United States Department of Labor
Employees' Compensation Appeals Board

D.T., Appellant	)	
and	)	**Docket No. 14-2024**
	)	**Issued: June 24, 2015**
U.S. POSTAL SERVICE, POST OFFICE, St. Louis, MO, Employer	)	

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
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 23, 2014 appellant filed a timely appeal from a May 13, 2014 merit decision and a July 15, 2014 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[2]

ISSUES

The issues are: (1) whether appellant met her burden of proof to establish a right wrist injury in the performance of duty on February 4, 2014; and (2) whether OWCP abused its

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that appellant submitted additional evidence after OWCP rendered its July 15, 2014 decision. The Board's jurisdiction is limited to reviewing the evidence that was before OWCP at the time of its final decision. Therefore, this additional evidence cannot be considered by the Board. 20 C.F.R. § 501.2(c)(1); *Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35, 36 n.2 (1952). Appellant may submit this evidence to OWCP, together with a formal request for reconsideration, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606(b)(2).

discretion in denying appellant's request for a review of the written record as untimely filed, under 5 U.S.C. § 8124(b)(1).

FACTUAL HISTORY

On February 4, 2014 appellant, then a 57-year-old clerk, filed a traumatic injury claim (Form CA-1) alleging that on that same date she sustained a right wrist/hand injury when she placed her foot on top of a trashcan to tie her shoe, lost her balance, and fell onto her right wrist. A February 6, 2014 witness statement from Shawn Jones, a fellow coworker, stated that he heard the trashcan wobble and saw appellant fall to the floor and land on her back. Appellant notified her supervisor and first sought medical treatment on the date of incident, February 4, 2014.

The employing establishment issued appellant a properly completed Form CA-16, authorization for examination, dated February 4, 2014, authorizing medical treatment related to the February 4, 2014 injury. The description of injury was reported as sprain/break of the right wrist/hand. The employing establishment did not dispute that appellant's claimed right hand/wrist injury was due to the February 4, 2014 employment incident.

In the February 4, 2014 emergency room (ER) report, Dr. Terry Thrasher, a Doctor of Osteopathic Medicine, reported that appellant complained of right wrist pain which began at work on that same date. He noted that appellant slipped on ice/snow and landed on her right wrist. Physical examination revealed pain and swelling. A February 4, 2014 x-ray of the right wrist revealed impacted fracture of the radius with intra-articular extension and soft tissue swelling. Dr. Thrasher diagnosed right wrist radius fracture and provided appellant with a splint.

In the attending physician's report accompanying the Form CA-16, Dr. Thrasher diagnosed right radius fracture. The question about whether the injury was caused by work was left unanswered. Dr. Thrasher restricted use of the upper right extremity and referred appellant for orthopedic evaluation. In a February 4, 2014 duty status report (Form CA-17), appellant's supervisor indicated that appellant lost her balance, fell, and broke her right hand on February 4, 2014. Dr. Thrasher diagnosed right wrist fracture and answered "Yes" when asked if the diagnosis was due to injury. He provided appellant with work restrictions.

Dr. Thomas R. Turnbaugh, a Board-certified orthopedic surgeon, in a February 6, 2014 report, noted that on February 4, 2014 appellant had tripped and fallen at work, causing her to land on her right wrist. He reviewed diagnostic testing and provided findings on physical examination and diagnosed displaced intra-articular fracture of the right distal radius and recommended surgery following further testing.

In a February 7, 2014 diagnostic report, Dr. D. Kent McNutt, a Doctor of Osteopathic Medicine, reported that a computerized tomography (CT) scan of the right wrist revealed comminuted intra-articular fracture of the distal radius.

Dr. Turnbaugh on February 9, 2014 performed an open reduction of comminuted intra-articular fracture, right distal radius with internal fixation using two dorsal plates.

In medical reports dated February 13 to March 6, 2014, Dr. Turnbaugh diagnosed status post open reduction of comminuted intra-articular fracture of the right distal radius with internal

fixation with good restoration of the articular surface. On March 6, 2014 appellant's cast and sutures were removed.

By letter dated April 15, 2014, OWCP informed appellant that additional evidence was needed to support her claim and was directed to submit it to OWCP within 30 days.

In support of her claim, appellant submitted a February 9, 2014 anesthesia record and a March 20, 2014 physical therapy note.

By decision dated May 13, 2014, OWCP denied appellant's claim finding that the medical evidence of record failed to establish that her right wrist fracture was causally related to the accepted February 4, 2014 employment incident. It noted that the Form CA-16 did not relate her injury to the work incident and Dr. Thrasher left the box unanswered when asked if the condition found was caused or aggravated by the employment activity described.

