



## **FACTUAL HISTORY**

On April 23, 2015 appellant, a 39-year-old tractor trailer operator, filed a traumatic injury claim (Form CA-1) alleging that he strained his right chest muscle in the performance of duty on April 21, 2015. He attributed his injury to pushing heavy equipment. Appellant did not report his alleged injury until the following day. The employing establishment challenged the claim noting that he reportedly was injured off-loading his truck on April 21, 2015, but reportedly did not feel any pain until the next day.

OWCP received an April 24, 2015 report from Dr. Mark A. Louis-Charles, a Board-certified family practitioner. Dr. Louis-Charles did not provide a specific diagnosis, but merely noted a history of right chest pain. He did not believe that appellant's condition was employment related. Dr. Louis-Charles provided pain management treatment and released appellant to return to his regular duties as of April 24, 2015. An April 24, 2015 duty status report (Form CA-17) signed by Dr. Louis-Charles did not include a diagnosis or any work restrictions.

On May 12, 2015 OWCP advised appellant that the evidence received thus far was insufficient to support his claim. There were noted deficiencies with respect to both the factual and medical evidence. OWCP explained that circumstances surrounding the alleged April 21, 2015 injury were unclear. Additionally, it noted that the employing establishment challenged the claim based on an apparent delayed onset of symptoms. Appellant was asked to respond to the employing establishment's concerns, as well as provide a detailed description of how his injury occurred. With respect to the medical evidence, OWCP explained that pain was a symptom, not a valid diagnosis. As such, the record was devoid of any medical evidence that included a diagnosis or condition resulting from the claimed injury. OWCP afforded appellant 30 days to submit additional factual and medical information in support of his alleged employment-related right chest injury.

In a May 22, 2015 statement, appellant indicated that when he arrived home on April 21, 2015 he started feeling uncomfortable "with a minor chest pain." As a precautionary measure, he went to the emergency room (ER) the next day, April 22, 2015. Appellant explained that all the test results -- "E.K.G., x-ray" -- came out okay, and Dr. Louis-Charles told him it could have been a muscle strain, pain, or spasms. He indicated that he was prescribed Ibuprofen and discharged that same day.

Appellant also submitted his April 22, 2015 ER treatment records from South Nassau Community Hospital. He was treated by Dr. Diana C. Kontonotas-Willis. According to the ER records, appellant complained of right chest wall pain with an April 8, 2015 onset of symptoms. His chest pain was reportedly on and off for the past two weeks, and his pain was noted to be worse with deep breaths. Appellant advised Dr. Kontonotas-Willis that he had seen his personal physician two weeks ago and was given a pill, but he was unsure what type pill he received. The ER treatment records also noted that "[appellant] denies trauma or injury." Appellant reported experiencing sharp pain in one spot in his right chest. The pain did not radiate and it reportedly worsened with deep inspiration and pushing movement of the arms. Dr. Kontonotas-Willis also noted that appellant had no other associated symptoms. There was no reported nausea or vomiting, and at the time appellant denied any current chest pain. While in the ER, appellant had

a chest x-ray and an electrocardiogram (EKG). The chest x-ray revealed no focal lobar lung consolidation. Appellant's EKG showed marked sinus bradycardia, which was abnormal. Dr. Kontonotas-Willis diagnosed chest wall pain. Appellant received 600 milligrams of Ibuprofen and was discharged that same day. He also received an April 22, 2015 work excuse form, which noted that he could resume work on April 23, 2015, but should avoid physical activity until his symptoms resolved.

In a June 17, 2015 decision, OWCP denied appellant's claim because he failed to establish fact of injury. It found that both the factual information and the medical evidence were insufficient to support his traumatic injury claim.

On August 31, 2015 OWCP received appellant's request for an oral hearing before an OWCP hearing representative. Appellant submitted the appeal request form that accompanied the June 17, 2015 decision. The hearing request was dated August 20, 2015.

In a September 22, 2015 nonmerit decision, the Chief, Branch of Hearings & Review denied appellant's hearing request as untimely. He also denied a discretionary hearing, noting that he could instead file a request for reconsideration.

