

**United States Department of Labor  
Employees' Compensation Appeals Board**

---

V.T., Appellant )

and )

DEPARTMENT OF DEFENSE, DEFENSE )  
AGENCIES, DEFENSE FINANCE & )  
ACCOUNTING SERVICE, Columbus, OH, )  
Employer )

---

**Docket No. 13-2172  
Issued: March 6, 2014**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

COLLEEN DUFFY KIKO, Judge  
ALEC J. KOROMILAS, Alternate Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On September 25, 2013 appellant filed a timely appeal from a June 3, 2013 merit decision and a July 29, 2013 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

**ISSUES**

The issues are: (1) whether appellant met her burden of proof to establish that hypertension and situational anxiety were causally related to a March 30, 2012 employment

---

<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> Appellant submitted additional evidence following the June 3, 2013 OWCP decision. Since the Board's jurisdiction is limited to evidence that was before OWCP at the time it issued its final decision, the Board may not consider this evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c); *Sandra D. Pruitt*, 57 ECAB 126 (2005).

incident; and (2) whether OWCP properly denied appellant's request for an oral hearing as untimely filed under 5 U.S.C. § 8124.

### **FACTUAL HISTORY**

On January 2, 2013 appellant, then a 51-year-old supervisory accounting technician, filed a traumatic injury claim alleging that on March 30, 2012 her left hand, arm and shoulder became numb after a coworker slapped her hand in the performance of duty during a training class. She stopped work and returned on April 17, 2012.

Appellant submitted various e-mails with her supervisors and coworkers dated September 28 to December 14, 2012. In a December 14, 2012 e-mail, she stated that she experienced a workplace violence-related injury that caused her to be out of the office from April 2 to 17, 2012. On March 30, 2012 during a required training course for the employing establishment, appellant was slapped really hard on the hand by a disgruntled employee named Myrna Speers when she touched the tab key on the computer. She reported that her left hand and arm grew numb and started to throb. Appellant reported the incident to the police and was examined by a nurse who informed her that her blood pressure was elevated. She noted that she experienced continuous choking spells and fatigue since the March 30, 2012 incident and had multiple follow-up visits with her physician.

In a March 30, 2012 sworn statement, Ms. Speers advised that she was assisting appellant during class when she noticed that appellant kept tabbing at the end of the line which added extra lines. She joked with appellant that if she kept adding extra lines she would smack her hand. Ms. Speers related that, when appellant did hit the "tab" key again, she tapped the back of appellant's hand with two of her fingers. She stated that she was joking and apologized.

In a March 30, 2012 sworn statement, appellant stated that she was in a classroom and Ms. Speers offered to help her but became upset because she kept hitting the tab key by mistake. Appellant alleged that Ms. Speers slapped the back of her left hand really hard which caused her hand and left arm to grow numb from the slap. She reported that the incident made her very uncomfortable and it was hard for her to focus afterwards. Appellant noted that her blood pressure was high after the incident.

In a March 30, 2012 criminal incident report, a police officer stated that appellant was attending a computer-based course in room B131 of building 21 and was being instructed by another student named Ms. Speers. Appellant kept hitting the tab key when she was not supposed to and was slapped on her left hand by Ms. Speers with force. She related that her entire arm became numb and a nurse told her that her blood pressure elevated. The police officer stated that Ms. Speers informed him that she only lightly tapped appellant's wrist with two fingers and that the gesture was meant as a joke, with no malicious intent. He noted that there was no visible mark on appellant's hand where she had been slapped.

In a March 30, 2012 report of injury or illness form, a registered nurse with an illegible signature stated that appellant was receiving assistance from another student named Ms. Speers who slapped appellant's left hand really hard. Appellant related that her hand, arm and shoulder became numb. The registered nurse noted that appellant's blood pressure was high and that her

left hand appeared within normal limits. In an April 3, 2012 request for cardiology services, Dr. Richard E. Gordon, a Board-certified family practitioner, noted a diagnosis of labile hypertension and requested a 24-hour blood pressure monitor.

In an April 13, 2012 return to work note, Dr. Gordon indicated that appellant had been under his care for medical reasons and was able to return to work as of April 17, 2012. Appellant also submitted various diagnostic and laboratory results performed on August 30, 2012.

By letter dated March 12, 2013, OWCP advised appellant that the evidence submitted was insufficient to establish her claim. It requested additional evidence to establish that she sustained a diagnosed condition as a result of the alleged March 30, 2012 employment incident. OWCP also sent a similar development letter to the employing establishment requesting additional information regarding the alleged March 30, 2012 employment incident.

In a March 20, 2103 statement, appellant reported that there was no animosity with Ms. Speers, who was upset at the way that the employing establishment was treating her. Since the March 30, 2012 incident at work, she experienced choking when under pressure and related that the workplace incident left her feeling scared, threatened and unsafe. Appellant reported that she did not have any prior cardiac or emotional conditions or took any medication for an emotional condition. She noted that she was currently taking medication for hypertension.

