

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

S.H., Appellant

and

**U.S. POSTAL SERVICE, METROPLEX POST
OFFICE, Detroit, MI, Employer**

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**Docket No. 15-1518
Issued: November 12, 2015**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On July 2, 2015 appellant filed a timely appeal from the May 19, 2015 nonmerit decision and the March 27, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of this case.

ISSUES

The issues are: (1) whether appellant's deep vein thrombosis (DVT) is causally related to her federal employment; and (2) whether OWCP properly denied her request for a hearing.

FACTUAL HISTORY

On September 15, 2014 appellant, then a 58-year-old automation clerk, filed an occupational disease claim (Form CA-2) alleging that her DVT was a result of the amount of standing she did working at delivery bar code sorter (DBCS) and automated flat sorting

¹ 5 U.S.C. § 8101 *et seq.*

machines. She had received bi-weekly treatments for a DVT in her left leg since 2009. In June 2010 appellant suffered severe pain on her left side while working on the DBCS machine. She was hospitalized and diagnosed with DVT on the left. On August 28, 2014 appellant notified her supervisor that she needed to leave work because she was in severe pain due to standing and working on the DBCS machine. On September 4, 2014 again while working on the DBCS machine, her left leg became so painful she could barely walk. Appellant was hospitalized the following day with a recurrence of DVT on the left. She returned to work with restrictions on November 15, 2014.

Dr. Jennifer Edwards-Johnson, an osteopath, noted that appellant was under her care for chronic lower extremity swelling caused by DVT. She advised that this condition was worsened by continued standing. Dr. Edwards-Johnson noted that appellant had lower extremity swelling made worse by periods of extensive standing. Multiple tests revealed extension of appellant's previous DVT and worsening. "Prolonged standing could exacerbate her ... leg swelling with resultant severe pain as her leg swelling requires elevation as part of the treatment protocol." Appellant explained to Dr. Edwards-Johnson her duties as a mail processing clerk which, included standing, walking, bending, pulling, pushing, and processing mail on machines. Dr. Edwards-Johnson advised that appellant could complete these duties with certain restrictions, including no standing greater than four hours without a two-hour period of sitting.

In a decision dated March 27, 2015, OWCP denied appellant's injury claim. It found that the evidence was insufficient to establish that the events occurred as she described. Although appellant noted that she stood to perform her work duties, she did not discuss how long she performed this and other duties. OWCP also found that the medical opinion evidence did not provide a clear and definitive discussion of the specific work functions appellant performed, particularly with regard to standing more than four hours a day, nor did the medical opinion evidence establish that her diagnosed condition was causally related to the described events.

With an envelope postmarked April 30, 2015, appellant requested an oral hearing before an OWCP hearing representative.

OWCP denied this request on May 19, 2015. It explained that appellant was not entitled to a hearing as a matter of right because she did not make her request within 30 days of the March 27, 2015 decision denying her claim. OWCP exercised its discretion in the matter and denied a hearing as she could equally well address the issue in her case through the reconsideration process.

LEGAL PRECEDENT -- ISSUE 1

FECA provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.² An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim. When an employee claims that he or she has sustained an injury in the performance of duty, he or she must submit sufficient evidence to establish that he or she experienced a specific event, incident, or

² 5 U.S.C. § 8102(a).

exposure occurring at the time, place, and in the manner alleged. He or she must also establish that such event, incident, or exposure caused an injury.³

Causal relationship is a medical issue,⁴ and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the claimant,⁵ must be one of reasonable medical certainty,⁶ and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.⁷

ANALYSIS -- ISSUE 1

Appellant attributes the DVT in her left leg to the standing she did while working at DBCS and automated flat sorting machines. Although she did not make clear the extent to which she stood at these machines, there is no dispute that she stood to perform these duties. The Board, therefore, finds that appellant has established that she experienced a specific event, incident, or exposure occurring at the time, place, and in the manner alleged and the March 27, 2015 merit decision is modified to find fact of injury. The question remaining is whether appellant has met her burden of proof to establish whether standing at the machines to process mail caused or aggravated her diagnosed DVT.

