

ISSUES

The issues are: (1) whether appellant sustained an occupational disease in the performance of duty; and (2) whether OWCP properly denied his request for review of the written record as untimely under 5 U.S.C. § 8124.

FACTUAL HISTORY

On February 28, 2014 appellant, then a 23-year-old city carrier assistant, filed an occupational disease claim alleging that he developed a back condition in the performance of duty. He contended that carrying his satchel and parcels of mail caused back pain and soreness. Appellant advised that he became aware of his condition and its relation to his federal employment on February 10, 2014. He did not stop work, but later resigned effective March 21, 2014.

In a February 28, 2014 report, Dr. Robert Wagner, Board-certified in internal medicine, advised that appellant complained of intermittent sharp pain in the left mid back. He noted that appellant attributed his condition to carrying a heavy satchel. On physical examination, Dr. Wagner noted full range of motion, no lower extremity weakness, no tenderness to palpation of the spine, and tenderness of the left mid and upper thoracic paravertebral musculature. He advised that an x-ray of the thoracic spine was normal and diagnosed strain of the thoracic region. Dr. Wagner checked the box “yes” to indicate that his findings were consistent with appellant’s statements. In a February 28, 2014 disability status report, he advised that appellant was able to continue work without restrictions. In another February 28, 2014 treatment note, Dr. Wagner advised that appellant was with the employing establishment for one month. He noted that appellant related that he was having pain in the lower back intermittently for the past three weeks. Dr. Wagner advised that appellant attributed his symptoms to carrying a heavy satchel at work.

In a February 28, 2014 patient information form from U.S. Health Works, appellant advised that he believed his symptoms occurred at work as a result of carrying a heavy satchel full with mail and boxes.

By letter dated March 18, 2014, OWCP notified appellant that medical evidence was insufficient to establish his claim. Appellant was also notified that it was unclear whether he was alleging an occupational disease or traumatic injury. He was advised of the type of medical and factual evidence needed to establish his claim. In particular, OWCP advised appellant that he must provide a physician’s opinion supported by a medical explanation as to how work activities caused or aggravated his medical condition.

In a March 6, 2014 report, Dr. Wagner advised that appellant’s condition worsened. He noted that he was experiencing tenderness on physical examination and diagnosed thoracic strain. In a March 6, 2014 disability status report, Dr. Wagner advised that appellant was unable to do overhead work and restricted lifting, pulling, and pushing to no more than 10 pounds.

In a March 19, 2014 statement, the employing establishment controverted appellant’s claim arguing that he did not sustain an injury in the performance of duty. It noted that his

satchel was limited to 35 pounds. OWCP also reiterated that appellant did not report his injury until February 28, 2014; although, his date of injury was February 10, 2014.

A March 21, 2014 notification of personnel action advised that appellant resigned effective that day.

By decision dated May 21, 2014, OWCP denied appellant's claim because medical evidence was insufficient to establish that work factors resulted in a diagnosed condition. The decision was mailed to appellant's address of record.

By letter dated April 16, 2014, appellant's health care provider advised that appellant was discharged from its care.

In a September 18, 2014 telephone call record, appellant requested appeal forms. He was notified that appeal forms could be found with his decision letter. Appellant alleged that he never received the decision. An OWCP hearing representative advised that a copy of the decision would be resent to him.

On October 14, 2014 appellant requested review of the written record.

In an October 14, 2014 statement, appellant advised that he did not receive a development or denial letter. He acknowledged that his employment was short, but maintained that he sustained a workers' compensation injury. Appellant argued that, if the medical evidence was insufficient, then OWCP should have requested that Dr. Wagner provide a more comprehensive report. He advised that he was unable to pay his medical bills and requested that OWCP waive his bill.

By decision dated October 30, 2014, OWCP denied appellant's request for review of the written record as untimely. After considering whether to grant a discretionary review of the written record, it determined that the issue could be further addressed by requesting reconsideration and submitting additional evidence.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA has the burden to establish 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 timely filed within the applicable time limitation, that an injury was sustained in the performance of duty as alleged, and that any disabilities and/or specific conditions 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 upon a traumatic injury or an occupational disease.⁴

Whether an employee actually sustained an injury in the performance of duty begins with an analysis of whether fact of injury has been established. To establish an occupational disease

³ *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ *Victor J. Woodhams*, 41 ECAB 345 (1989).

claim, an employee must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.⁵

Causal relationship is a medical issue and the evidence generally required to establish causal relationship is rationalized medical opinion evidence. 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 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.⁷

ANALYSIS -- ISSUE 1

Appellant claimed that he began feeling back pain and soreness because he carried a heavy satchel at work. There is no dispute that he carried a satchel as part of his job. However, the medical evidence does not establish that the medical condition was causally related to the accepted work event.