In an April 4, 2012 statement, Yvonne Crawford, the classroom instructor, reported that at approximately 10:25 a.m. on March 30, 2012 appellant was late returning from a break and Ms. Speers was assisting appellant in catching up to the class. She witnessed Ms. Speers take appellant's hand and hit the top of it. Ms. Crawford related that she told Ms. Speers not to do that again and asked appellant if she was okay. During the next break, appellant informed Ms. Crawford that she experienced pain in her hand and arm but, when Ms. Crawford asked if appellant wanted to see the nurse, appellant reaffirmed that it was fine. Around 1:15 p.m. a police officer knocked on the door and requested to speak to Ms. Speers. Ms. Crawford noted that appellant informed the class that she reported the incident and that the nurse told her she had high blood pressure.

In an April 17, 2013 e-mail to her supervisor, appellant stated that after the March 30, 2012 workplace violent incident she started to experience heavy blood flow and frequent menstrual periods, which caused her to have low blood iron, shortness of breath, choking and other health issues. She noted that her physician suggested surgery in order to control the bleeding.

In a decision dated June 3, 2013, OWCP denied appellant's traumatic injury claim. It accepted that the March 30, 2012 incident occurred and that she was diagnosed with hypertension and situational anxiety. OWCP denied appellant's claim finding insufficient medical evidence to establish that her cardiovascular or emotional condition was causally related to the accepted incident.

In an undated appeal form postmarked on July 6, 2013, appellant requested an oral hearing.

By decision dated July 29, 2013, an OWCP hearing representative denied appellant's request for a hearing as untimely filed. OWCP noted that her request for an oral hearing was postmarked July 6, 2013, which was more than 30 days after the June 3, 2013 decision. It exercised its discretion and further determined that the issue in the case could be equally well addressed by requesting reconsideration from OWCP and submitting evidence not previously considered which establishes her claim.

### **LEGAL PRECEDENT -- ISSUE 1**

An employee seeking benefits under FECA<sup>3</sup> has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence<sup>4</sup> including that he or she sustained an injury in the performance of duty and that any specific condition or disability for work for which he or she claims compensation is causally related to that employment injury.<sup>5</sup>

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether "fact of injury" has been established.<sup>6</sup> There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.<sup>7</sup> Second, the employee must submit evidence, generally only in the form of probative medical evidence, to establish that the employment incident caused a personal injury.<sup>8</sup> An employee may establish that the employment incident occurred as alleged but fail to show that his disability or condition relates to the employment incident.<sup>9</sup>

Whether an employee sustained an injury in the performance of duty requires the submission of rationalized medical opinion evidence.<sup>10</sup> 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 condition and the specific employment factors identified by the employee.<sup>11</sup> The weight of the medical evidence is determined by its reliability, its probative

---

<sup>3</sup> 5 U.S.C. §§ 8101-8193.

<sup>4</sup> *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

<sup>5</sup> *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>6</sup> *S.P.*, 59 ECAB 184 (2007); *Alvin V. Gadd*, 57 ECAB 172 (2005).

<sup>7</sup> *Bonnie A. Contreras*, 57 ECAB 364 (2006); *Edward C. Lawrence*, 19 ECAB 442 (1968).

<sup>8</sup> *David Apgar*, 57 ECAB 137 (2005); *John J. Carlone*, 41 ECAB 354 (1989).

<sup>9</sup> *T.H.*, 59 ECAB 388 (2008); *see also Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006).

<sup>10</sup> *See J.Z.*, 58 ECAB 529 (2007); *Paul E. Thams*, 56 ECAB 503 (2005).

<sup>11</sup> *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.<sup>12</sup>

### **ANALYSIS -- ISSUE 1**

Appellant alleged that on March 30, 2012 her left arm became numb and that she experienced high blood pressure and anxiety as a result of being slapped on the top of her hand by a coworker. In a decision dated June 3, 2013, OWCP accepted that the March 30, 2012 incident occurred. It denied appellant's traumatic injury claim finding that the medical evidence was insufficient to establish an injury causally related to the accepted incident.

In an April 3, 2012 request for cardiology services, Dr. Gordon noted appellant's diagnoses of labile hypertension. In an April 13, 2012 note, he stated only that she was under his medical care and authorized her to return to work on April 17, 2012. The Board notes that while Dr. Gordon diagnosed hypertension he did not provide any opinion on the cause of appellant's diagnosed condition nor relate the condition to the accepted March 30, 2012 employment incident. Dr. Gordon did not address how appellant being smacked on the hand by Ms. Speers was competent to elevate her blood pressure. Further, he provided a history pertaining to appellant's hypertension. The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.<sup>13</sup> Thus, Dr. Gordon's medical reports are insufficient to establish appellant's claim.