The attending osteopath, Dr. Edwards-Johnson, advised that appellant's chronic lower extremity swelling was exacerbated by continued standing. Appellant described to her the duties she performed as a mail processing clerk, including standing. It was Dr. Edwards-Johnson's opinion that periods of extensive standing made appellant's lower extremity swelling worse. Testing revealed an extension and worsening of the previous DVT. Appellant explained that because leg swelling requires elevation as part of the treatment protocol, prolonged standing could exacerbate the swelling with resultant severe pain.

Dr. Edwards-Johnson's opinion is supportive of appellant's claim, but it is not sufficiently well rationalized. She did not discuss the nature of DVT and did not explain from a vascular perspective how standing can exacerbate swelling in the lower extremity or how this would cause pain. Dr. Edwards-Johnson also did not make clear what she meant by continued, extensive, or prolonged standing. She appeared to suggest that standing for a lesser period of time might not exacerbate the swelling, and if that is the case, a more thorough discussion of the issue is needed to clarify whether appellant's particular circumstances at work aggravated,

³ *John J. Carlone*, 41 ECAB 354 (1989).

⁴ *Mary J. Briggs*, 37 ECAB 578 (1986).

⁵ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

⁶ *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

⁷ *See William E. Enright*, 31 ECAB 426, 430 (1980).

temporarily or otherwise, her diagnosed DVT.⁸ Dr. Edwards-Johnson should also explain how testing revealed an extension and worsening of appellant's DVT.

The Board thus finds that Dr. Edwards-Johnson's opinion is not sufficiently rationalized to establish the critical element of causal relationship.

The Board finds that, while appellant established fact of injury, she has not met her burden of proof to establish causal relationship. The Board, therefore, affirms as modified herein OWCP's March 27, 2015 merit decision denying her injury claim.

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:

“Before review under section 8128(a) of this title, a claimant for compensation not satisfied with a decision of the Secretary under subsection (a) of this section 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.”⁹

The hearing 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.¹⁰ OWCP has discretion, however, to grant or deny a request that is made after this 30-day period.¹¹ In such a case, it will determine whether a discretionary hearing should be granted or, if not, will so advise the claimant with reasons.¹²

ANALYSIS -- ISSUE 2

Appellant's request for a hearing was postmarked on April 30, 2015. Because this was more than 30 days after the date of OWCP's March 27, 2015 decision, she is not entitled to a hearing as a matter of right. OWCP retains discretion to grant a hearing regardless, but in this case it found that appellant could equally well address the issue in her case through the reconsideration process. For that reason, a discretionary hearing was not deemed necessary. As appellant may address the issue in her case by submitting to OWCP new and relevant medical opinion evidence

⁸ Should the particular amount of time that appellant stood at the DBCS machine become a critical issue, OWCP should confirm with the employing establishment the number of hours appellant stood to perform her duties.

⁹ 5 U.S.C. § 8124(b)(1).

¹⁰ 20 C.F.R. § 10.616(a).

¹¹ *Herbert C. Holley*, 33 ECAB 140 (1981).

¹² *Rudolph Bermann*, 26 ECAB 354 (1975).

with a request for reconsideration, the Board finds that OWCP properly exercised its discretion in denying appellant's untimely request for a hearing.¹³

CONCLUSION

The Board finds that appellant has established fact of injury, she did not meet her burden to establish that her DVT is causally related to her federal employment. The Board also finds that OWCP properly denied her request for a hearing.

ORDER

IT IS HEREBY ORDERED THAT the May 19 and March 27, 2015 decisions of the Office of Workers' Compensation Programs are affirmed, as modified herein.

Issued: November 12, 2015
Washington, DC

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

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

¹³ The Board has held that the denial of a hearing on these grounds is a proper exercise of OWCP's discretion. *E.g.*, *Jeff Micono*, 39 ECAB 617 (1988).