

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

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**C.M., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Kokomo, IN, Employer**

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**Docket No. 17-0596  
Issued: June 15, 2017**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

CHRISTOPHER J. GODFREY, Chief Judge  
ALEC J. KOROMILAS, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On January 23, 2017 appellant filed a timely appeal from an October 21, 2016 merit decision and a December 27, 2016 nonmerit decision of the Office of Workers' Compensation Programs<sup>1</sup> (OWCP). Pursuant to the Federal Employee's Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUES**

The issues are: (1) whether appellant met her burden of proof to establish an injury causally related to the accepted August 3, 2016 employment incident; and (2) whether OWCP properly denied appellant's request for an oral hearing before an OWCP hearing representative.

On appeal, appellant contends that her medical documentation establishes that her injuries occurred while she was performing her employment duties.

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<sup>1</sup> While appellant initially timely requested oral argument before the Board, pursuant to 20 C.F.R. § 501.5(b), appellant withdrew her request on February 21, 2017.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

On August 3, 2016 appellant, then a 44-year-old carrier, filed a traumatic injury claim (Form CA-1) alleging that on that date she injured her left knee when it gave out while she was walking down steps. She stopped work on August 3, 2016.

With her claim, appellant submitted an August 10, 2016 attending physician's report (Form CA-20) wherein Dr. Courtney A. Holland, a Board-certified orthopedic surgeon, indicated that she treated appellant on July 14, and August 10, and 19, 2016. Dr. Holland diagnosed knee pain/swelling for four to six weeks, exacerbated by impact activities (prolonged standing/stairs). She noted that appellant's knee gave out, and that she was using a knee brace. Dr. Holland found moderate effusion and mild arthritis, and diagnosed internal derangement of the knee. She further opined that appellant was able to return to light work, with walking as tolerated.

On September 7, 2016 appellant submitted Dr. Holland's progress reports. In a July 14, 2016 progress report, Dr. Holland diagnosed left knee effusion, knee internal derangement, and left knee pain. She noted that appellant had a four- to six-week history of left knee pain with an insidious onset. Dr. Holland indicated that appellant's pain was over her medial knee and was exacerbated with impact activities, prolonged standing, and stairs. She noted that appellant was employed as a postal worker, which required 8 to 12 hours of standing and up to 12 miles of walking per day. Dr. Holland noted frequent episodes of appellant's knee buckling and giving out on her. She recommended conservative treatment. Dr. Holland indicated that x-rays were taken of appellant's left knee which showed moderate effusion, decreased joint space within the medial compartment, secondary changes of medial femoral condyle and medial plateau to include squaring and sclerosis, and mild arthritis in the patellofemoral compartment. She noted that she had given appellant an injection on that date and that appellant noted immediate relief.

In an August 10, 2016 progress note, Dr. Holland repeated appellant's history and diagnoses. She also noted that on the day of injury appellant was walking when her knee gave out and she fell. In an August 25, 2016 report, Dr. Holland noted that appellant had a magnetic resonance imaging (MRI) scan on that date. She diagnosed chondromalacia of medial femoral condyle, knee pain, and medial meniscus tear. Dr. Holland noted that appellant had failed conservative treatment and recommended left knee arthroscopy with meniscal debridement or repair, chondroplasty, and evaluation for possible chondral restoration procedure.

In a September 16, 2016 letter to appellant, OWCP indicated that when it first received appellant's claim, it appeared to be a minor injury that resulted in minimal or no lost time from work and a limited amount of medical expense, so it was administratively approved without a full merit review. However, as appellant had not returned to work in a full-time capacity, OWCP opened the claim for consideration of the merits. OWCP noted that it had reviewed the claim and determined that the evidence of record was insufficient to support her claim. It afforded appellant 30 days to submit the necessary medical evidence.

In a September 23, 2016 report, Dr. Holland noted that appellant was initially injured after a fall that occurred in May 2016 while performing her employment duties. She noted that the injury was reported to her supervisor, but a formal incident report was never filed. Appellant advised her that a second injury occurred on August 3, 2016, which also resulted from a fall

while working. She summarized her previously submitted medical reports. Dr. Holland noted that she recommended a left knee arthroscopy with medial debridement and chondroplasty, and asked for authorization for that procedure.

By decision dated October 21, 2016, OWCP denied appellant's claim because she had not established a causal relationship between the accepted employment incident and the accepted diagnosis.

Appellant submitted a request for a review of the written record by an OWCP hearing representative on an appeal request form dated November 21, 2016. However, the postmark for mailing this document was November 28, 2016.

By decision dated December 27, 2016, OWCP denied appellant's request for a review of the written record by an OWCP hearing representative as untimely filed. It also reviewed appellant's request at its discretion, and denied the request as it determined that the issue in the case could be equally well addressed by requesting reconsideration and submitting new evidence.

### **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 timely filed within the applicable time limitation period of FECA, that an injury was caused 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.<sup>3</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>4</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. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged.<sup>5</sup> 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.<sup>6</sup>

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

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<sup>3</sup> *Joe D. Cameron*, 42 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>4</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>5</sup> *John J. Carlone*, 41 ECAB 354 (1989).

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

condition and the specific employment factors identified by the employee.<sup>7</sup> The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.<sup>8</sup>

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

Appellant filed a traumatic injury claim alleging injuries to her left knee when, on August 3, 2016, it gave out on her while she was walking down steps during the performance of her federal duties. OWCP denied her claim because she had not established a causal relationship between the accepted employment incident and the accepted diagnosis.