On June 17, 2014 appellant requested review of the written record before the Branch of Hearings and Review. The request was received on June 20, 2014.

In a May 22, 2014 report, Dr. Turnbaugh diagnosed status post open reduction of comminuted intra-articular fracture of the right distal radius with internal fixation with good progression of recovery and improvement in motion. He further diagnosed deformity of the nail bed of the right thumb, thus far minimal. Appellant also submitted an April 26, 2014 Form CA-17 and an April 26, 2014 physical therapy note indicating treatment on that date.

By decision dated July 15, 2014, Branch of Hearings and Review denied appellant's request for a review of the written record finding that her request was not made within 30 days of the May 13, 2014 OWCP decision. The Branch of Hearings and Review further determined that the issue in the case could equally well be addressed by requesting reconsideration from OWCP and submitting evidence not previously considered which established that the claimed medical condition was related to the established employment incident.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an "employee of the United States" within the meaning of FECA; that the claim was filed within the applicable time limitation, that an injury was sustained while in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed are causally related to the employment injury.[3] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.[4]

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

[3] *Gary J. Watling*, 52 ECAB 278 (2001); *Elaine Pendleton*, 40 ECAB 1143, 1154 (1989).

[4] *Michael E. Smith*, 50 ECAB 313 (1999).

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.[5] The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.

OWCP's procedures recognize that a claim may be accepted without a medical report when the condition is a minor one which can be identified on visual inspection.[6] In clear-cut traumatic injury claims, such as an obvious broken arm resulting from a fall, a physician's affirmative statement is sufficient and no rationalized opinion on causal relationship is needed. In all other traumatic injury claims, a rationalized medical opinion supporting causal relationship is required.[7]

To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence supporting such a causal relationship.[8] The opinion of the physician must be based on a complete factual and medical background of the claimant, 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. This medical opinion must include an accurate history of the employee's employment injury and must explain how the condition is related to the injury. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.[9]

ANALYSIS -- ISSUE 1

Despite inconsistencies as to how the injury occurred, OWCP accepted that the February 4, 2014 employment incident occurred as alleged. The issue before the Board is whether appellant established that the incident caused her a right wrist fracture. The Board finds that she did not submit sufficient medical evidence to support that her right wrist fracture is causally related to the February 4, 2014 employment incident.[10]

In ER reports dated February 4, 2014, Dr. Thrasher reported that appellant complained of right wrist pain which began at work on that same date, noting that appellant slipped on ice/snow. Upon review of diagnostic testing, he diagnosed right wrist radius fracture.

[5] *Elaine Pendleton*, *supra* note 3.

[6] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3 (January 2013).

[7] *Id.*

[8] *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

[9] *James Mack*, 43 ECAB 321 (1991).

[10] *See Robert Broome*, 55 ECAB 339 (2004).

In clear-cut traumatic injury claims, such as a fall resulting in an obvious broken arm, a physician's affirmative statement may be sufficient and no rationalized opinion on causal relationship is needed.[11] While appellant sought immediate medical treatment on February 4, 2014 and submitted contemporaneous hospital and diagnostic records of treatment indicating a right wrist fracture, Dr. Thrasher failed to provide an opinion regarding the cause of her injury, based upon an accurate history of injury. A physician's report is entitled to little probative value if the history presented is inaccurate and incomplete.[12] While Dr. Thrasher related a history of injury in his February 4, 2014 report that appellant had slipped on ice/snow and landed on her wrist, this history is not consistent with appellant's allegations and her witness statement as to how the injury occurred. He submitted the February 4, 2014 Form CA-16 attending physician's report but did not respond when asked if the injury was caused by the described employment activity. In this instance, Dr. Thrasher's reports are insufficient to establish appellant's claim as he failed to provide an affirmative statement, based upon an accurate history of injury, regarding the cause of appellant's right wrist fracture.

In reports dated February 6 to May 22, 2014, Dr. Turnbaugh reported that appellant tripped and fell at work on February 4, 2014, causing her to land on her right hand. He diagnosed displaced intra-articular fracture of the right distal radius and documented appellant's treatment following her February 9, 2014 operation. Dr. Turnbaugh's reports are of limited probative value as he merely related a history of injury but failed to state any opinion on the cause of appellant's injury.[13] In this regard, the Board also notes that Dr. Turnbaugh's history of injury, that appellant tripped, fell and landed on her right hand is inconsistent with the history provided by appellant's witness that the trashcan appellant had placed her foot on wobbled, appellant fell to the floor and landed on her back.

