

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

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**K.P., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
St. Petersburg, FL, Employer**

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**Docket No. 15-39  
Issued: March 20, 2015**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

COLLEEN DUFFY KIKO, Judge  
PATRICIA HOWARD FITZGERALD, Judge  
ALEC J. KOROMILAS, Alternate Judge

**JURISDICTION**

On October 6, 2014 appellant filed a timely appeal of a June 9, 2014 merit decision and an August 28, 2014 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.

**ISSUES**

The issues are: (1) whether appellant established an injury in the performance of duty on May 3, 2014, as alleged; and (2) whether OWCP properly denied appellant's request for an oral hearing before an OWCP hearing representative.

**FACTUAL HISTORY**

On May 3, 2014 appellant, then a 54-year-old city letter carrier, filed a traumatic injury claim alleging that on that day he injured his head, neck, back, and leg when he slipped and fell while delivering mail.

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

The employing establishment completed on May 3, 2014, an authorization for examination and/or treatment (Form CA-16).

In a May 6, 2014 Florida Workers' Compensation Uniform Medical Treatment/Status Reporting Form, a nurse practitioner, diagnosed multiple contusions. She checked a box indicating that the condition was employment related and "yes" to the question of whether there were objective findings.

In a duty status report (Form CA-17), the nurse practitioner diagnosed multiple contusions and provided work restrictions. Under history of injury she related that, on May 3, 2014, appellant slipped and fell on a slick floor while delivering mail.

In correspondence dated May 9, 2014, OWCP informed appellant that the evidence he submitted was insufficient to establish his claim. Appellant was advised as to the medical and factual evidence required and given 30 days to provide this information.

Following OWCP's request for additional information, appellant submitted a May 6, 2014 chart note from the nurse practitioner who reported that he had been seen for a follow-up visit for a May 3, 2014 employment injury. The nurse practitioner noted that on May 3, 2014 appellant fell at work and that he was reporting neck, back, and left foot pain. She performed a physical examination, provided the findings from the examination, and diagnosed multiple contusions.

In a May 13, 2014 chart note, another nurse practitioner, diagnosed neck sprain and provided work restrictions.

In May 4, 2014 chart note, Dr. Gregory Marolf, a treating Board-certified family practitioner, diagnosed multiple contusions, shoulder contusion, and neck sprain/strain. He noted that x-ray interpretations had been taken and provided physical examination findings. In a May 14, 2014 Florida Workers' Compensation Uniform Medical Treatment/Status Reporting Form, Dr. Marolf, reported no change from the prior form report.

In a May 20, 2014 chart note, Dr. Megan Janson, a treating Board-certified family practitioner, noted that appellant was seen for a follow up of his work injury. She stated that his condition had resolved and he was ready to return to work with no restrictions. In a May 20, 2014 Florida Workers' Compensation Uniform Medical Treatment/Status Reporting Form, Dr. Janson indicated that appellant had reached maximum medical improvement that day and there was no residual disability nor dysfunction from the work-related injury.

By decision dated June 9, 2014, OWCP denied his claim as the medical evidence was insufficient to establish that the diagnosed condition was causally related to the accepted May 3, 2014 incident.

Following the decision denying his claim appellant resubmitted medical reports that had previously been considered by OWCP in its June 9, 2014 decision as well as copies of diagnostic testing.

In a letter dated August 8, 2014, appellant requested a review of the written record by an OWCP hearing representative.

By decision dated August 8, 2014, OWCP's Branch of Hearings and Review denied appellant's request as untimely filed. OWCP considered his request and determined that his case could equally well be addressed by requesting reconsideration and submitting new evidence.

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

An employee seeking benefits under FECA<sup>2</sup> 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 and/or specific condition for which compensation is claimed are causally related to the employment injury.<sup>3</sup> 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.<sup>4</sup>

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a fact of injury has been established. 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. Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.<sup>5</sup>

The claimant has the burden of establishing by the weight of reliable, probative, and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of employment.<sup>6</sup> An award of compensation may not be based on appellant's belief of causal relationship. Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish a causal relationship.<sup>7</sup>

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.<sup>8</sup> Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the compensable employment factors.<sup>9</sup> The opinion of the physician must be based on a complete

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<sup>2</sup> *Id.*

<sup>3</sup> *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

<sup>4</sup> *S.P.*, 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>5</sup> *See Elaine Pendleton*, 40 ECAB 1143 (1989); *K.K.*, Docket No. 13-1205 (issued December 13, 2013).

