

ISSUES

The issues are: (1) whether appellant met his burden of proof to establish a traumatic injury in the performance of duty on August 17, 2015; and (2) whether OWCP abused its discretion in denying appellant's request for review of the written record.

FACTUAL HISTORY

On August 20, 2015 appellant, then a 55-year-old Unit Chief 1811, filed a traumatic injury claim (Form CA-1) alleging that on August 17, 2015 he sustained a left knee injury during a training session. He did not stop work. The employing establishment checked a box marked "yes" to the question of whether the injury was sustained in the performance of duty.

In an August 31, 2015 report, Dr. Erik M. Krushinski, a treating Board-certified orthopedic surgeon, reported that appellant had been seen for left knee pain complaints, which began at work. He noted that appellant was an instructor with the employing establishment and that he provided instruction in personal defense. Appellant related his left knee pain had been present for about two weeks with no specific injury at the time the pain began. Physical examination findings of the left knee included mild effusion, pain with patellar compression, and medial and lateral joint tenderness. A review of x-ray interpretations revealed mild degenerative changes in the left patellofemoral joint and left medial and lateral knee compartments. Dr. Krushomski provided a differential diagnosis of aggravation of early osteoarthritis versus a meniscal tear.

Dr. Krushinski, in a November 5, 2015 report, diagnosed medial and lateral meniscal tears and medial and patellofemoral osteoarthritis. Physical examination findings were unchanged from the prior report. A review of an October 30, 2015 magnetic resonance imaging (MRI) scan revealed small medial and lateral meniscus tears, and moderate-to-high grade patellofemoral joint chondromalacia.

By letter dated January 4, 2016, OWCP informed appellant that at the time his claim had been filed it had been considered to be a minor injury and the merits of the claim had not been considered. It informed appellant that his claim had been reopened for a review on the merits and that the evidence of record was insufficient to establish his claim. Appellant was advised as to the medical and factual evidence required to establish his claim. He was afforded 30 days to provide the requested information.

In a January 12, 2016 statement, appellant described how the injury occurred. He noted the duties of his position and related that on August 17, 2015 he was involved in a basic agent training class. The training session required that appellant review various defensive tactic techniques which included full-body search, armed kneeling compliant handcuffing, and standing compliant handcuffing. At approximately 8:30 a.m. appellant stated he felt left knee pain and that his left knee gave out while he was walking. He attributed the injury to the physical activity he had performed during the training session.

By decision dated February 5, 2016, OWCP denied appellant's traumatic injury claim. It found that he had failed to establish that the event occurred as alleged, and also found the

medical evidence failed to contain a diagnosed condition causally related to the alleged injury or incident.

In a March 9, 2016 report, Dr. Krushinski noted treating appellant for a left knee injury sustained on August 17, 2015 which occurred while appellant was participating as an instructor in a defensive tactics session. Dr. Krushinski explained that pain developed during the session even though there had been no definitive injury. He opined that appellant's knee injury had been caused by the August 17, 2015 incident as there had be no prior complaints of knee pain.

On March 15, 2016 OWCP received appellant's request for a review of the written record, by an OWCP hearing representative. This request was postmarked March 8, 2016.

By decision dated July 8, 2016, OWCP's Branch of Hearings and Review denied appellant's request for review of the written record as it was untimely filed. OWCP considered appellant's request and determined that his case could equally well be addressed by requesting reconsideration and submitting new evidence.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA³ 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.⁴ 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.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.⁶ First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident at the time, place, and in the manner alleged.⁷ 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.⁸

To establish that an injury occurred as alleged, the injury need not be confirmed by eyewitnesses, but the employee's statements must be consistent with the surrounding facts and

³ 5 U.S.C. § 8101 *et seq.*

⁴ *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

⁵ *S.P.*, 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁶ *B.F.*, Docket No. 09-60 (issued March 17, 2009); *Bonnie A. Contreras*, *supra* note 4.

⁷ *D.B.*, 58 ECAB 464 (2007); *David Apgar*, 57 ECAB 137 (2005).

⁸ *C.B.*, Docket No. 08-1583 (issued December 9, 2008); *D.G.*, 59 ECAB 734 (2008); *Bonnie A. Contreras*, *supra* note 4.

circumstances and his subsequent course of action.⁹ Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury, and failure to obtain medical treatment may, if otherwise unexplained, cast doubt on an employee's statements.¹⁰ However, an employee's statement regarding the occurrence of an employment incident is of great probative force and will stand unless refuted by strong or persuasive evidence.¹¹

ANALYSIS -- ISSUE 1

Appellant alleged that he sustained a left knee injury in the performance of duty on August 17, 2015. A proper analysis of the issue is to first determine whether the evidence establishes an employment incident.¹² If the details of an employment incident are established, then the medical evidence is reviewed to determine if a diagnosed condition is causally related to the employment incident.¹³

In his statement, appellant related that on the date of the incident he had been involved in a training session showing various defensive tactic techniques including full-body searches, armed kneeling compliant handcuffing, and standing compliant handcuffing. During the training session, his left knee went out while he was walking and he developed left knee pain. Appellant attributed the injury to physical activity involved during the training session and immediately notified his supervisor. On the back of the CA-1 form, his supervisor checked a box marked "yes" to the question of whether he was injured in the performance of duty. There are no inconsistencies in the record.

