

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

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**B.W., Appellant**

**and**

**DEPARTMENT OF THE ARMY, MEDICAL  
COMMAND, Fort Sam Houston, TX, Employer**

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**Docket No. 15-1690  
Issued: January 7, 2016**

*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 5, 2015 appellant filed a timely appeal from a March 30, 2015 merit decision and a May 27, 2015 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.<sup>2</sup>

**ISSUES**

The issues are: (1) whether appellant met her burden of proof to establish that her right upper extremity conditions were causally related to an October 15, 2014 employment incident; and (2) whether OWCP properly denied appellant's request for a review of the written record as untimely.

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

<sup>2</sup> The Board notes that, following the issuance of the May 27, 2015 OWCP decision, appellant submitted new evidence. The Board is precluded from reviewing evidence which was not before OWCP at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c)(1).

On appeal appellant contends that the evidence she submitted was sufficient to establish a causal relationship and requests review of her claim.

### **FACTUAL HISTORY**

On January 6, 2015 appellant, a 65-year-old nurse, filed a traumatic injury claim (Form CA-1) alleging that she sustained injuries to her right arm and shoulder on October 15, 2014 as a result of being struck by an elevator door that closed suddenly. On the claim form the employing establishment noted that the injury was sustained in the performance of duty, but was not reported within 30 days following the incident.

In a January 21, 2015 letter, OWCP notified appellant of the deficiencies of her claim and afforded her 30 days to submit additional evidence and respond to its inquiries.

Appellant submitted a narrative statement dated January 29, 2015, an October 20, 2014 incident report, and emergency department hospital records dated October 20, 2014 diagnosing a right shoulder and arm injury. She also submitted physical therapy notes dated December 19, 2014 and January 14, 2015.

In a report dated October 30, 2014, Dr. Barry Sheridan, a Board-certified emergency medicine specialist, diagnosed cervical pain and right shoulder pain due to being struck by an elevator.

On December 2, 2014 Dr. Grover Yamane, a Board-certified family practitioner, diagnosed right shoulder pain and noted that on October 15, 2014 appellant's right shoulder and upper arm area experienced blunt trauma from an elevator door, which closed prematurely.

By decision dated March 30, 2015, OWCP denied appellant's claim because the medical evidence was insufficient to establish a causal relationship between any diagnosed conditions and the October 15, 2014 employment incident.

On April 30, 2015 appellant requested a review of the written record by an OWCP hearing representative and resubmitted hospital records dated October 20, 2014 and physical therapy notes dated January 14, 2015.

By decision dated May 27, 2015, OWCP denied appellant's request for a review of the written record finding that her request was untimely because it was not made within 30 days of its March 30, 2015 decision. Appellant's request was dated and postmarked April 30, 2015. OWCP exercised its discretion and further denied the request for the reason that the relevant issue of the case could be addressed by requesting reconsideration and submitting evidence not previously considered by OWCP.

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

An employee seeking benefits under FECA<sup>3</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

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<sup>3</sup> *Supra* note 1.

States” within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA, that an injury<sup>4</sup> was sustained in the performance of duty, as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.<sup>5</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. A fact of injury determination is based on two elements. First, the employee must submit sufficient evidence to establish that 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. An employee may establish that the employment incident occurred as alleged but fail to show that his or her condition relates to the employment incident.<sup>6</sup>

Causal relationship is a medical issue 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 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>7</sup>

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

The Board finds that appellant has not met her burden of proof to establish that her right upper extremity conditions are causally related to an October 15, 2014 employment incident, as alleged.

OWCP has accepted that the employment incident of October 15, 2014 occurred at the time, place, and in the manner alleged. The issue is whether appellant’s right upper extremity conditions resulted from the October 15, 2014 employment incident. The Board finds that she did not meet her burden of proof to establish a causal relationship between the conditions for which compensation is claimed and the employment incident.

In his October 30, 2014 report, Dr. Sheridan diagnosed cervical pain and right shoulder pain due to being struck by an elevator door. The Board finds that his diagnosis of cervical pain and right shoulder pain is a description of a symptom rather than a clear diagnosis of the medical

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<sup>4</sup> OWCP regulations define a traumatic injury as a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected. 20 C.F.R. § 10.5(ee).