<sup>6</sup> *Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006); *Katherine J. Friday*, 47 ECAB 591 (1996).

<sup>7</sup> *P.K.*, Docket No. 08-2551 (issued June 2, 2009); *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

<sup>8</sup> *Y.J.*, Docket No. 08-1167 (issued October 7, 2008); *A.D.*, 58 ECAB 149 (2006); *D'Wayne Avila*, 57 ECAB 642 (2006).

<sup>9</sup> *J.J.*, Docket No. 09-27 (issued February 10, 2009); *Michael S. Mina*, 57 ECAB 379 (2006).

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>10</sup>

### ANALYSIS -- ISSUE 1

OWCP accepted the May 3, 2014 work incident, but by decision dated June 9, 2014, it denied appellant's claim because the medical evidence failed to establish that the diagnosed medical conditions were causally related to the accepted incident. The issue on appeal is whether the evidence is sufficient to establish multiple contusions, shoulder contusion, and neck sprain as a result of the accepted May 3, 2014 employment incident.

In support of his claim appellant submitted medical evidence from Drs. Marolf and Janson. Dr. Marolf, in his May 4, 2014 chart notes diagnosed multiple contusions, shoulder contusion, and neck sprain/strain and on May 14, 2014, he reported no change from the prior form report. Dr. Janson, in a May 20, 2014 chart note stated that appellant was seen for a follow up of his work injury and that his condition had resolved and he was ready to return to work with no restrictions. On May 20, 2014 she found that he had reached maximum medical improvement that day and there was no residual disability nor dysfunction from the work-related injury. These reports contain no history of the May 3, 2014 employment incident and do not provide an opinion, with rationale, regarding the cause of appellant's condition. 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>11</sup> Medical opinions based on an incomplete or inaccurate history are of diminished probative value.<sup>12</sup>

Appellant also submitted reports from nurse practitioners. The Board notes, however, that a nurse practitioner is not considered a physician as defined under FECA.<sup>13</sup> Accordingly, these opinions regarding diagnosis and causal relationship are of no probative medical value.<sup>14</sup>

The Board has held that the fact that a condition manifests itself during a period of employment does not raise an inference of causal relation.<sup>15</sup> An award of compensation may not

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<sup>10</sup> *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>11</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); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

<sup>12</sup> *L.G.*, Docket No. 09-1692 (issued August 11, 2010); *M.W.*, 57 ECAB 710 (2006); *James R. Taylor*, 56 ECAB 537 (2005).

<sup>13</sup> 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. § 8102(2); *G.A.*, Docket No. 09-2153 (issued June 10, 2010) (evidence from a registered nurse had no probative medical value as a nurse is not a "physician" as defined under FECA); *Roy L. Humphrey*, 57 ECAB (2005).

<sup>14</sup> See *G.A.*, *id.*; *Thomas L. Agee*, 56 ECAB 465 (2005) (a medical report may not be considered probative medical evidence unless it can be established that the person completing the report is a "physician" as defined in 5 U.S.C. § 8101(2)).

<sup>15</sup> *L.D.*, Docket No. 09-1503 (issued April 15, 2010); *D.I.*, 59 ECAB 158 (2007); *Daniel O. Vasquez*, 57 ECAB 559 (2006).

be based on surmise, conjecture, or speculation. Neither the fact that appellant's conditions became apparent during a period of employment nor the belief that his condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship.<sup>16</sup> To establish a firm medical diagnosis and causal relationship, appellant must submit a physician's report that addresses the May 3, 2014 employment incident and how it caused or aggravated the diagnosed multiple contusions, shoulder contusion, and neck sprain/strain.<sup>17</sup>

OWCP requested more information from appellant to provide a comprehensive medical report which described his symptoms, test results, diagnosis, treatment, and the physician's opinion, with medical reasons, on the cause of his condition. Appellant failed to submit appropriate medical documentation in response to OWCP's request. As there is no probative, rationalized medical evidence addressing how his claimed multiple contusions, shoulder contusion, and neck sprain/strain were caused or aggravated by the May 3, 2014 employment incident, he has not met his burden of proof.

