

FACTUAL HISTORY

On August 10, 2010 appellant, then a 47-year-old supervisor of distribution operations, filed an occupational disease claim alleging that he developed a right knee chondromalacia patella due to his employment. During his daily duties there were days where more walking was required, causing swelling, tightness, and pain in his right knee. Appellant first became aware of his condition on July 3, 2010 and first realized that this condition was related to his employment that same date. He attributed his condition to walking in the performance of his job duties.

In a letter dated June 3, 2014, OWCP requested additional factual and medical information from appellant in support of his claim. It also requested that the employing establishment respond to his allegations.

Dr. Chris Maeda, a Board-certified orthopedic surgeon, examined appellant on September 30, 2013 and diagnosed bilateral knee pain. He indicated that appellant first developed right knee pain in 2004 and left knee pain in 1994. Appellant reported a recent exacerbation of his symptoms on September 30, 2013 and had not worked since July 18, 2013. He stated that his knee pain prevented him from walking one block and that his symptoms were exacerbated by stair climbing and weight bearing. Appellant reported a left knee arthroscopy in 1999. Dr. Maeda diagnosed right knee pain and osteoarthritis.

On January 15, 2014 Dr. Maeda stated that appellant developed bilateral knee pain without any known injury. He listed appellant's symptoms of knee pain and difficulty bearing weight greater in the left knee than the right. Dr. Maeda stated that appellant's knee symptoms began 10 years previously and that appellant was currently unable to walk more than one block. He diagnosed osteoarthritis of the knees and noted that after being informed of the risks and benefits appellant wished to proceed with a total knee replacement.

Dr. Maeda examined appellant on March 13 and 31, April 14, May 5 and 28, 2014. He stated that appellant underwent a left total knee replacement on March 18, 2014 and a right total knee replacement on January 21, 2014. Dr. Maeda stated that appellant was able to work with restrictions beginning on May 26, 2014.

The employing establishment responded to OWCP's questions on June 26, 2014 and stated that appellant had reported knee problems since 2008, but had never mentioned that his knee conditions were caused by walking at work. It stated that appellant was the only supervisor with a desk on the workroom floor so he could sit down when needed.

By decision dated July 22, 2014, OWCP denied appellant's occupational disease claim on the grounds that he had not submitted the necessary factual information to establish how much he walked in the performance of his federal job duties. It further noted that he had not provided any medical evidence establishing that his diagnosed conditions were causally related to his employment.

Appellant requested a review of the written record from the Branch of Hearings and Review in a form dated by him on August 22, 2014 and received by the Branch of Hearings and

Review on September 2, 2014. The postmark of the accompanying envelope appears is not legible.

By decision dated September 19, 2014, the Branch of Hearings and Review denied appellant's request for review of the written record as untimely, as it was not made within 30 days of OWCP's July 22, 2014 decision. The Branch of Hearings and Review stated that his request was postmarked on August 22, 2014 more than 30 days after the July 22, 2014 decision. The Branch of Hearings and Review exercised its discretionary review and found that it could be equally well addressed through the reconsideration process.

LEGAL PRECEDENT -- ISSUE 1

OWCP regulations define an occupational disease as "a condition produced by the work environment over a period longer than a single workday or shift."² 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 employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon a complete factual and medical background, showing a causal relationship between the claimed condition and identified factors. The belief of a claimant that a condition was caused or aggravated by employment is not sufficient to establish causal relation.³

ANALYSIS -- ISSUE 1

Appellant completed an occupational disease claim and attributed his right knee condition to walking in the performance of his duties. He did not provide any details regarding the amount of walking his work required or the distances that he was required to cover. Appellant also submitted a series of medical reports from Dr. Maeda supporting a diagnosis of bilateral knee arthritis and bilateral total knee replacements. Dr. Maeda did not address any causal relationship between appellant's diagnosed bilateral knee conditions and his employment duties.

The Board finds that appellant has not met his burden of proof in establishing an occupational disease claim. Appellant has provided medical evidence of the presence or existence of the disease or condition for which compensation is claimed, but has provided only a limited factual statement identifying employment factors alleged to have caused or contributed to his diagnosed condition, walking in the performance of duty. Finally, he has provided no medical evidence establishing a causal connection between his diagnosed bilateral knee arthritis

² 20 C.F.R. § 10.5(q).

³ *Lourdes Harris*, 45 ECAB 545, 547 (1994).

with resulting total knee replacements and his implicated employment duty of walking. Due to these deficiencies, appellant has not established that he developed an occupational disease as the result of his federal job duties.⁴

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,⁵ 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."⁶

Pursuant to 20 C.F.R. § 10.615, a claimant may choose between an oral hearing and a review of the written record. The request must be sent within 30 days (as determined by the postmark or other carrier's date marking) of the date of OWCP's decision.⁷ If the request for review of the written record is not made within 30 days, appellant is not entitled to a review of the written record as a matter of right. Although not entitled to a review of the written record as a matter of right, OWCP has discretionary authority to grant the request and must exercise this discretionary authority.⁸

ANALYSIS -- ISSUE 2

The Board finds that the Branch of Hearings and Review properly determined appellant's August 22, 2014 request for review of the written record was not timely as it was made more than 30 days after the issuance of OWCP's July 22, 2014 decision. Although the postmark was illegible, the appeal form was dated by appellant on August 22, 2014, 31 days after OWCP's July 22, 2014 decision and not received by OWCP until September 2, 2014. OWCP therefore, properly denied appellant's untimely request for a review of the written record as a matter of right.

The Branch of Hearings and Review then proceeded to exercise its discretion, in accordance with Board precedent, to determine whether to grant a review of the written record in this case. The Branch of Hearings and Review determined that a review of the written record

⁴ Following OWCP's July 22, 2014 initial denial of his claim and on appeal to the Board, appellant has submitted additional medical evidence. As it did not review this evidence in reaching a final decision, the Board may not consider this evidence for the first time on appeal. 20 C.F.R. § 501.2(c)(1).

⁵ 5 U.S.C. §§ 8101-8193.

⁶ *Id.* at § 8124(b)(1).

⁷ 20 C.F.R. § 10.615.

⁸ *D.E.*, Docket No. 14-1686 (issued December 12, 2014).

was not necessary as the issue in the case could be resolved through the submission of evidence in the reconsideration process. Therefore, the Branch of Hearings and Review properly denied appellant's request for a review of the written record as untimely and properly exercised its discretion in determining to deny appellant's request as he had other review options available.

CONCLUSION

The Board finds that appellant failed to meet his burden of proof in establishing an occupational disease causally related to his employment. The Board further finds that the Branch of Hearings and Review properly denied appellant's request for a review of the written record as untimely.

ORDER

IT IS HEREBY ORDERED THAT September 19 and July 22, 2014 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: February 13, 2015
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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