Appellant also submitted a March 30, 2012 report of injury form from a registered nurse who described the March 30, 2012 incident and noted that her blood pressure was high. Because a nurse is not a "physician" as defined under FECA this report is of no probative value and is insufficient to establish appellant's claim.<sup>14</sup>

On appeal, appellant contends that she was a victim of workplace violence and placed in a hostile environment. She described her health issues and the March 30, 2012 incident at work. The issue of causal relationship, however, is a medical question that must be established by probative medical opinion from a physician.<sup>15</sup> The Board finds that appellant has not submitted such probative medical evidence from a physician to establish that her diagnosed hypertension and anxiety was causally related to the March 30, 2012 employment incident.

---

<sup>12</sup> *James Mack*, 43 ECAB 321 (1991).

<sup>13</sup> *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *A.D.*, 58 ECAB 149 (2006).

<sup>14</sup> *R.M.*, 59 ECAB 690 (2008); section 8101(2) of FECA provides as follows: the term physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law. 5 U.S.C. § 8101(2).

<sup>15</sup> *W.W.*, Docket No. 09-1619 (June 2, 2010); *David Apgar*, *supra* note 8.

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 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 or her claim before a representative of the Secretary.<sup>16</sup> Sections 10.617 and 10.618 of the federal regulations implementing this section of FECA provide that a claimant shall be afforded a choice of an oral hearing or a review of the written record by a representative of the Secretary.<sup>17</sup> A claimant is entitled to a hearing or review of the written record as a matter of right only if the request is filed within the requisite 30 days as determined by postmark or other carrier's date marking and before the claimant has requested reconsideration.<sup>18</sup> Although there is no right to a review of the written record or an oral hearing if not requested within the 30-day time period, OWCP may within its discretionary powers grant or deny appellant's request and must exercise its discretion.<sup>19</sup> OWCP's procedures require that it exercise its discretion to grant or deny a hearing when the request is untimely or made after reconsideration under section 8128(a).<sup>20</sup>

### **ANALYSIS -- ISSUE 2**

On June 3, 2013 OWCP denied appellant's traumatic injury claim. Appellant requested an oral hearing in an undated appeal form that was postmarked July 6, 2013. The Board notes that her request for an oral hearing was submitted more than 30 days after the June 3, 2013 decision.<sup>21</sup> Section 8124(b)(1) is unequivocal on the time limitation for requesting a hearing.<sup>22</sup> The Board finds that OWCP properly determined that appellant's request for an oral hearing was not timely and, thus, she was not entitled to a hearing as a matter of statutory right under section 8124(b)(1) of FECA.

Although appellant's request for a hearing was untimely, OWCP has the discretionary authority to grant the request and it must exercise such discretion. In its July 29, 2013 decision,

---

<sup>16</sup> 5 U.S.C. § 8124(b)(1).

<sup>17</sup> 20 C.F.R. §§ 10.616 and 10.617.

<sup>18</sup> *Id.* at § 10.616(a).

<sup>19</sup> *Eddie Franklin*, 51 ECAB 223 (1999); *Delmont L. Thompson*, 51 ECAB 155 (1999).

<sup>20</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Review of the Written Record*, Chapter 2.1601.2(a) (October 2011); *see R.T.*, Docket No. 08-408 (issued December 16, 2008).

<sup>21</sup> The 30-day period for determining the timeliness of an employee's request for an oral hearing or review commences the day after the issuance of OWCP's decision. *See Donna A. Christley*, 41 ECAB 90 (1989). The Board notes that appellant did not submit a written request for an oral hearing by July 3, 2013, within 30 calendar days after OWCP's June 3, 2013 decision.

<sup>22</sup> *William F. Osborne*, 46 ECAB 198 (1994).

OWCP properly exercised its discretion by notifying her that it had considered the matter in relation to the issue involved and indicated that additional argument and evidence could be submitted with a request for reconsideration. The Board has held that the only limitation on OWCP's authority is reasonableness and an abuse of discretion is generally shown through proof of manifest error, a clearly unreasonable exercise of judgment or actions taken which are contrary to both logic and probable deductions from established facts.<sup>23</sup> In this case, there is no evidence of record that OWCP abused its discretion in denying appellant's hearing request. Accordingly, the Board finds that OWCP properly denied her request for an oral hearing.

### **CONCLUSION**

The Board finds that appellant did not meet her burden of proof to establish that her diagnosed conditions were causally related to the March 30, 2012 employment incident. The Board also finds that OWCP properly denied her request for an oral hearing pursuant to 5 U.S.C. § 8124(b)(1).

### **ORDER**

**IT IS HEREBY ORDERED THAT** the July 29 and June 3, 2013 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: March 6, 2014  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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

---

<sup>23</sup> *Samuel R. Johnson*, 51 ECAB 612 (2000).