

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

K.R., Appellant)
)
and)
)
INDEPENDENT AGENCIES, U.S. SENATE,)
CAPITAL POLICE DEPARTMENT,)
Washington, DC, Employer)

Docket No. 14-552
Issued: October 29, 2014

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 13, 2014 appellant filed a timely appeal of a September 20, 2013 Office of Workers' Compensation Programs' (OWCP) merit decision denying her traumatic injury claim and a November 27, 2013 nonmerit decision denying her request for an oral hearing. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of the case.

ISSUES

The issues are: (1) whether appellant met her burden of proof to establish that she sustained a traumatic injury in the performance of duty on June 13, 2013, as alleged; and (2) whether OWCP's Branch of Hearings and Review properly denied appellant's request for an oral hearing under 5 U.S.C. § 8124(b)(1).

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On June 14, 2013 appellant, then a 58-year-old vehicle and materials screener, filed a traumatic injury claim alleging that she fell on her left knee on June 13, 2013 after opening the door to walk up the steps at the employing establishment. She stated that the injury occurred at 4:48 a.m.² On the reverse of the form, appellant's supervisor, Tasheka Westbury stated that appellant informed her that she injured her foot on the steps. A witness saw appellant fall.

In a statement dated June 14, 2013, Ms. Westbury asserted that appellant told her that she had hurt her foot on the steps at the employing establishment on June 13, 2013. Charmaine L. Harris, a coworker, completed a June 18, 2013 statement. On June 13, 2013 she saw appellant laying on the steps "as if she had tripped over something and was having a difficult time to get up." Appellant stated that she slipped and fell on the steps.

Sergeant Kendrick A. Young, appellant's supervisor, completed a statement on June 18, 2013. On June 13, 2013 appellant notified Ms. Westbury that she injured her foot while walking up the steps. She later notified Sergeant Young that she was losing feeling in her right leg because her already sore knee was injured while walking up the steps and that she required medical treatment. Appellant informed him that her previous injury was to the right side of her body not her right knee.

Joe Palmer, a coworker, completed a statement on June 20, 2013. Appellant returned to the employing establishment on June 19, 2013 with her medical paperwork without crutches, an immobilizer or a limp.

The employing establishment provided appellant with an Authorization for Examination and/or Treatment, Form CA-16, on June 13, 2013. Appellant sought treatment at the Fort Washington Medical Center on June 13, 2013 due to left knee pain. Dr. Karlene Ross, a Board-certified family practitioner, examined appellant on June 27, 2013 due to pain and swelling in her left knee following a fall. Appellant underwent a left knee magnetic resonance imaging (MRI) scan on June 30, 2013. It demonstrated a high-grade medial compartment articular surface degenerative joint disease chondromalacia with near complete meniscus body degenerative tearing and marked subluxation extrusion of the meniscus. Dr. Ross noted a history of a left knee arthroscopy surgery in 1999 and compared the 2013 MRI scan to a left knee MRI scan in July 2004. Dr. Ross completed the Form CA-16 on July 10, 2013 and listed appellant's history as "fell while walking up the stairs and landed on the left knee." She indicated with a checkmark "yes" that appellant's condition was caused or aggravated by her employment activity. Dr. Ross listed the findings as degenerative joint disease and chondromalacia with degenerative tearing of the medial meniscus.

On July 26, 2013 Dr. Shaheer Yousaf, a Board-certified orthopedic surgeon, examined appellant and diagnosed a left knee contusion, internal derangement of the left knee, sprain of the medial collateral ligament, chondromalacia, tendinitis, patellofemoral syndrome and meniscal pathology. He listed the history of appellant's onset as "Impact as she fell on the step going up." Dr. Yousaf recommended a knee brace.

² Appellant's tour of duty was listed as from 4:30 a.m. to 2:30 p.m.

In a letter dated August 12, 2013, OWCP requested additional factual and medical information in support of appellant's claim. It stated that the evidence was not sufficient to establish that she experienced the June 13, 2013 incident as alleged and that the medical evidence was not sufficient. OWCP directed appellant to respond to several questions as to the incident and obtain a detailed report from her physician explaining how the work incident caused or aggravated her medical condition. It allowed 30 days for a response.

