

FACTUAL HISTORY

On May 13, 2014 appellant, then a 63-year-old telecommunications specialist filed a traumatic injury claim alleging that on May 6, 2014 he sustained a right knee injury in the performance of duty. He alleged that, while digging a trench, he began to experience pain in his right knee. It was noted that appellant was on restrictions due to a 2001 injury. The employing establishment did not indicate that he stopped work.

In a May 8, 2014 report, Dr. Diego Gonzalez, Board-certified in pediatrics, advised that appellant had a severe onset of right knee pain while digging a trench. He noted that appellant had a recurrent history of knee pain and that his left knee had previously been replaced. Dr. Gonzalez advised that appellant previously had a steroid injection for right knee pain in February 2014. On physical examination, he noted localized pain and swelling in the lateral aspect of the right knee with a grinding and crunching sound on flexion, extension, and rotation. Dr. Gonzalez diagnosed right knee joint pain and internal derangement of the lateral meniscus. He released appellant to limited-duty work. In a May 19, 2014 report, Dr. Gonzalez referred appellant to an orthopedic surgeon. He repeated that appellant had severe right knee pain while digging a trench and that appellant had a previous history of right knee pain which required a steroid injection. On examination, Dr. Gonzalez found localized pain and swelling of the right knee. He diagnosed right knee pain and noted that the mode of injury was undetermined.

OWCP also received multiple medical reports regarding appellant's medical history, including reports relating to a 2001 work injury to the knees. A September 24, 2001 report noted that appellant had right knee bursitis at the Gerdy's tubercle. In a September 12, 2005 report, Dr. Jon R. Jacobson, Board-certified in occupational medicine, advised that appellant complained of right knee pain and diagnosed patellar chondromalacia.

In a June 25, 2014 attending physician's report (Form CA-20), Dr. Michael Superior, a preventative medicine specialist, diagnosed joint pain of the right knee after digging a trench. On physical examination, he found pain and swelling of the right knee. Dr. Superior further noted that appellant had recurrent knee pain from 2001. When asked if appellant's condition was caused or aggravated by factors of his employment, he stated that he was unsure. Dr. Superior remarked that appellant was previously a runner and was currently a cyclist and that these activities could not be ruled out as contributing to his condition.

In a July 8, 2014 statement, the employing establishment controverted appellant's claim. It noted that he had preexisting osteoarthritis which previously required knee injections and that he was a runner and cyclist which could be a cause of his injury. The statement also advised that initially appellant claimed that his condition was a recurrence from his 2001 claim and that there was no new injury.

In a July 16, 2014 attending physician's report (Form CA-20), Dr. Tad Pruitt, a Board-certified orthopedic surgeon, advised that appellant had a shoveling injury. He noted that appellant had preexisting mild arthritis and diagnosed a possible lateral meniscal tear. Dr. Pruitt also checked the box marked "yes" to indicate that appellant's condition was caused or aggravated by an employment-related activity. In a July 16, 2014 disability status report, he advised that appellant was able to return to full duty without restrictions.

By letter dated July 23, 2014, OWCP notified appellant that medical evidence was insufficient to establish his claim and advised him of the type of evidence needed.

Appellant submitted a July 16, 2014 report from Dr. Pruitt advising that appellant complained of right knee pain. Dr. Pruitt noted that appellant was digging a trench when he began to experience sharp lateral knee pain. Appellant related that he has had “bad knees” for years, including a 2002 total left knee arthroplasty, but was able to perform unrestricted activities such as biking and running. Dr. Pruitt advised that, in early May, appellant was digging a trench and went down onto the knee and, while shoveling later, he had a sharp lateral knee pain. Appellant took medication but overall the pain was getting worse with intermittent swelling. Knee alignment was normal. The right knee had tenderness along the lateral joint line, full range of motion as well as good strength and stability. Anteroposterior right knee x-ray was relatively normal while the Rosenberg view showed possible lateral joint space narrowing and lateral patellofemoral facet joint space narrowing. Dr. Pruitt assessed right knee strain related to the May 6, 2014 work incident, possible right lateral meniscus tear, and right knee osteoarthritis.

In an August 4, 2014 statement, appellant advised that, while he was digging a trench to bury a telephone cable, he began to feel a sharp pain in his right knee that he had never felt previously. He noted that his injury caused a severe right limp. In response to the employing establishment’s statement, appellant noted that he had not run since 2001 and that his cycling was recommended by his personal physician. He also submitted a newspaper article indicating that older people should not limit high-impact activities like jogging.

