

FACTUAL HISTORY

On February 29, 2012 appellant, then a 44-year-old inventory management specialist, filed an occupational disease claim alleging that she sustained an injury causally related to factors of her federal employment. OWCP accepted the claim for bilateral lateral epicondylitis. Appellant stopped work on March 18, 2013 and returned to modified employment on April 15, 2013.³

On August 14, 2012 Dr. David H. Wiley, a Board-certified orthopedic surgeon, performed injections of platelet rich plasma on appellant's right and left elbows. In an accompanying treatment and work status report form dated August 14, 2012, he indicated that appellant should remain off work pending further evaluation.

In a report dated August 15, 2012, Dr. Jeffrey C. Easom, an osteopath, evaluated appellant for bilateral knee pain. He diagnosed osteoarthritis of the knee and pain in the knee and lower extremity.

On January 28, 2013 appellant filed a claim for compensation for leave buyback for intermittent periods of disability from April 23 to August 24, 2012. She requested compensation for eight hours a day from August 15 through 23, 2012 and for five hours on August 24, 2012.

By letter dated February 4, 2013, OWCP requested that appellant submit medical evidence supporting that she was disabled for the periods claimed due to her employment injury. It noted that the August 14, 2012 form report indicated that she could not work due to bilateral lateral epicondylitis but did not provide an explanation of why she was disabled. OWCP further found that appellant received treatment on August 15, 2012 for a condition other than her accepted employment injury.

On February 22, 2013 appellant indicated that she had received treatment for a knee condition on August 15, 2012 and that the report was not relevant to her current claim. She maintained that she was off work for over eight weeks following the August 14, 2012 procedure but her physicians had not responded to her request for documentation.

By decision dated March 4, 2013, OWCP denied appellant's claim for compensation from August 15 through 24, 2012. It found that she was entitled to intermittent hours claimed on April 23, June 7 and July 17, 2012.

In a form dated April 3, 2013, postmarked April 4, 2013 and received April 9, 2013, appellant requested an oral hearing. By decision dated May 30, 2013, OWCP denied her request for an oral hearing as it was untimely. It considered the request within its discretion and found that the issue could be adequately addressed through the reconsideration process.

³ In decisions dated October 22 and November 2, 2012, OWCP denied appellant's claim for compensation from August 26 to September 6, 2012. On December 10, 2012 OWCP vacated its November 2, 2012 decision as it was a duplicate, issued in error. In a decision dated January 25, 2013, it denied modification of the October 22, 2012 decision.

On appeal appellant argues that she was out of work after receiving injections of platelet rich plasma because Dr. Wiley did not allow her to return to work. She maintains that she requested supporting evidence from Dr. Wiley but he did not respond. Management at the employing establishment did not provide assistance or guidance. Appellant questions why OWCP denied her claim given that the employing establishment signed her request for leave buyback.

LEGAL PRECEDENT -- ISSUE 1

The term disability as used in FECA⁴ means the incapacity because of an employment injury to earn the wages that the employee was receiving at the time of injury.⁵ Whether a particular injury caused an employee disability for employment is a medical issue which must be resolved by competent medical evidence.⁶ When the medical evidence establishes that the residuals of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in the employment held when injured, the employee is entitled to compensation for any loss of wage-earning capacity resulting from such incapacity.⁷ The Board will not require OWCP to pay compensation for disability in the absence of any medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.⁸

ANALYSIS -- ISSUE 1

OWCP accepted that appellant sustained bilateral lateral epicondylitis due to factors of her federal employment. Appellant stopped work on March 18, 2013 and returned to modified employment on April 15, 2013. On January 28, 2013 she filed claims for compensation for intermittent disability from April 23 to August 24, 2012. In a decision dated March 4, 2013, OWCP denied appellant's claim for compensation from August 15 to 24, 2012.

On August 14, 2012 Dr. Wiley performed injections on the right and left elbows. In an August 14, 2012 form report, he found that appellant should remain off work until further evaluation. Dr. Wiley did not provide any rationale for his finding that she was disabled from employment. As he failed to provide a reasoned opinion on causal relationship between the claimed periods of disability and the accepted work injury, his opinion is insufficient to meet appellant's burden of proof.⁹

⁴ 5 U.S.C. § 8101 *et seq.*; 20 C.F.R. § 10.5(f).