Additionally, the history of the work incident was confirmed by contemporaneous medical reports. The Board notes that appellant reported the injury immediately to his supervisor. Appellant sought medical treatment for a diagnosed left knee condition on August 31, 2015 and provided Dr. Krushinski with a consistent history of his injury. In his August 31, 2015 report, Dr. Krushinski noted under history of injury that appellant had developed left knee pain while working as an instructor for personal defense and physical exercise. In his November 5, 2015 report, he diagnosed medial and lateral meniscal tears and medial and patellofemoral osteoarthritis. The Board finds that the evidence establishes that on August 17, 2015 appellant was performing his work duties as an instructor, which included demonstrating various defensive tactics during a training session. Thus, contrary to OWCP's finding in its February 5, 2016 decision, the Board finds that appellant has established the

⁹ See *Betty J. Smith*, 54 ECAB 174 (2002).

¹⁰ *Linda S. Christian*, 46 ECAB 598 (1995).

¹¹ *Gregory J. Reser*, 57 ECAB 277 (2005)

¹² *Supra* note 7.

¹³ *Supra* note 8.

employment incident occurred, as alleged, in the performance of his employment on August 17, 2015.¹⁴

However, with regard to the medical evidence, the Boards finds that it is insufficiently rationalized to establish the second component of fact of injury. The medical evidence contains no reasoned explanation of how the specific employment incident either caused or aggravated an injury. Dr. Krushinski reviewed the medical evidence of record. He noted that x-rays of appellant's left knee revealed mild degenerative changes in the left patellofemoral joint and left medial and lateral knee compartments. Dr. Krushomski provided a differential diagnosis of aggravation of early osteoarthritis versus a meniscal tear. He however offered no medical explanation as to how the employment incident of August 17, 2015 would have caused appellant's left knee condition. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.¹⁵ An opinion provided by a physician without the necessary rationale explaining how and why the incident caused the diagnosed medical condition is insufficient to meet a claimant's burden of proof to establish a claim.¹⁶ Appellant therefore did not meet his burden of proof to establish an injury on August 17, 2015 causally related to the accepted employment incident.

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 claim before a representative of the Secretary.¹⁷ 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.¹⁸ 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.¹⁹ Although there is no right to a review of the written record or an oral hearing

¹⁴ *R.K.*, Docket No. 15-1524 (issued August 10, 2016).

¹⁵ *See S.E.*, Docket No. 08-2214 (issued May 6, 2009).

¹⁶ *T.D.*, Docket No. 16-1178 (issued November 9, 2016).

¹⁷ 5 U.S.C. § 8124(b)(1).

¹⁸ 20 C.F.R. §§ 10.616, 10.617

¹⁹ *Id.* at § 10.616(a).

if not requested within the 30-day time period, OWCP may within its discretionary powers grant or deny appellant's request and must exercise its discretion.²⁰

ANALYSIS -- ISSUE 2

OWCP received a request for review of the written record postmarked March 8, 2016. As this postmark date was more than 30 days after the February 5, 2016 OWCP decision, it was untimely. Section 8124(b)(1) is unequivocal on the time limitation for requesting a hearing.²¹ Because the hearing request was untimely filed, appellant was not entitled to a review of the written record as a matter of right.

OWCP has the discretionary power to grant an oral hearing or review of the written record when a claimant is not entitled to one as a matter of right. It exercised this discretion in its July 8, 2016 decision, finding that appellant's issue could equally well be addressed by requesting reconsideration and submitting additional evidence. This basis for denying his request for a review of the written record is a proper exercise of OWCP's authority.²² Accordingly, the Board finds that OWCP properly denied appellant's request for a review of the written record as untimely filed.

CONCLUSION

The Board finds that appellant has established that the employment incident occurred as alleged on August 17, 2015. The Board further finds that appellant has not established that he sustained an injury causally related to this accepted incident. The Board further finds that OWCP did not abuse its discretion in denying appellant's request for review of the written record as it was untimely filed.

²⁰ *Delmont L. Thompson*, 51 ECAB 155 (1999); *Eddie Franklin*, 51 ECAB 223 (1999).

²¹ *William F. Osborne*, 46 ECAB 198 (1994).

²² *A.M.*, Docket No. 16-1307 (issued October 27, 2016).

ORDER

IT IS HEREBY ORDERED THAT the July 8, 2016 decision of the Office of Workers' Compensation Programs is affirmed and the February 5, 2016 decision is affirmed as modified.

Issued: January 11, 2017
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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