

injury is work related. Appellant asserts that her right wrist injury was caused by repetitive work duties.

FACTUAL HISTORY

On August 23, 2016 appellant, then a 54-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that her tendinitis condition was caused or aggravated by repetitive wrist action while delivering and casing mail at the office into five shelves. She became aware of the condition and realized its relationship to her federal employment on August 22, 2016. Appellant stopped work on the filing date of her claim and returned to work on August 29, 2016. The employing establishment submitted a September 2016 employee information sheet.

By letter dated September 19, 2016, OWCP informed appellant of the deficiencies of her claim and requested that she submit medical evidence and respond to its inquiries.

On September 26, 2016 appellant responded to OWCP's queries. She claimed that her right wrist tendinitis was caused by work duties that included casing flats into a five-shelf case and placing each piece in a six-inch shelf, one hour to one and one-half hours, five days and sometimes six days a week; delivering mail by holding it in her right hand, opening a mailbox, and putting it inside of the mailbox, six to eight hours a day, five days and sometimes six days a week; walking her loops, two and one-half hours to three and one-half hours a day, five to six days a week; and scanning packages while holding the scanner along with flats and letter mail in her arms and hand, bending her wrist at odd angles to scan the packages, and driving a vehicle probably four hours a day and sometimes more when she worked overtime, five to six days a week. Appellant related that she noticed her wrist pain at the end of the workday on August 22, 2016. Her pain progressively worsened at night and on August 23, 2016 she sought medical treatment. Appellant noted her medical treatment and related that her wrist felt better after not using it for six days. She changed her work habits to prevent further pain. Appellant altered her work by using two hands to bend something thick into the case and not holding mail in the same hand she used to open mailboxes.

In an August 30, 2016 Form CA-20 report, Dr. Sayess noted a history that since August 22, 2016 appellant had wrist pain. She indicated that appellant performed repetitive wrist motions at work as a mail carrier. Dr. Sayess provided findings on examination and diagnosed right wrist tendinitis. She checked a box marked "yes" indicating that appellant's condition was caused or aggravated by an employment activity. Dr. Sayess indicated that appellant was totally disabled from August 22 to 29, 2016 and advised that she was able to resume her regular work on August 29, 2016.

By decision dated October 27, 2016, OWCP denied appellant's occupational disease claim. It found that Dr. Sayess did not provide a rationalized medical opinion explaining how the accepted employment factors caused or contributed to the diagnosed condition.

In an appeal request form dated November 28, 2016, postmarked November 29, 2016, and received by OWCP's Branch of Hearings and Review on December 6, 2016, appellant

requested a review of the written record by an OWCP hearing representative. She submitted a November 26, 2016 report from Dr. Sayess who assessed new right wrist pain.

By decision dated December 29, 2016, a representative of the Branch of Hearings and Review denied appellant's request for a review of the written record as it was untimely filed. She found that the request was not postmarked within 30 days of the issuance of the October 27, 2016 OWCP merit decision. After exercising its discretion, the hearing representative further found that the issue in the case could equally well be addressed through OWCP's reconsideration process.

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 filed within the applicable time limitation, that an injury was sustained while in the performance of duty as alleged, and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.² These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.³

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (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 employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.

The medical evidence required to establish a 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 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.⁴

ANALYSIS -- ISSUE 1

OWCP accepted as factual that appellant performed the work duties of a letter carrier, which involved casing and delivering mail. The Board finds, however, that the medical evidence of record is insufficient to establish that she sustained a right wrist condition caused or aggravated by the accepted work factors.

² C.S., Docket No. 08-1585 (issued March 3, 2009); *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ *S.P.*, 59 ECAB 184 (2007); *Victor J. Woodhams*, 41 ECAB 345 (1989); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁴ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, *id.*

Dr. Sayess' August 30, 2016 Form CA-20 report provided a history that appellant performed repetitive wrist motions while working as a mail carrier and diagnosed right wrist tendinitis. She checked a box marked "yes" indicating that the condition was caused or aggravated by an employment activity and found that appellant was totally disabled from August 22 to 29, 2016. However, the Board has held that a checkmark notation supporting causation, without supporting rationale, is of limited probative value and is insufficient to establish the claim.⁵ Dr. Sayess did not explain how or why appellant's diagnosed condition and resultant disability were caused or contributed to by the accepted employment factors. Thus, the Board finds that her report is insufficient to meet appellant's burden of proof.