Dr. Yousaf examined her on August 6, 2013 for left knee pain and strain, medial cruciate ligament sprain and subluxed meniscal tear. He stated that appellant's right knee was normal and released her to sedentary work on August 16, 2013. On August 19, 2013 Dr. Yousaf signed a form report noting her history of falling while climbing steps and indicating with a checkmark "yes" that her condition was caused by her employment activity. He recommended left knee arthroscopic surgery.

By decision dated September 20, 2013, OWCP denied appellant's traumatic injury claim. It found that she had not submitted sufficient factual evidence to establish the June 13, 2013 incident as alleged.

Appellant requested an oral hearing before the Branch of Hearings and Review through a form dated October 23, 2013 and postmarked October 22, 2013. She also requested a review of the written record regarding the September 20, 2013 decision from the Branch of Hearings and Review through a form dated November 18, 2013 and received on November 20, 2013.

By decision dated November 27, 2013, the Branch of Hearings and Review denied appellant's request for an oral hearing or review of the written record. It found that her request was not made within 30 days of OWCP's September 20, 2013 decision. Further the issue could equally well be addressed through the reconsideration process.

LEGAL PRECEDENT -- ISSUE 1

OWCP defines a traumatic injury as, "[A] condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain which is identifiable as to time and place of occurrence and member or function of the body affected."³ In order to determine whether an employee actually sustained an injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.⁴ The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.

With respect to the first component of fact of injury, the employee has the burden of establishing the occurrence of an injury at the time, place and in the manner alleged, by a

³ 20 C.F.R. § 10.5(ee).

⁴ *Elaine Pendleton*, 40 ECAB 1143 (1989).

preponderance of the reliable, probative and substantial evidence. An injury does not have to be confirmed by eyewitnesses in order to establish the fact that an employee sustained an injury in the performance of duty, but the employee's statements must be consistent with the surrounding facts and circumstances and his subsequent course of action. An employee has not met his burden of proof in establishing the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim. Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury and failure to obtain medical treatment may, if otherwise unexplained, cast sufficient doubt on an employee's statements in determining whether a *prima facie* case has been established. However, an employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.⁵

Second, the employee must submit sufficient evidence, generally only in the form a medical evidence, to establish that the employment incident caused a personal injury.⁶ When determining whether the implicated employment incident caused a diagnosed condition, OWCP generally relies on the rationalized medical opinion of a physician. It recognizes, however, that a case may be accepted without a medical report if: (1) the condition reported is a minor one that can be identified on visual inspection by a lay person (*e.g.*, burn, laceration, insect sting or animal bite); (2) the injury was witnessed or reported promptly and no dispute exists as to the fact of injury; and (3) no time was lost from work due to disability.⁷

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met her burden of proof to establish a traumatic injury in the performance of duty on June 13, 2013, as alleged.

The Board finds that appellant has submitted factual evidence to establish that the June 13, 2013 traumatic incident occurred. Appellant provided consistent statements on her claim form and to her physicians that she tripped on steps and fell on her left knee at the employing establishment on June 13, 2013. The record contains a witness' statement supporting that appellant fell on steps on June 13, 2013. Appellant consistently reported that she landed on her left knee. The employing establishment submitted statements that she initially reported a foot and right knee injury, but these statements do not conform to the history of injury as claimed or the reports given by appellant to her physicians. This evidence does not cast sufficient doubt as to the validity of her claim. The Board finds that appellant fell on steps at the employing establishment on June 13, 2013.

The Board finds, however, that appellant has not submitted sufficient medical opinion evidence to establish that this incident resulted in her left knee condition. Dr. Yousaf initially diagnosed a left knee contusion as a result of appellant's employment incident. Dr. Ross

⁵ *D.B.*, 58 ECAB 464, 466-67 (2007).

⁶ *J.Z.*, 58 ECAB 529 (2007).

⁷ *A.S.*, 59 ECAB 246 (2007).

examined appellant on June 27, 2013 for pain and swelling in her left knee following a fall. The Board has held that the diagnosis of pain does not constitute a firm medical diagnosis.⁸ Dr. Ross did not list other diagnosed conditions as resulting from appellant's fall. Her report is not sufficiently detailed to meet appellant's burden of proof in establishing a traumatic injury as a result of her June 13, 2013 employment incident.

