

reaching above her head on a daily basis. Appellant identified February 20, 2014 as the date she first realized her right shoulder condition was caused or aggravated by her work for the employing establishment.² She did not submit any medical evidence with her June 30, 2014 CA-2 form.

By letter dated August 27, 2014, OWCP advised appellant of the five basic elements to establish a claim under FECA. It further explained that the evidence of record was insufficient to establish her claimed occupational exposure. OWCP provided a questionnaire that appellant was to complete and return. It requested that she describe in detail the employment-related activities she believed contributed to her condition, including information regarding the frequency and duration of various implicated activities. OWCP also requested appellant to provide information regarding all activities outside her federal employment. Additionally, it noted that no medical evidence had been received. OWCP afforded appellant 30 days to submit the necessary factual information and medical evidence in support of her claimed right shoulder injury.

OWCP subsequently received a September 22, 2014 work excuse form signed by Dr. T. Bradley Edwards, a Board-certified orthopedic surgeon, who advised that appellant had recovered sufficiently to return to light-duty work. Dr. Edwards imposed restrictions of no pulling, no pushing, no overhead work, and no lifting more than five pounds. However, Dr. Edwards did not provide a specific diagnosis.

In a September 29, 2014 merit decision, OWCP denied appellant's occupational disease claim as she failed to establish fact of injury because the evidence did not support that the injury occurred as alleged.

On December 4, 2014 appellant requested a review of the written record by the Branch of Hearings & Review. She signed and returned OWCP's August 27, 2014 activities questionnaire, but neglected to provide the requested information.

In a report dated September 24, 2014, Dr. Emile Mathurin Jr., a Board-certified physiatrist, diagnosed right shoulder impingement syndrome.³ He described appellant as a carrier who does a lot of repetitive motion with the shoulder. Dr. Mathurin noted a prior history of work-related left shoulder problems. Appellant described her current right shoulder symptoms as being very similar to the left shoulder. She denied any history of falls or trauma to the shoulder. Appellant also indicated that her pain seemed to be aggravated with motion and with certain activities, especially above the head movement. On physical examination Dr. Mathurin noted that her shoulders were symmetrical. Appellant had undergone left shoulder surgery 4 to 5 months ago and exhibited limited range of motion. Examination of the right shoulder revealed no instability and fairly good range of motion. Dr. Mathurin noted some tenderness in the suprascapular region. He also reported good scapulohumeral movement of the right shoulder and good external and internal range of motion. Additionally, Dr. Mathurin noted that there was a little discomfort on internal rotation of the right shoulder. Also, appellant's

² Appellant has an accepted claim for a left shoulder traumatic injury sustained on August 21, 2012 (xxxxxx763).

³ OWCP received Dr. Mathurin's report on October 6, 2014.

Hawkins test was negative. Dr. Mathurin ordered plain x-rays of the left shoulder. He noted that appellant stated that she had been doing exercises especially working with the left shoulder, which apparently helped.

By decision dated January 7, 2015, OWCP's Branch of Hearings and Review denied appellant's request for review of the written record as untimely. The hearing representative also denied a discretionary hearing, noting that appellant could instead request reconsideration before OWCP.

LEGAL PRECEDENT -- ISSUE 1

A claimant seeking benefits under FECA has the burden of establishing 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.⁴

To establish that an injury was sustained in the performance of duty, a claimant must submit: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the diagnosed condition is causally related to the identified employment factors.⁵

ANALYSIS -- ISSUE 1

When appellant initially filed her Form CA-2 she did not provide any medical evidence in support of her claimed right shoulder injury. She also did not provide a detailed account of the employment duties she believed either caused or contributed to her claimed injury. On August 27, 2014 OWCP advised appellant of the above-noted deficiencies within her claim and afforded her at least 30-days to submit additional evidence. However, appellant did not submit the requested factual information.

Dr. Edwards' September 22, 2014 work excuse, which was of record, did not include a medical diagnosis, date of injury, or explanation as to the cause of injury. OWCP denied her occupational disease claim because she failed to establish fact of injury. The Board finds that appellant has not met her burden to prove she sustained an injury in the performance of duty on

⁴ 20 C.F.R. § 10.115(e), (f) (2014); see *Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996). Causal relationship is a medical question, which 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 factors 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 factors. *Id.*

⁵ *Victor J. Woodhams, id.*

or about February 20, 2014 as she has not provided the factual information necessary to evaluate her 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

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.⁶ 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.⁷ The claimant must not have previously submitted a reconsideration request (whether or not it was granted) on the same decision.⁸ 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 and Review may exercise its discretion to either grant or deny a hearing.⁹

ANALYSIS -- ISSUE 2

OWCP issued its merit decision on September 29, 2014. Appellant had 30 days to request a hearing, but she waited more than two months before filing her request. The hearing request was postmarked December 4, 2014. The regulations clearly state that "[t]he hearing request must be sent within 30 days ... of the date of the decision for which a hearing is sought."¹⁰ The Board, therefore, finds that appellant's December 4, 2014 request was untimely and she was not entitled to a review of the written record as a matter of right. The Branch of Hearings & Review also denied her request on the basis that her occupational disease claim could be equally well-addressed by requesting reconsideration before OWCP.

The Board finds that the hearing representative properly exercised appellant's discretionary authority in denying her request for review of the written record.¹¹

⁶ 20 C.F.R. § 10.616(a).

⁷ *Id.*

⁸ *Id.*

⁹ 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).

¹⁰ 20 C.F.R. § 10.616(a).

¹¹ *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 Thyratron*, 54 ECAB 257, 261 (2002).

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.

CONCLUSION

Appellant failed to establish that she sustained an injury in the performance of duty on or about February 20, 2014. The Board also finds that the Branch of Hearings & Review properly denied appellant's request for review of the written record.

ORDER

IT IS HEREBY ORDERED THAT the January 7, 2015 and September 29, 2014 decisions of the Office of Workers' Compensation Programs are affirmed.¹²

Issued: March 15, 2016
Washington, DC

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

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

¹² James A. Haynes, Alternate Judge, participated in the original decision but was no longer a member of the Board effective November 16, 2015.