



## **ISSUES**

The issues are: (1) whether appellant met her burden of proof to establish an injury causally related to the accepted October 27, 2015 employment incident; and (2) whether OWCP properly denied appellant's request for an oral hearing as untimely filed under 5 U.S.C. § 8124.

On appeal, appellant contends that she suffered an injury causally related to factors of her federal employment, that she has a new treating physician, and that she is still in pain from these injuries. She also contends that her request for an oral hearing should have been treated as timely filed.

## **FACTUAL HISTORY**

On October 29, 2015 appellant, then a 74-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on October 27, 2015 she felt a sharp pain in her left arm while pushing a gurney across the workroom floor. She also alleged injury to the back of her left hand.

Appellant initially received treatment from Kacey L. Dayton, a physician assistant, on October 30, 2015, at which time she released appellant to regular duty. Ms. Dayton also treated appellant on November 24, 2015. In addition, appellant received treatment from occupational therapists from October 29 through November 12, 2015 for treatment of paresthesia of her skin.

On November 12, 2015 appellant was seen by Dr. Jose Ayala, an occupational medicine specialist, who assessed appellant with paresthesia of both hands.

In a November 20, 2015 report, Dr. Barbara Heller, an osteopath specializing in physical medicine, noted appellant's history of federal employment. She diagnosed appellant with paresthesia of both hands and carpal tunnel syndrome. Dr. Heller related that the electromyography and nerve conduction velocity (EMG/NCV) studies provided electrophysiologic evidence of fairly severe entrapment neuropathy involving demyelination and axon loss of both sensory and motor fibers of the median nerve on the left. She noted similar findings on the right, but of moderate severity only. Dr. Heller provided work restrictions for appellant.

In a December 15, 2015 report, Dr. Nicholas Speziale, a Board-certified hand surgeon, indicated that appellant had tingling in her left thumb, index, and long fingers for the past two months. He indicated that appellant also had tingling in her right hand, but that it is much worse on the left. Dr. Speziale noted that appellant was still working as a mail carrier working mail 6 days a week, sometimes as long as 10 to 14 hours a day. Dr. Speziale noted that appellant worked for the employing establishment for over 50 years. Dr. Speziale opined that appellant had severe left carpal tunnel syndrome and he recommended a left carpal tunnel release. He noted that appellant could return to work, but she should not push, pull, or lift more than 10 pounds.

By letter dated January 19, 2016, OWCP informed appellant that her claim was initially administratively approved for a limited amount of medical expenses, but that as the medical expenses had now exceeded \$1,500.00, further medical evidence regarding causal relationship was necessary to establish her claim. Appellant was afforded 30 days to submit the requested information. She did not respond within the time allotted.

By decision dated February 22, 2016, OWCP denied appellant's claim. It determined that appellant had failed to establish a causal relationship between the accepted employment incident and her diagnosed condition.

In an appeal request form signed on March 24, 2016, postmarked on March 25, 2016, and received by OWCP on March 29, 2016, appellant requested an oral hearing before an OWCP hearing representative.

By decision dated April 26, 2016, OWCP denied appellant's request for an oral hearing as it was not filed within 30 days of the February 22, 2016 decision.

### **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 sustained 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. 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>

In order to determine whether an employee actually sustained an injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components, which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident or exposure, which is alleged to have occurred.<sup>5</sup> In order to meet his or her burden of proof to establish the fact that he or she sustained an injury in the performance of duty, an employee must submit sufficient evidence to establish that he or she actually experienced the employment injury or exposure at the time, place, and in the manner alleged.<sup>6</sup>

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.<sup>7</sup> The medical evidence required to establish causal relationship is usually rationalized medical evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, 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 claimant.<sup>8</sup> Neither the

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<sup>4</sup> *Jussara L. Arcanjo*, 55 ECAB 281, 283 (2004).

<sup>5</sup> *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803(2)(a) (August 2012).

<sup>6</sup> *Linda S. Jackson*, 49 ECAB 486 (1998).