In an August 18, 2014 report, Dr. Pruitt reiterated that the diagnosis of right knee strain related to the May 6, 2014 work incident, possible right lateral meniscus tear, and right knee osteoarthritis. He advised that appellant was injured while digging a hole at work. Appellant was experiencing pain over the lateral aspect of the knee. Dr. Pruitt advised that a steroid injection gave appellant 35 percent pain relief for approximately two weeks but the pain had mostly returned. He noted findings and recommended a magnetic resonance imaging (MRI) scan of the right knee.

By decision dated August 25, 2014, OWCP denied appellant’s claim because the medical evidence did not establish that the diagnosed condition was causally related to the work incident.

In a September 3, 2014 report, a physician assistant advised that appellant complained of right knee pain. He detailed appellant’s treatment with regard to his right knee and opined that appellant’s condition was not a recurrence of the old injury because the prior injury did not lend itself to explain his lateral knee pain. The physician assistant also noted that appellant related that he went 12 years without right knee pain until the May 6, 2014 incident of digging trenches. Appellant also resubmitted medical reports previously of record.

By letter post-marked and dated September 25, 2015, appellant requested review of the written record. In a September 24, 2014 report, Dr. Pruitt advised that, while appellant was digging a trench, his foot slipped causing him to fall and land on his right knee. He noted that this incident caused compression, bruising, pain, swelling, and a tear to the lateral meniscus. Dr. Pruitt opined that appellant’s current symptoms were due to the work-related injury sustained on May 6, 2014, as opposed to appellant’s preexisting osteoarthritis. He advised that x-rays

revealed some lateral joint space narrowing and lateral facet joint narrowing caused by the lateral meniscus tear.

By decision dated October 29, 2014, OWCP denied appellant's request for review of the written record as untimely without a merit review. It considered his request within its discretion, but found that his case could be addressed equally well by a request for reconsideration and the submission of evidence showing a causal relationship between his claimed condition and the work incident.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking compensation under FECA has the burden of establishing the essential elements of his or her claim by the weight of reliable, probative, and substantial evidence,² including that he is an "employee" within the meaning of FECA and that he or she filed his or her claim within the applicable time limitation.³ The employee must also establish that he or she sustained an injury in the performance of duty as alleged and that his or her disability for work, if any, was causally related to the employment injury.⁴

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. There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident at the time, place, and in the manner alleged. Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.⁵

Rationalized medical opinion evidence is generally required to establish causal relationship. The opinion of the physician must be based on a complete factual and medical background, 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

ANALYSIS -- ISSUE 1

On May 6, 2014 appellant was digging a trench when he began to experience right knee pain. The evidence supports that the claimed work incident occurred. Therefore, the Board finds that the first component of fact of injury is established. However, the medical evidence is insufficient to establish that the employment incident on May 6, 2014 caused appellant's right knee condition.

² *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 57 (1968).

³ *R.C.*, 59 ECAB 427 (2008).

⁴ *Id.*; *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁵ *T.H.*, 59 ECAB 388 (2008).

⁶ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

In his July 16, 2014 report, Dr. Pruitt advised that appellant complained of right knee pain. He noted that appellant related that he has had “bad knees” for years and assessed right knee strain related to the May 6, 2014 work incident, possible right lateral meniscus tear, and right knee osteoarthritis. Although Dr. Pruitt provides some support for causal relationship, he failed to provide medical rationale to explain how the work incident caused appellant’s knee strain and possible meniscus tear. As noted, rationalized medical opinion evidence is generally required to establish causal relationship. In his August 18, 2014 report, Dr. Pruitt reiterated the diagnosis of right knee strain related to the May 6, 2014 work incident, possible right lateral meniscus tear, and right knee osteoarthritis. Again, he failed to provide sufficient rationale. In his July 16, 2014 attending physician’s report, Dr. Pruitt, checked the box marked “yes” to indicate that appellant’s condition was caused or aggravated by an employment-related activity. The Board has held that an opinion on causal relationship that consists only of a physician checking yes to a medical form question on whether the claimant’s condition was related to the history given is of little probative value.⁷ As a result, these reports are insufficient to discharge appellant’s burden of proof. None of Dr. Pruitt’s reports provide rationale explaining how appellant’s work activity on May 6, 2014 caused or contributed to a diagnosed condition.

