.

In a September 20, 2013 report, Dr. Jai Lee, a Board-certified orthopedic surgeon, noted a history of neck and right shoulder pain after a lifting accident in 2008 and a current complaint of right neck ache and cervical radiculopathy to the right hand with numbness and weakness and right shoulder stiffness. He indicated that this had bothered appellant since 2009 after cracking his neck while lifting at work. Dr. Lee diagnosed displacement or cervical disc without myelopathy and degeneration of cervical disc. On September 23, 2013 he described May 18, 2009 cervical spine magnetic resonance imaging (MRI) scan findings of multiple disc protrusions and right shoulder findings of mild arthropathy of the acromioclavicular joint with tears and tendinopathy of the supraspinatus tendon. Dr. Lee diagnosed right cervical disc disease, right shoulder adhesive capsulitis, and right supraspinatus tear and tendinopathy. On September 27, 2013 he noted that a September 28, 2013 MRI scan study of the cervical spine demonstrated multilevel discogenic/degenerative changes and moderate stenosis at C4-5 and C5-6. Dr. Lee additionally diagnosed spinal stenosis. On October 6, 2013 he reported persistent neck and right shoulder pain. Dr. Lee noted right shoulder MRI scan findings of moderate-to-severe supraspinatus and biceps tendinosis and additionally diagnosed bursitis.

By decision dated October 31, 2013, OWCP denied the claim finding that the factual and medical evidence was insufficient. It indicated that Dr. Lee did not provide a sufficient explanation as to how appellant's work duties caused the diagnosed conditions. OWCP further noted that appellant had a previous claim with a May 7, 2009 date of injury, accepted for a cervical and right shoulder condition and that, because he failed to attend a scheduled second opinion evaluation under that claim, a sanction was issued terminating all benefits until he complied with the examination, which he had not done.³

In a request postmarked December 3, 2013, received by OWCP on December 11, 2013, appellant requested a review of the written record and submitted copies of the September 26, 2013 cervical spine MRI scan study and an October 1, 2013 right shoulder MRI scan study and a November 22, 2013 report from Dr. Lee.

In a January 16, 2014 decision, OWCP denied appellant's request for a review of the written record as untimely and advised him that the issue in the case could equally be addressed

³ The 2009 claim was adjudicated by OWCP under file number xxxxxx972, the instant claim under file number xxxxxx060. File number xxxxxx972 is not presently before the Board.

by requesting reconsideration with OWCP and submitting evidence not previously considered or by filing an appeal with the Board.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA 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 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 is causally related to the employment injury. These are the essential elements of each and every compensation claim, regardless of whether the asserted claim involves traumatic injury or occupational disease, an employee must satisfy this burden of proof.⁴

OWCP regulations define the term “occupational disease or illness” as a condition produced by the work environment over a period longer than a single workday or shift.”⁵ 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) a 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 diagnosed condition is causally related to the employment factors identified by the claimant. The medical opinion 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.⁶

Causal relationship is a medical issue, and the medical evidence required to establish a causal relationship is rationalized medical evidence.⁷ 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 employee.⁸ Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.⁹

⁴ *Roy L. Humphrey*, 57 ECAB 238 (2005).

⁵ 20 C.F.R. § 10.5(ee).

⁶ *Roy L. Humphrey*, *supra* note 4.

⁷ *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

⁸ *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

⁹ *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

ANALYSIS -- ISSUE 1

The Board finds that appellant did not meet his burden of proof to establish a right shoulder, cervical or neck condition caused by his federal job duties because the medical evidence is insufficient to establish causal relationship.

While Dr. Lee provided treatment notes dated September 20 to October 6, 2013 and mentioned 2008 and 2009 work incidents, as noted above, the 2009 injury was accepted by OWCP under file number xxxxxx972. He did not provide medical rationale explaining the nature of the relationship between his current diagnoses and specific employment factors and did not provide any opinion regarding disability.

The opinion of a physician supporting causal relationship must be one of reasonable medical certainty that the condition for which compensation is claimed is causally related to his federal employment and such relationship must be supported with affirmative evidence, explained by medical rationale and be based upon a complete and accurate medical and factual background of the claimant.¹⁰ It is appellant's burden to establish that his claimed back condition is causally related to factors of his federal employment. In this case, he submitted insufficient evidence to show that he sustained a shoulder or neck condition caused by his employment duties.

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

A claimant dissatisfied with a decision of OWCP shall be afforded an opportunity for an oral hearing or, in lieu thereof, a review of the written record. A request for either an oral hearing or a review of the written record must be submitted, in writing, within 30 days of the date of the decision for which a hearing is sought. If the request is not made within 30 days or if it is made after a reconsideration request, a claimant is not entitled to a hearing or a review of the written record as a matter of right.¹¹ The Board has held that OWCP, in its broad discretionary authority in the administration of FECA has the power to hold hearings in certain circumstances where no legal provision was made for such hearings and that OWCP must exercise this discretionary authority in deciding whether to grant a hearing.¹² OWCP's procedures, which require OWCP to exercise its discretion to grant or deny a request for a hearing or review of the written record when the request is untimely or made after reconsideration, are a proper interpretation of FECA and Board precedent.¹³

¹⁰ *A.D.*, 58 ECAB 149 (2006).

¹¹ *Claudio Vazquez*, 52 ECAB 496 (2001).

¹² *Marilyn F. Wilson*, 52 ECAB 347 (2001).

¹³ *Claudio Vazquez*, *supra* note 11.

ANALYSIS -- ISSUE 2

In its January 16, 2014 decision, OWCP denied appellant's request for a review of the written record on the grounds that it was untimely filed. It found that he was not, as a matter of right, entitled to a written record review as his request, postmarked December 3, 2013, was not made within 30 days of its October 31, 2013 decision. As appellant's request was postmarked December 3, 2013, more than 30 days after the date of the October 31, 2013 OWCP decision, the Board finds that OWCP properly determined that he was not entitled to a review of the written record as a matter of right as his request was untimely filed.

OWCP also has the discretionary power to grant a request for a hearing or review of the written record when a claimant is not entitled to such as a matter of right. In the January 16, 2014 decision, it properly exercised its discretion by stating that it had considered the matter in relation to the issue involved and had denied appellant's request on the basis that the issue could be addressed through a reconsideration application.

The Board has held that, as the only limitation on OWCP'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.¹⁴ In the present case, the evidence of record does not indicate that OWCP committed any act in connection with its denial of appellant's request for a review of the written record that could be found to be an abuse of discretion.

CONCLUSION

The Board finds that appellant did not establish that he sustained a neck or shoulder condition causally related to factors of his federal employment and that OWCP properly denied his request for a review of the written record.

¹⁴ See *Mary Poller*, 55 ECAB 483 (2004).

ORDER

IT IS HEREBY ORDERED THAT the January 16, 2014 and October 31, 2013 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: August 13, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

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