OWCP, however, did not adjudicate the issue of appellant's incurred medical expenses. The record contains a CA-16 form dated February 4, 2014 and signed by the employing establishment.<sup>18</sup> Under section 8103 of FECA, OWCP has broad discretionary authority to approve medical care which it finds necessary and reasonable in cases of emergency or other unusual circumstances, to be determined on a case-by-case basis.<sup>19</sup> Upon return of the record OWCP should rule on this matter.

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 is entitled to a hearing before an OWCP representative when a request is made within 30 days after issuance of an OWCP final decision.<sup>20</sup> A claimant is not entitled to a hearing if the request is not made within 30 days of the date of issuance of the decision as determined by the postmark of the request.<sup>21</sup> OWCP has discretion, however, to grant or deny a request that is made after this 30-day period.<sup>22</sup> In such a

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<sup>16</sup> See *D.U.*, Docket No. 10-144 (issued July 27, 2010); *D.I.*, *id.*; *Robert Broome*, 55 ECAB 339 (2004); *Anna C. Leanza*, 48 ECAB 115 (1996).

<sup>17</sup> *Michael S. Mina*, *supra* note 9; *Michael E. Smith*, 50 ECAB 313 (1999).

<sup>18</sup> See *Val D. Wynn*, 40 ECAB 666 (1989); see also Federal (FECA) Procedure Manual, Part 3 -- Medical, *Authorizing Examination and Treatment*, Chapter 3.300.3(a)(3) (February 2012).

<sup>19</sup> 5 U.S.C. § 8103; 20 C.F.R. § 10.304. See *L.B.*, Docket No. 10-469 (issued June 2, 2010); see also Federal (FECA) Procedure Manual, *id.* at Chapter 3.300.3(a)(3), *supra* note 18.

<sup>20</sup> *Id.* at § 8124(b)(1). See *A.B.*, 58 ECAB 546 (2007); *Gerard F. Worker*, 56 ECAB 259 (2005).

<sup>21</sup> 20 C.F.R. § 10.616(b).

<sup>22</sup> *Hubert Jones, Jr.*, 57 ECAB 467 (2006).

case, it will determine whether a discretionary hearing should or review of the written record be granted or, if not, will so advise the claimant with reasons.<sup>23</sup>

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

A request for a hearing must, as noted above, be made within 30 days after the date of the issuance of OWCP's final decision. Appellant requested an oral hearing before OWCP's Branch of Hearings and Review on August 8, 2014. As the request was submitted more than 30 days following issuance of the June 9, 2014 decision, it was untimely filed.

OWCP also has the discretionary power to grant a review of the written record when a claimant is not entitled to a review of the written record as a matter of right. The Board finds that OWCP, in its August 28, 2014 decision, properly exercised its discretion by stating that it had considered the matter in relation to the issue involved and had denied appellant's request for an oral hearing on the basis that his claim could be addressed through a reconsideration application. The Board has held that as the only limitation on OWCP's authority is reasonableness, 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.<sup>24</sup> In the present case, the evidence of record does not indicate that OWCP abused its discretion in connection with its denial of appellant's request for a review of the written record.

### **CONCLUSION**

The Board finds that appellant failed to meet his burden of proof to establish an injury in the performance of duty on May 3, 2014, as alleged. The Board further finds that OWCP properly denied his request for a review of the written record as it was untimely.

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<sup>23</sup> *Teresa M. Valle*, 57 ECAB 542 (2006).

<sup>24</sup> *Id.*; *Daniel J. Perea*, 42 ECAB 214 (1990).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated August 28 and June 9, 2014 are affirmed.

Issued: March 20, 2015  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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