Appellant's belief that factors of employment caused or aggravated her condition is insufficient, by itself, to establish causal relationship.⁶ The issue of causal relationship is a medical one and must be resolved by probative medical opinion from a physician. The Board finds that there is insufficient medical evidence of record to establish that appellant's right wrist condition was caused or aggravated by the established employment factors. Appellant, therefore, did not meet her burden of proof.

On appeal, appellant contends that Dr. Sayess' Form CA-20 report found that her right wrist injury is work related. She asserts that her right wrist injury was caused by repetitive work duties. For the reasons stated above, however, Dr. Sayess failed to provide any medical rationale on the issue of the causal relationship between appellant's right wrist condition and the established work factors.

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 that a claimant for compensation not satisfied with a decision of the Secretary 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.⁷ Sections 10.617 and 10.618 of the federal regulations implementing this section of FECA provide that a claimant shall be afforded a choice of an oral hearing or a review of the written record by a representative of the Secretary.⁸ A claimant is entitled to a hearing or review of the written record as a matter of right only if the request is filed within the requisite 30 days as determined by postmark or other carrier's date marking and before the claimant has requested reconsideration.⁹ Although there is no right to a review of the written record or an oral hearing if not requested within the 30-day time period, OWCP may within its discretionary powers grant or

⁵ See *D.S.*, Docket No. 15-1930 (issued January 30, 2016).

⁶ 20 C.F.R. § 10.115(e); *Phillip L. Barnes*, 55 ECAB 426, 440 (2004).

⁷ 5 U.S.C. § 8124(b)(1).

⁸ 20 C.F.R. §§ 10.616, 10.617.

⁹ *Id.* at § 10.616(a).

deny his or her request and must exercise its discretion.¹⁰ Its procedures require that it exercise its discretion to grant or deny a hearing when the request is untimely or made after reconsideration under section 8128(a).¹¹

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly determined that appellant's request for a review of the written record was untimely filed as it was made more than 30 days after the issuance of OWCP's October 27, 2016 merit decision. The November 28, 2016 form, on which appellant requested the review, was postmarked on November 29, 2016. The time limitation to request a review of the written record from OWCP's Branch of Hearings and Review expired on Saturday, November 26, 2016, 30 days after OWCP's October 27, 2016 decision. As November 26, 2016 was a Saturday, appellant had until Monday, November 28, 2016 to file her appeal.¹² However, her request was postmarked November 29, 2016 and was untimely. Section 8124(b)(1) sets an unequivocal time limitation for requesting a review of the written record.¹³ Because the request was untimely filed, appellant was not entitled to a review of the written record as a matter of right under section 8124(b)(1) of FECA.

Although appellant's request for a review of the written record was untimely filed, OWCP has the discretionary authority to grant the request and it must exercise such discretion. In its December 29, 2016 decision, it properly exercised its discretion by notifying appellant that it had considered the matter in relation to the issue involved and that additional argument and evidence could be submitted with a request for reconsideration. The Board has held that the only limitation on OWCP's authority is reasonableness. An abuse of discretion is generally shown through proof of manifest error, a clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deductions from established facts.¹⁴ In this case, there is no evidence of record that OWCP abused its discretion by denying appellant's request for a review of the written record. Accordingly, the Board finds that OWCP properly denied her November 28, 2016 request for a review of the written record.

CONCLUSION

The Board finds that appellant has failed to meet her burden of proof to establish a right wrist condition causally related to factors of her federal employment. The Board further finds that OWCP properly denied her request for a review of the written record as untimely filed pursuant to 5 U.S.C. § 8124.

¹⁰ *Eddie Franklin*, 51 ECAB 223 (1999); *Delmont L. Thompson*, 51 ECAB 155 (1999).

¹¹ *See R.T.*, Docket No. 08-0408 (issued December 16, 2008).

¹² *See John B. Montoya*, 43 ECAB 1148 (1992). The Board has held that, in computing a time period, the date of the event from which the designated period of time begins to run shall not be included while the last day of the period so computed shall be included unless it is a Saturday, a Sunday, or a legal holiday.

¹³ *See William F. Osborne*, 46 ECAB 198 (1994).

¹⁴ *Samuel R. Johnson*, 51 ECAB 612 (2000).

ORDER

IT IS HEREBY ORDERED THAT the December 29 and October 27, 2016 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: August 1, 2017
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