<sup>5</sup> See *T.H.*, 59 ECAB 388 (2008).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

condition.<sup>8</sup> Similarly, in a December 2, 2014 report, Dr. Yamane diagnosed right shoulder pain and noted that on October 15, 2014 appellant's right shoulder and upper arm area experienced blunt trauma from an elevator door, which closed prematurely. Neither Dr. Sheridan nor Dr. Yamane addressed how the closing of the elevator door on appellant's arm caused or contributed to a specific diagnosed medical condition. Moreover, the Board has held that the mere fact that appellant's symptoms arise during a period of employment or produce symptoms revelatory of an underlying condition does not establish a causal relationship between her condition and her employment factors.<sup>9</sup> Therefore, the Board finds that these reports are insufficient to establish that she sustained an employment-related injury.

Appellant further submitted an October 20, 2014 incident report, emergency department hospital records dated October 20, 2014, and physical therapy notes dated December 19, 2014 and January 14, 2015. These documents do not constitute competent medical evidence as they do not contain a physician's opinion relating appellant's diagnosed condition to the accepted employment incident.<sup>10</sup> As such, the Board finds that appellant did not meet her burden of proof with these submissions.

As appellant has not submitted sufficient medical evidence to support her allegation that she sustained an injury causally related to an October 15, 2014 employment incident, she has failed to meet her burden of proof to establish a claim for compensation.

Appellant contends on appeal that the evidence she submitted was sufficient to establish a causal relationship. For the reasons stated above, the Board finds her argument is not substantiated.

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 the FECA provides: "Before review under section 8128(a) of this title [relating to reconsideration], 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 [her] claim before a representative of the Secretary."<sup>11</sup>

Section 10.615 of Title 20 of the Code of Federal Regulations provide, "A hearing is a review of an adverse decision by a hearing representative. Initially, the claimant can choose

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<sup>8</sup> The Board has consistently held that pain is a symptom, rather than a compensable medical diagnosis. *See P.S.*, Docket No. 12-1601 (issued January 2, 2013); *C.F.*, Docket No. 08-1102 (issued October 10, 2008).

<sup>9</sup> *See Richard B. Cissel*, 32 ECAB 1910, 1917 (1981); *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

<sup>10</sup> *See* 5 U.S.C. § 8101(2); *Paul Foster*, 56 ECAB 208, 212 n.12 (2004).

<sup>11</sup> 5 U.S.C. § 8124(b)(1).

between two formats: An oral hearing or a review of the written record.”<sup>12</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>13</sup> OWCP has discretion, however, to grant or deny a request that is made after this 30-day period.<sup>14</sup> In such a case, it will determine whether to grant a discretionary hearing and, if not, will so advise the claimant with reasons.<sup>15</sup>

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

The Board finds that OWCP properly denied appellant’s request for a review of the written record as untimely.

Appellant had 30-calendar days from OWCP’s March 30, 2015 decision, or until April 29, 2015, to request a review of the written record. Appellant’s request for a review of the written record by an OWCP hearing representative was dated and postmarked April 30, 2015, which was more than 30 days after OWCP issued its March 30, 2015 decision.<sup>16</sup> Section 8124(b)(1) is unequivocal on the time limitation for requesting a hearing.<sup>17</sup> Because the application was untimely filed, appellant was not entitled to a review of the written record.

Appellant was not entitled to a review of the written record as a matter of right under section 8124(b)(1) of FECA. Exercising its discretion to grant a review of the written record, OWCP denied her request because she could equally well address her arguments by requesting reconsideration. Because reconsideration exists as an alternative appeal right to address the issues raised by OWCP’s March 30, 2015 decision, the Board finds that OWCP did not abuse its discretion in denying appellant’s untimely request for a review of the written record.<sup>18</sup>

### **CONCLUSION**

The Board finds that appellant has not met her burden of proof to establish that her right upper extremity conditions are causally related to an October 15, 2014 employment incident. The Board further finds that OWCP properly denied her request for a review of the written record as untimely.

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<sup>12</sup> 20 C.F.R. § 10.615.

<sup>13</sup> *Id.* at § 10.616.

<sup>14</sup> *See G.W.*, Docket No. 10-782 (issued April 23, 2010). *See also Herbert C. Holley*, 33 ECAB 140 (1981).

<sup>15</sup> *Id.* *See also Rudolph Bermann*, 26 ECAB 354 (1975).

<sup>16</sup> Under OWCP regulations and procedures, the timeliness of a request for a hearing is determined on the basis of the postmark of the envelope containing the request. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.4.a (October 2011). If the postmark is not legible, the request will be deemed timely unless OWCP has kept evidence of date of delivery on the record reflecting that the request is untimely. *Id.*

<sup>17</sup> *See William F. Osborne*, 46 ECAB 198 (1994).

<sup>18</sup> *See Gerard F. Workinger*, 56 ECAB 259 (2005).

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 27 and March 30, 2015 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: January 7, 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