In his February 28, 2014 report, Dr. Wagner advised that appellant complained of intermittent sharp pain in the left mid back. He noted that appellant attributed his condition to carrying a heavy satchel. Dr. Wagner noted findings and diagnosed a thoracic strain. He indicated that his findings were consistent with appellant's statements. While Dr. Wagner advised that appellant attributed his symptoms to carrying a heavy satchel, he did not provide an independent opinion on causal relationship. His report is insufficient to discharge appellant's burden of proof because the Board has held that medical opinions that do not state an opinion on causal relationship are of little probative value.⁸ In his other February 28, 2014 treatment notes, Dr. Wagner again advised that appellant attributed his symptoms to carrying a heavy satchel at work. He repeats appellant's belief about the cause of his symptoms without offering his own opinion on causal relationship. An opinion from Dr. Wagner or any physician on causal relationship is still insufficient to establish the claim if it does not explain the reasons why particular work duties caused or aggravated a diagnosed condition. Dr. Wagner's March 6, 2014 report advised that appellant's condition worsened but he did not offer an opinion on the cause of

⁵ *R.H.*, 59 ECAB 382 (2008); *Ernest St. Pierre*, 51 ECAB 623 (2000).

⁶ *I.J.*, 59 ECAB 408 (2008); *supra* note 4.

⁷ *James Mack*, 43 ECAB 321 (1991).

⁸ *Jaja K. Asaramo*, 55 ECAB 200 (2004).

appellant's diagnosed thoracic strain. Other disability status reports are also insufficient to establish the claim because they do not offer an opinion on causal relationship.⁹

On appeal appellant argued that he submitted sufficient evidence and in the alternative, that OWCP should have contacted Dr. Wagner for a more detailed report if evidence was deficient. However, it is his burden of proof to establish his claim and OWCP notified appellant of the type of evidence needed to establish his claim. Because appellant has not provided such medical opinion evidence in this case, he has failed to meet his burden of proof.

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 through 10.607.

LEGAL PRECEDENT -- ISSUE 2

Section 8124(b)(1) of FECA provides that a claimant for compensation who is 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.¹⁰ He is afforded the choice of either an oral hearing or a review of the written record.¹¹ While a claimant is no longer entitled to an oral hearing or review of the written record as a matter of right if his or her request is filed past the 30-day period, OWCP may grant the request within its discretionary power and must exercise that discretion.¹²

ANALYSIS -- ISSUE 2

Appellant filed a request for review of the written record on October 14, 2014, more than 30 days after OWCP issued its May 21, 2014 decision. Because the request was not timely filed, appellant was not entitled to a review of the written record as a matter of right.

OWCP retains the discretionary power to grant a review of the written record when a claimant fails to request a review within the allotted time. In this case, it exercised its discretion in its October 30, 2014 decision by finding that the issue raised by appellant's request could be addressed if she requested reconsideration and submitted additional evidence. This denial of appellant's request for review of the written record is a proper exercise of OWCP's authority.¹³

Appellant argued that he did not receive OWCP's May 21, 2014 decision until September 22, 2014. He also argued that he did not receive the development letter advising him of the deficiencies in his claim. However, the record indicates that the decision and the development letter were sent to appellant's address of record. There is no evidence that the

⁹ *Id.*

¹⁰ 5 U.S.C. § 8124(b)(1); *Joseph R. Giallanza*, 55 ECAB 186, 190-91 (2003). See 20 C.F.R. § 10.616(a).

¹¹ *Id.* at § 10.615.

¹² See *Eddie Franklin*, 51 ECAB 223 (1999); *Delmont L. Thompson*, 51 ECAB 155 (1999).

¹³ *Mary B. Moss*, 40 ECAB 640, 647 (1989).

May 21, 2014 decision was returned to OWCP as undeliverable. Absent evidence to the contrary, a notice mailed in the ordinary course of business is presumed to have been received by the intended recipient.¹⁴ This presumption is commonly referred to as the “mailbox rule.”¹⁵ It arises when the record reflects that the notice was properly addressed and duly mailed.¹⁶ There is no evidence to rebut the presumption that appellant received OWCP’s May 21, 2014 decision in due course. Under these circumstances, appellant’s October 14, 2014 request for review of the written record was untimely.

CONCLUSION

The Board finds that appellant did not establish that he sustained an occupational disease in the performance of duty. The Board also finds that OWCP properly denied appellant’s request for review of the written record as untimely.

ORDER

IT IS HEREBY ORDERED THAT the October 30 and May 21, 2014 decisions of the Office of Workers’ Compensation Programs are affirmed.

Issued: May 22, 2015
Washington, DC

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

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

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

¹⁴ *Kenneth E. Harris*, 54 ECAB 502, 505 (2003).

¹⁵ *Id.*

¹⁶ *Id.*