The remaining medical evidence of record including physical therapy notes, x-rays, and test results, which do not contain an opinion as to the cause of appellant's right wrist fracture, are of limited probative value.[14] Any medical opinion evidence appellant may submit to support her claim should reflect a correct history and offer a medically sound explanation by the physician of how the specific employment incident, in particular physiologically, caused or aggravated her right wrist injury.[15]

Appellant's honest belief that the February 4, 2014 employment incident caused her right wrist fracture is not in question. But that belief, however sincerely held, does not constitute the medical evidence necessary to establish causal relationship. In the instant case, the record lacks rationalized medical evidence establishing a causal relationship between the February 4, 2014 employment incident and appellant's injury. Thus, appellant has failed to meet her burden of proof.

[11] *Supra* note 6.

[12] *See James A. Wyrick*, 31 ECAB 1805 (1980).

[13] *S.E.*, Docket No. 08-2214 (issued May 6, 2009); *C.B.*, Docket No. 09-2027 (issued May 12, 2010).

[14] *Q.G.*, Docket No. 11-1514 (issued February 13, 2012).

[15] *T.G.*, Docket No. 14-751 (issued October 20, 2014).

The Board also notes that the employing establishment issued a Form CA-16 on February 4, 2014 authorizing medical treatment.[16] The Board has held that when the 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. 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.[17] Although OWCP denied appellant's claim for an injury, it did not address whether she would be entitled to reimbursement of medical expenses pursuant to the Form CA-16. Upon return of the case record, OWCP should further address this issue.[18]

LEGAL PRECEDENT -- ISSUE 2

Section 8124(b)(1) of FECA provides that before review under section 8128(a) of this title, 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.[19] 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.[20] OWCP regulations provide that the request must be sent within 30 days of the date of the decision for which a hearing is sought and also that the claimant must not have previously submitted a reconsideration request (whether or not it was granted) on the same decision.[21]

The Board has held that OWCP, in its broad discretionary authority in the administration of FECA,[22] has the power to hold hearings in certain circumstances where no legal provision was made for such hearings and that OWCP must exercise this discretionary authority in deciding whether to grant a hearing.[23] OWCP procedures, which require OWCP to exercise its discretion to grant or deny a hearing when the request is untimely or made after reconsideration, are a proper interpretation of FECA and Board precedent.[24]

[16] 20 C.F.R. § 10.300 provides that, when an employee sustains a work-related traumatic injury requiring medical treatment, the employing establishment should issue a CA-16 form.

[17] *See* 20 C.F.R. § 10.300(c); *Tracy P. Spillane*, 54 ECAB 608 (2003).

[18] *See P.B.*, Docket No. 14-837 (issued August 12, 2014).

[19] 5 U.S.C. § 8124(b)(1).

[20] 20 C.F.R. § 10.615.

[21] *Id*. at § 10.616(a).

[22] 5 U.S.C. §§ 8101-8193.

[23] *Marilyn F. Wilson*, 52 ECAB 347 (2001).

[24] *Teresa M. Valle*, 57 ECAB 542 (2006).

ANALYSIS -- ISSUE 2

In the present case, appellant requested review of the written record on June 17, 2014. Her request was made more than 30 days after the date of issuance of OWCP's prior May 13, 2014 merit decision. Therefore, OWCP properly found in its July 15, 2014 decision that appellant was not entitled to an oral hearing or examination of the written record as a matter of right because her request was not made within 30 days of its May 13, 2014 decision.[25]

OWCP then properly exercised its discretion by stating that it had considered the matter and had denied appellant's request for an examination of the written record because the issue of causal relationship could be addressed through a reconsideration application. 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, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deduction from established facts.[26] In this case, the evidence of record does not indicate that OWCP abused its discretion in its denial of appellant's request for an examination of the written record. Accordingly, the Board finds that OWCP properly denied her request.[27]

CONCLUSION

The Board finds that appellant has not established that she sustained a right wrist fracture in the performance of duty on February 4, 2014. The Board further finds that OWCP properly denied her request for review of the written record as untimely. Upon return of the case record, OWCP should address the issue of whether appellant is entitled to reimbursement of medical expenses pursuant to the Form CA-16.

[25] 20 C.F.R. § 10.616(a); FECA Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.4(a) (October 2011).

[26] *Daniel J. Perea*, 42 ECAB 214, 221 (1990).

[27] *D.P.*, Docket No. 14-308 (issued April 21, 2014); *D.J.*, Docket No. 12-1332 (issued June 21, 2013).

ORDER

IT IS HEREBY ORDERED THAT the July 15, 2014 decision of the Office of Workers' Compensation Programs is affirmed and the May 13, 2014 decision is affirmed, as modified.

Issued: June 24, 2015
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