United States Department of Labor
Employees' Compensation Appeals Board

D.S., Appellant	)	
and	)	**Docket No. 15-1795**
	)	**Issued: April 8, 2016**
U.S. POSTAL SERVICE, POST OFFICE, Jacksonville, FL, Employer	)	

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 August 31, 2015 appellant timely appealed from a May 14, 2015 merit decision and an August 14, 2015 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 the claim.[2]

ISSUES

The issues are: (1) whether appellant met her burden of proof to establish an injury in the performance of duty on February 17, 2015; and (2) whether OWCP properly denied appellant's request for a hearing.

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that appellant submitted additional evidence. The Board's jurisdiction is limited to reviewing the evidence that was before OWCP at the time of its final decision. Therefore, any additional evidence cannot be considered by the Board. 20 C.F.R. § 501.2(c)(1); *James C. Campbell*, 5 ECAB 35 (1952).

FACTUAL HISTORY

On February 21, 2015 appellant, then a 56-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on February 17, 2015 she reached behind and between two front seats to pick up a parcel and sustained an injury to the back of her left hand in the performance of duty. The employing establishment checked a box marked "yes" in response to whether appellant was in the performance of duty.

In a February 25, 2015 duty status report, Dr. Ron Lippmann, a general practitioner, advised that appellant lifted a parcel which caused pain and swelling. He diagnosed a wrist and hand sprain and indicated that appellant could work full time wearing a splint. In other reports dated February 25, 2015, Dr. Lippmann, noted that on February 17, 2015 appellant was delivering mail when she reached backward and used one hand to grab the package, causing severe pain in her left hand. She indicated that the pain became overwhelming and she stopped work. Dr. Lippmann noted that appellant could not move her left hand and, as she only used her left hand to deliver, she had no capability to complete her work. He noted that she related that the pain did not improve and she reported the incident on February 19, 2015. Dr. Lippmann diagnosed wrist pain and hand swelling and opined that the condition was work related.

In March 4, 2015 reports, Dr. Lippmann repeated the history of injury and related that her hand and wrist were not improving. He explained that the swelling in her hand and wrist had significant reduction and she had full range of motion of the wrist and fingers but she had pain. Dr. Lippmann noted that appellant had no preexisting conditions and diagnosed a left wrist and hand injury. He further noted that she was not better and recommended no use of the left hand until further notice. Dr. Lippmann requested authorization for diagnostic testing and a brace.

In a letter dated April 2, 2015, OWCP advised appellant that she originally filed a claim for a traumatic injury which originally appeared to be for a minor injury resulting in minimal or not lost time. It advised appellant that her claim was reopened because she had requested medical authorization. OWCP informed appellant of the type of evidence needed to support her claim and requested that she submit such evidence within 30 days. No further evidence was received.

By decision dated May 14, 2015, OWCP denied appellant's claim. It found that the medical evidence of record did not demonstrate that the claimed medical condition was related to the established work events.

On July 27, 2015 OWCP received appellant's undated request for a hearing.

By decision dated August 14, 2015, OWCP denied appellant's request for a hearing because her request was not made within 30 days of the issuance of its May 14, 2015 decision. It exercised its discretion and determined that it further would not grant a hearing because the issue in the case could equally well be addressed by requesting reconsideration and submitting new evidence not previously considered.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA has the burden of proof 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 period of FECA,[3] and that an injury was sustained in the performance of duty.[4] These are the essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[5]

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.[6] 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.[7]

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 evidence which includes a physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. 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.[8]

ANALYSIS -- ISSUE 1

In this case, appellant alleged that on February 17, 2015 she reached behind and between two front seats to pick up a parcel at work. OWCP accepted that the claimed event occurred, but found that the medical evidence submitted by appellant was insufficient to establish an injury to her left hand or wrist due to the February 17, 2015 incident. The Board finds that appellant has failed to meet her burden of proof.

The record contains several reports from Dr. Lippmann. In the February 25, 2015 duty status report, he indicated that appellant lifted a parcel which caused pain and swelling and diagnosed a wrist and hand sprain, but he offered no opinion on causation. The Board has held that medical opinions are of limited probative value when they do not offer an opinion on causal relationship.[9]

[3] *Joe D. Cameron*, 41 ECAB 153 (1989).

[4] *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[5] *Delores C. Ellyett*, 41 ECAB 992 (1990).

[6] *John J. Carlone*, 41 ECAB 354 (1989).

[7] *Id*.

[8] *I.J.*, 59 ECAB 408 (2008).

[9] *See Charles H. Tomaszewski*, 39 ECAB 461, 467-68 (1988) (finding that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

In his reports dated February 25 and March 4, 2015, Dr. Lippmann, noted that on February 17, 2015 appellant was delivering mail when she reached backward and used one hand to grab the package and felt severe pain in her left hand. She indicated the pain became overwhelming and she stopped work. Dr. Lippmann noted that she could not move her left hand and as she only used her hand to deliver, she had no capability to complete her work. He diagnosed wrist pain and hand swelling and checked a box marked "yes" to whether the condition was work related. Dr. Lippmann did not provide medical reasoning to explain why particular physical motions associated with reaching behind the seat and lifting a package would cause or aggravate a hand or wrist condition. Without further rationale, his report is of limited probative value.[10]

The Board thus finds that appellant failed to meet her burden of proof to establish that she sustained an injury in the performance of duty.

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 states: 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 or her claim before a representative of the Secretary.[11] A hearing is a review of an adverse decision by a hearing representative. Initially, the claimant can choose between two formats: an oral hearing or a review of the written record. In addition to the evidence of record, the claimant may submit new evidence to the hearing representative.[12] The Branch of Hearings and Review, in its broad discretionary authority in the administration of FECA, has the power to hold hearings in certain circumstances where no legal provision was made for such hearings and must exercise this discretionary authority in deciding whether to grant a hearing.[13] The Board has held that it must exercise its discretion to grant or deny a hearing when the request is untimely or made after reconsideration under section 8128(a).[14]

ANALYSIS -- ISSUE 2

A request for a hearing must, as noted above, be made within 30 days after the date of the issuance of an OWCP final decision. OWCP received appellant's undated request for oral hearing on July 27, 2015. As the request was submitted more than 30 days following issuance of the May 14, 2015 decision, the Board finds that it was untimely filed.

[10] *See Deborah L. Beatty*, 54 ECAB 340 (2003).

[11] 5 U.S.C. § 8124(b)(1).

[12] 20 C.F.R. § 10.615.

[13] *D.M.*, Docket No. 08-1814 (issued January 16, 2009).

[14] *See R.T.*, Docket No. 08-0408 (issued December 16, 2008).

OWCP also has the discretionary power to grant an oral hearing even if the claimant is not entitled to a review as a matter of right. The Board finds that OWCP, in its August 14, 2015 decision, properly exercised its discretion by noting that it had considered the matter and had denied appellant's request for oral hearing as her claim could be equally well 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.[15] In the present case, the Board finds that OWCP properly denied appellant's request for an oral hearing.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that she sustained an injury in the performance of duty on February 17, 2015. Furthermore, the Board finds that OWCP properly denied appellant's request for a hearing.

ORDER

IT IS HEREBY ORDERED THAT the August 14 and May 14, 2015 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: April 8, 2016
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

[15] *See Daniel J. Perea*, 42 ECAB 214 (1990).