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

A claimant seeking benefits under FECA has the burden to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence, including that an injury was sustained in the performance of duty as alleged and that any specific condition or disability claimed is causally related to the employment injury.<sup>2</sup>

To determine if an employee sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether "fact of injury" has been established. Generally, fact of injury consists of two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred.<sup>3</sup> The second component is whether the employment incident caused a personal injury.<sup>4</sup> An employee may establish that an injury occurred in the performance of duty as alleged, but fail to establish that the disability or specific condition for which compensation is being claimed is causally related to the injury.<sup>5</sup>

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<sup>2</sup> 20 C.F.R. § 10.115(e), (f) (2014); see *Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

<sup>3</sup> *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>4</sup> *John J. Carlone*, 41 ECAB 354 (1989). Causal relationship is a medical question that generally requires rationalized medical opinion evidence to resolve the issue. See *Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factor(s). *Id.*

<sup>5</sup> *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

### **ANALYSIS -- ISSUE 1**

On his April 23, 2015 Form CA-1, appellant alleged that he was injured pushing heavy equipment on April 21, 2015. He did not provide any additional details of his injury. OWCP wrote to appellant on May 12, 2015 and specifically asked that he provide a detailed description as to how the injury occurred. Appellant's May 22, 2015 statement was not entirely responsive to OWCP's request for additional information regarding his injury. He did not explain what he was doing at work when injured, but merely how he felt when he arrived home after work. As such, the only factual information regarding the alleged injury was that appellant was reportedly pushing heavy equipment. As OWCP properly found, the information on his Form CA-1 is not sufficiently detailed. It is also noteworthy that appellant did not identify a work-related injury when he visited the ER on April 22, 2015. According to the ER treatment records, he had been experiencing chest pain off and on for approximately two weeks. Moreover, Dr. Kontonotas-Willis specifically noted that "[appellant] denies trauma or injury." Based on the available evidence, the Board finds that appellant failed to establish that the April 21, 2015 employment incident occurred as alleged.

Furthermore, the medical evidence does not include a specific diagnosis even arguably related to his employment. Chest wall pain is not an appropriate medical diagnosis. Findings of pain or discomfort alone do not satisfy the medical aspect of the fact-of-injury determination.<sup>6</sup> Consequently, appellant failed to establish that he was injured in the performance of duty on April 21, 2015.

### **LEGAL PRECEDENT -- ISSUE 2**

A claimant, injured on or after July 4, 1966, who has received a final adverse decision by OWCP, may obtain a hearing by writing to the address specified in the decision.<sup>7</sup> 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.<sup>8</sup> The claimant must not have previously submitted a reconsideration request (whether or not it was granted) on the same decision.<sup>9</sup> If the request is not made within 30 days, a claimant is not entitled to a hearing as a matter of right. However, the Branch of Hearings & Review may exercise its discretion to either grant or deny a hearing.<sup>10</sup>

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<sup>6</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.4a(6) (August 2012); *see also D.N.*, Docket No. 15-1587 (issued December 23, 2015) (pain is a symptom and not a compensable medical diagnosis).

<sup>7</sup> 20 C.F.R. § 10.616(a).

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> 5 U.S.C. §§ 8124(b)(1) and 8128(a); *Hubert Jones Jr.*, 57 ECAB 467, 472-73 (2006); *Herbert C. Holley*, 33 ECAB 140 (1981).

## ANALYSIS -- ISSUE 2

OWCP issued its merit decision on June 17, 2015. Appellant had 30 days to request a hearing, but he waited more than two months. The appeal request form he submitted was dated August 20, 2015. The regulations clearly specify that “[t]he hearing request must be sent within 30 days ... of the date of the decision for which a hearing is sought.”<sup>11</sup> As appellant’s request was untimely, he was not entitled to a hearing as a matter of right. The Chief, Branch of Hearings & Review also denied appellant’s request finding that the relevant issue could be equally well addressed by requesting reconsideration before OWCP. The Board finds that he properly exercised his discretionary authority in denying appellant’s request.<sup>12</sup>

## CONCLUSION

Appellant failed to establish that he sustained an injury in the performance of duty on April 21, 2015. The Board also finds that the Branch of Hearings & Review properly denied appellant’s hearing request.

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<sup>11</sup> *Supra* note 7.

<sup>12</sup> *Mary B. Moss*, 40 ECAB 640, 647 (1989). 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 deductions from known facts. *See André Thyatron*, 54 ECAB 257, 261 (2002).

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 22 and June 17, 2015 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: February 4, 2016  
Washington, DC

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

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

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board