The Board finds that appellant did not meet her burden of proof in that she did not submit medical evidence establishing that her diagnosed left knee conditions were causally related to her August 3, 2016 employment incident.

In support of her claim appellant submitted multiple reports by Dr. Holland. Dr. Holland diagnosed chondromalacia of the medial femoral condyle and medial meniscus tear, and recommended a left knee arthroscopy with medial meniscal debridement and chondroplasty. However, she did not provide a rationalized medical opinion establishing how these diagnosed conditions were causally related to appellant's fall during her employment as a letter carrier on August 3, 2016. The Board has held that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale.<sup>9</sup>

Dr. Holland first discussed appellant's symptoms in her left knee in a July 14, 2016 progress report, which was prior to the date of the August 3, 2016 alleged traumatic injury. In her August 10, 2016 report, she indicated that appellant had fallen on that date, not one week earlier. Dr. Holland first noted appellant's August 3, 2016 fall in her September 23, 2016 report. However, she failed to provide medical rationale as to why appellant's knee giving out on August 3, 2016 caused the left knee diagnoses for which she required surgery. In fact, Dr. Holland noted that appellant had a previous employment-related fall in May 2016. A mere conclusion without the necessary rationale explaining how and why the physician believes that the accepted incident resulted in a diagnosed condition is not sufficient to meet appellant's burden of proof.<sup>10</sup> Neither the fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by an employment incident is sufficient to establish causal relationship.<sup>11</sup> The Board finds that appellant did not meet her burden of proof.

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<sup>7</sup> *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, *supra* note 4.

<sup>8</sup> *James Mack*, 43 ECAB 321 (1991).

<sup>9</sup> *L.H.*, Docket No. 16-194 (issued October 27, 2016).

<sup>10</sup> *G.M.*, Docket No. 14-2057 (issued May 12, 2015).

<sup>11</sup> *T.E.*, Docket No. 16-1090 (issued February 24, 2017).

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.<sup>12</sup>

### **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 her claim before a representative of the Secretary.<sup>13</sup> 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.<sup>14</sup> 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 carriers' date marking and before the claimant has requested reconsideration.<sup>15</sup> 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 deny a hearing when the request is untimely or made after reconsideration under section 8128(a).<sup>16</sup>

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

Appellant's request for oral hearing was dated November 21, 2016. However, the postmark indicates that the request was mailed on November 28, 2016. The time limitation to request an oral hearing before OWCP expired on November 21, 2016 since November 20, 2016 fell on a Sunday.<sup>17</sup> However, the date of the postmark, November 28, 2016, is the date considered as the date of filing.<sup>18</sup> Accordingly, appellant's request is found to have been made more than 30 days after the issuance of OWCP's most recent decision on October 21, 2016.

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<sup>12</sup> The Board notes that appellant submitted a reconsideration request on December 27, 2016. On January 23, 2017 appellant requested an appeal before this Board. By letter dated February 28, 2017, OWCP properly informed appellant that no action would take place on her reconsideration request as the Board was considering appellant's claim. It and the Board may not simultaneously have jurisdiction over the same issue. As the Board had jurisdiction over the traumatic injury claim, OWCP could not issue decision regarding the same issue on appeal before the Board. See *Terry L. Smith*, 51 ECAB 182 (1999); *Arlonia B. Taylor*, 44 ECAB 591 (1993); *Russell E. Lerman*, 43 ECAB 770 (1992); *Douglas E. Billings*, 41 ECAB 880 (1990), 20 C.F.R. § 501.2(c)(3).

<sup>13</sup> 5 U.S.C. § 8124(b)(1).

<sup>14</sup> 20 C.F.R. §§ 10.626, 10.617.

<sup>15</sup> *Eddie Franklin*, 51 ECAB 223 (1999); *Delmont L. Thompson*, 51 ECAB 155 (1999).

<sup>16</sup> See *M.W.*, Docket No. 12-1267 (issued November 2, 2012); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Review of the Written Record*, Chapter 2.1601.2(a) (October 2011).

<sup>17</sup> See *T.T.*, Docket No. 15-1397 (issued December 3, 2015).

<sup>18</sup> *Supra* note 15.

Therefore, OWCP properly found that appellant was not entitled to an oral hearing as a matter of right.<sup>19</sup>

OWCP then properly exercised its discretion by stating that it had considered the matter and had denied appellant's request for a hearing because the issue could be addressed through a request for reconsideration.<sup>20</sup> The Board has held that the only limitation on OWCP's authority is reasonableness and an 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 deduction from established facts.<sup>21</sup> In this case, the evidence of record does not indicate that OWCP abused its discretion in its denial of appellant's request for an oral hearing. Accordingly, the Board finds that OWCP properly denied her request.<sup>22</sup>

### **CONCLUSION**

The Board finds that appellant did not meet her burden of proof to establish an injury causally related to the accepted August 3, 2016 employment incident. The Board further finds that OWCP properly denied appellant's request for an oral hearing before an OWCP hearing representative.

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<sup>19</sup> *C.C.*, Docket No. 16-1581 (issued February 17, 2017).

<sup>20</sup> *M.H.*, Docket No. 15-0774 (issued June 19, 2015).

<sup>21</sup> *Daniel J. Perea*, 42 ECAB 214, 221 (1990).

<sup>22</sup> *R.P.*, Docket No. 16-0554 (issued May 17, 2016).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated December 27 and October 21, 2016 are affirmed.

Issued: June 15, 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