⁵ *Paul E. Thams*, 56 ECAB 503 (2005).

⁶ *Id.*

⁷ *Id.*

⁸ *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

⁹ *See Sandra D. Pruitt*, 57 ECAB 126 (2005); *Jacquelyn L. Oliver*, 48 ECAB 232 (1996).

On appeal appellant contends that Dr. Wiley found that she was not able to work after her August 14, 2012 elbow injections. As discussed, however, she has the burden to submit medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disability is causally related to employment factors and supports that conclusion with sound medical reasoning.¹⁰

Appellant further maintains that the employing establishment did not assist her in returning to work or with her claims for compensation. She also alleges that she was disabled from work after August 24, 2012. The Board's jurisdiction, however, is limited to reviewing final adverse decisions of OWCP issued under FECA.¹¹

Appellant questions why OWCP denied her claim for compensation after the employing establishment signed her request for leave buyback. In situations where compensation is claimed for periods when leave was used, OWCP has the authority and the responsibility to adjudicate whether the employee was disabled during the period for which compensation is claimed.¹² It determines whether the medical evidence establishes disability for the period claimed for leave buyback due to an employment-related condition.¹³ As discussed, appellant has not submitted sufficient evidence to establish that she was disabled from August 15 through 24, 2012.

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 and 20 C.F.R. §§ 10.605 through 10.607.

LEGAL PRECEDENT -- ISSUE 2

Section 8124(b) of FECA 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.¹⁴ Section 10.615 of the federal regulations implementing this section of FECA provides that a claimant shall be afforded a choice of an oral hearing or a review of the written record.¹⁵ The 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.¹⁶ A claimant is entitled to a hearing or review of the written record as a matter of right if the request is filed within 30 days.¹⁷

¹⁰ See *Sandra D. Pruitt*, *supra* note 9.

¹¹ 20 C.F.R. §§ 501.2(c) and 501.3(a).

¹² See *Glen M. Lusco*, 55 ECAB 148 (2003); see also 20 C.F.R. § 10.425.

¹³ *Glen M. Lusco*, *id.*

¹⁴ 5 U.S.C. § 8124(b)(1).

¹⁵ 20 C.F.R. § 10.615.

¹⁶ *Id.* at § 10.616(a).

¹⁷ See *Leona B. Jacobs*, 55 ECAB 753 (2004).

While a claimant may not be entitled to a hearing or review of the written record as a matter of right if the request is untimely, OWCP has the discretionary authority to grant the request and must properly exercise such discretion.¹⁸

ANALYSIS -- ISSUE 2

OWCP denied appellant's claim for disability compensation on March 4, 2013. Appellant sought an oral hearing on a form postmarked April 4, 2013. In a decision dated May 30, 2013, OWCP denied appellant's hearing request as untimely. As her request for a hearing was postmarked April 4, 2013, more than 30 days after OWCP issued its March 4, 2013 decision, she was not entitled to a hearing as a matter of right.

OWCP 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.¹⁹ In its May 30, 2013 decision, it properly exercised its discretion by stating that it had considered the matter in relation to the issue involved and denied appellant's request for an oral hearing on the basis that the case could be resolved by submitting additional evidence to OWCP with a reconsideration request. The Board has held that the only limitation on OWCP's discretionary authority is reasonableness. An 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.²⁰ The evidence does not establish that OWCP committed any action in connection with its denial of appellant's request for an oral hearing which could be found to be an abuse of discretion. Accordingly, the Board finds that OWCP properly denied her request for an oral hearing as untimely under section 8124.

CONCLUSION

The Board finds that appellant has not established that she was entitled to compensation for disability for the period August 15 through 24, 2012. The Board further finds that OWCP properly denied her request for an oral hearing as untimely under section 8124.

¹⁸ 20 C.F.R. § 10.616(b); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.4(a) (October 2011).

¹⁹ *Afegalai L. Boone*, 53 ECAB 533 (2002).

²⁰ *See André Thyratron*, 54 ECAB 257 (2002).

ORDER

IT IS HEREBY ORDERED THAT the May 30 and March 4, 2013 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: July 2, 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