In his May 8, 2014 report, Dr. Gonzalez advised that appellant had a severe onset of right knee pain while digging a trench. He noted that appellant had a recurrent history of knee pain. Although Dr. Gonzalez relates the history of the injury, the Board has found that the mere fact that a condition manifests itself or is worsened during employment period does not raise an inference of causal relationship between the two.⁸ Furthermore, medical evidence without an opinion as to causal relationship is of little probative value.⁹ As a result, this report is insufficient to discharge appellant’s burden of proof. In his May 19, 2014 report, Dr. Gonzalez noted that appellant had severe right knee pain while digging a trench. He diagnosed right knee pain and noted that the mode of injury was undetermined. This report is insufficient to discharge appellant’s burden of proof because it notes that the mode of injury is “undetermined.” This report is of diminished probative value as Dr. Gonzalez declined to support causal relationship.

In his June 25, 2014 attending physician’s report, Dr. Superior diagnosed joint pain of the right knee after digging a trench. When asked if appellant’s condition was caused or aggravated by factors of his employment, he stated that he was unsure. Dr. Superior remarked that appellant was previously a runner and was currently a cyclist and that these activities could not be ruled out as contributing to his condition. As he did not specifically support causal relationship, this report is of limited probative value and insufficient to establish the claim. The September 12, 2005 report of Dr. Jacobson indicated that appellant complained of right knee pain but made no reference to the causal nature of the pain.

Consequently, appellant has submitted insufficient medical evidence to establish his claim. As noted, causal relationship is a medical question that must be established by probative

⁷ *Deborah L. Beatty*, 54 ECAB 334 (2003) (the checking of a box yes in a form report, without additional explanation or rationale, is insufficient to establish causal relationship).

⁸ *Patricia Bolleter*, 40 ECAB 373 (1988).

⁹ *Jaja K. Asaramo*, 55 ECAB 200 (2004).

medical opinion from a physician.¹⁰ The physician must accurately describe appellant's work duties and medically explain the pathophysiological process by which these duties would have caused or aggravated his condition.¹¹ Because appellant has not provided such medical opinion evidence in this case, he has failed to meet his burden of proof. The need for rationale by a physician is particularly important since the record indicates that appellant has a preexisting right knee condition.

Appellant may submit new evidence or argument as part of a formal 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.

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.¹² 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.¹³ 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.¹⁴ 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.¹⁵

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.¹⁶

¹⁰ See *supra* note 6.

¹¹ *Solomon Polen*, 51 ECAB 341 (2000) (rationalized medical evidence must relate specific employment factors identified by the claimant to the claimant's condition, with stated reasons by a physician). See also *S.T.*, Docket No. 11-237 (issued September 9, 2011).

¹² 5 U.S.C. § 8124(b)(1).

¹³ 20 C.F.R. § 10.615.

¹⁴ *Id.* at § 10.616(a).

¹⁵ See *Leona B. Jacobs*, 55 ECAB 753 (2004).

¹⁶ 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).

ANALYSIS -- ISSUE 2

In a decision dated August 25, 2014, OWCP denied appellant's traumatic injury claim. The record indicates that appeal rights accompanied the decision. Appellant sought a review of the written record in a letter postmarked September 25, 2014. By decision dated October 29, 2014, OWCP denied his request for a review of the written record as untimely under section 8124 of FECA.

On appeal, appellant argues that only 20 days elapsed when calculating his work schedule and excluding holidays. However, the Board has held that, in computing a time period, the date of the event from which the designated period of time begins to run shall not be included while the last day of the period so computed shall be included unless it is a Saturday, a Sunday, or a legal holiday.¹⁷ The 30-day time period for determining the timeliness of appellant's review of the written record began on August 26, 2014 and ended on September 24, 2014 which was a Wednesday. As appellant's request for a hearing was postmarked September 25, 2014, he was not entitled to review of the written record 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. 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 a review of the written record 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.¹⁸ In this case, the evidence of record does not establish that OWCP committed any action in connection with its denial of appellant's request for a review of the written record which could be found to be an abuse of discretion. Consequently, OWCP properly denied his request for an oral hearing as untimely under section 8124 of FECA.

The Board notes that appellant submitted other medical reports addressing causal relationship after OWCP's August 25, 2014 merit decision. As these reports were not considered by OWCP in reaching a decision, the Board lacks jurisdiction to review this new evidence for the first time on appeal.¹⁹

CONCLUSION

The Board finds that appellant did not establish that he sustained a traumatic injury in the performance of duty on May 16, 2014. Furthermore, the Board finds that OWCP properly denied appellant's request for review of the written record as untimely.

¹⁷ *John B. Montoya*, 43 ECAB 1148 (1992).

¹⁸ *See L.W.*, 59 ECAB 471 (2008).

¹⁹ *See* 20 C.F.R. § 501.2(c).

ORDER

IT IS HEREBY ORDERED THAT the October 29 and August 25, 2014 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: April 9, 2015
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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

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