The form reports of Dr. Ross and Dr. Yousaf listed that appellant's diagnosed left knee condition was causally related to the employment incident. The Board has held that an opinion on causal relationship which consists only of a physician checking "yes" to a medical form report question on whether the claimant's condition is related to the history given is of diminished probative value. Without any explanation or rationale for the conclusion reached, such reports are insufficient to establish causal relationship.⁹ Neither Dr. Ross nor Dr. Yousaf provided a narrative medical opinion evidence addressing a full or accurate history of appellant's left knee condition, prior treatment or exploring how the internal derangement, sprain of the medial collateral ligament, chondromalacia, tendinitis, patellofemoral syndrome or meniscal pathology were caused or aggravated by the June 13, 2013 fall. Without detailed medical opinion evidence explaining how appellant's fall caused or aggravated her underlying degenerative condition, these reports are not sufficient to meet appellant's burden of establishing a traumatic injury claim.¹⁰

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) of FECA,¹¹ concerning a claimant's entitlement to a hearing before an OWCP representative, states: "Before review under section 8128(a) of this title, a claimant ... not satisfied with a decision of the Secretary ... is entitled, on request made within 30 days after the date of issuance of the decision, to a hearing on his claim before a representative of the Secretary."¹²

⁸ *Robert Broome*, 55 ECAB 339 (2004).

⁹ *Lucrecia M. Nielson*, 41 ECAB 583, 594 (1991).

¹⁰ The Board, however, notes that where, as in this case, an employing establishment properly executes a Form CA-16 which authorizes medical treatment as a result of an employee's claim for an employment-related injury, the Form CA-16 creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. See *Tracy P. Spillane*, 54 ECAB 608 (2003). The period for which treatment is authorized by a Form CA-16 is limited to 60 days from the date of issuance, unless terminated earlier by OWCP. 20 C.F.R. § 10.300(c). The record in this case indicates that appellant underwent treatment as a covered expense.

¹¹ 5 U.S.C. §§ 8101-8193.

¹² *Id.* at § 8124(b)(1).

The Board has held that section 8124(b)(1) is “unequivocal” in setting forth the time limitation for requesting hearings and reviews of the written record. 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.¹³ Even where the hearing or review of the written record request is not timely filed, OWCP may within its discretion, grant a hearing, and must exercise this discretion.¹⁴

ANALYSIS -- ISSUE 2

Following the September 20, 2013 decision by OWCP, appellant requested an oral hearing before the Branch of Hearings and Review through a form dated October 23, 2013 and postmarked October 22, 2013. The time limit of 30 days for requesting an oral hearing after the September 20, 2013 decision expired on October 21, 2013. As appellant’s request for an oral hearing was 31 days after the September 20, 2013 OWCP decision it was untimely. She also requested a review of the written record from the Branch of Hearings and Review regarding the September 20, 2013 decision through a form dated November 18, 2013 and received on November 20, 2013. This request was made more than 30 days after the September 20, 2013 decision and was also untimely. OWCP therefore, properly denied appellant’s requests for review as a matter of right.

OWCP then proceeded to exercise its discretion, in accordance with Board precedent, to determine whether to grant further review in this case. It determined that a hearing or review of the written record was not necessary as the issue in the case was medical in nature and could be resolved through the submission of medical evidence in the reconsideration process. Therefore, OWCP properly denied appellant’s request for a hearing and her request for a review of the written record as untimely and properly exercised its discretion in determining to deny her requests as she had other appeal options available.

CONCLUSION

The Board finds that appellant has established that the June 13, 2013 employment incident occurred as alleged, but that she failed to submit sufficient medical evidence to establish her claim. The Board further finds that OWCP properly declined her request for an oral hearing as untimely.

¹³ *Tammy J. Kenow*, 44 ECAB 619 (1993).

¹⁴ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the September 20, 2013 decision of the Office of Workers' Compensation Programs is affirmed as modified and that the November 27, 2013 decision is affirmed.

Issued: October 29, 2014
Washington, DC

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

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

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