<sup>7</sup> *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

<sup>8</sup> *Judith A. Peot*, 46 ECAB 1036 (1995); *Ruby I. Fish*, 46 ECAB 276 (1994).

fact that a disease or condition manifests itself during a period of employment nor the belief that the condition was caused or aggravated by the employment factor is sufficient to establish causal relationship.<sup>9</sup>

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

OWCP accepted that the employment incident of October 27, 2015 occurred as alleged. However, it denied appellant's claim as she failed to establish causal relationship between the accepted employment incident and her diagnosed medical condition.

The Board finds that appellant failed to submit sufficient evidence to establish a medical diagnosis causally related to the accepted employment injury. No physician clearly indicated that appellant's diagnosed medical condition was causally related to the accepted employment incident. Dr. Speziale discussed appellant's work duties. He also diagnosed severe left carpal tunnel syndrome, and recommended a left carpal tunnel release. However, Dr. Speziale did not provide an opinion with regard to causal relationship.<sup>10</sup> Similarly, Dr. Heller mentioned appellant's employment and diagnosed paresthesia of both hands and carpal tunnel syndrome, but failed to provide a rationalized medical opinion indicating that these conditions were causally related to her federal employment. Dr. Ayala makes no mention of appellant's employment, nor does he provide an opinion on causation.<sup>11</sup> Without explaining how physiologically appellant's employment duties caused or contributed to her diagnosed left carpal tunnel syndrome, the opinions of Drs. Speziale, Heller, and Ayala are of limited probative value.<sup>12</sup>

Appellant was also treated by occupational therapists and a physician assistant. However, occupational therapists and physician assistants are not considered physicians under FECA and therefore their opinions are of no probative medical value regarding causal relationship.<sup>13</sup>

An award of compensation may not be based on surmise, conjecture, speculation, or on the employee's own belief of causal relation.<sup>14</sup> Appellant's honest belief that the October 27,

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<sup>9</sup> *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

<sup>10</sup> The Board has held that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship. See *L.M.*, Docket No. 16-0188 (issued March 24, 2016); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

<sup>11</sup> *Id.*

<sup>12</sup> See *D.P.*, Docket No. 16-1358 (issued December 19, 2016).

<sup>13</sup> The term physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. See 5 U.S.C. § 8102(2); 5 U.S.C. § 8101(2); see also *Sean O'Connell*, 56 ECAB 195 (2004) (physician assistants are not considered physicians as defined under FECA); *J.J.*, Docket No. 15-0727 (issued July 16, 2015) (reports from appellant's occupational therapist have no probative medical value. Occupational therapists are not considered physicians as defined under FECA).

<sup>14</sup> *D.D.*, 57 ECAB 734 (2006).

2015 employment incident caused her medical injury is not in question, but that belief, however sincerely held, does not constitute medical evidence to establish causal relationship.<sup>15</sup>

Appellant has, therefore, failed to establish that her alleged left upper extremity conditions were causally related to the accepted employment incident. Because appellant has not provided a rationalized opinion supporting causal relationship, she has not met her burden of proof.<sup>16</sup>

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 her claim before a representative of the Secretary.<sup>17</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>18</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>19</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>20</sup>

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

Appellant's request for an oral hearing was dated March 24, 2016, postmarked March 25, 2016, and received by OWCP on March 29, 2016. The time limitation to request an oral hearing from OWCP's Branch of Hearings and Review expired on March 23, 2016, 30 days after OWCP's February 22, 2016 decision.<sup>21</sup> Appellant's request was postmarked on March 25, 2016. Therefore, OWCP properly found in its April 26, 2016 decision that appellant was not entitled to

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<sup>15</sup> *H.H.*, Docket No. 16-0897 (issued September 21, 2016).

<sup>16</sup> *See J.E.*, Docket No. 16-0509 (issued September 16, 2016).

<sup>17</sup> 5 U.S.C. § 8124(b)(1).

<sup>18</sup> 20 C.F.R. § 10.626, 10.617.

<sup>19</sup> *Eddie Franklin*, 51 ECAB 223 (1999); *Delmont L. Thompson*, 51 ECAB 155 (1999).

<sup>20</sup> *See M.W.*, Docket No. 12-1267 (issued November 2, 2012); *supra* note 5 at *Hearings and Review of the Written Record*, Chapter 2.1601.2(a) (October 2011).

<sup>21</sup> *T.T.*, Docket No. 15-1397 (issued December 3, 2015).

an oral hearing as a matter of right because her request was not made within 30 days of its February 22, 2016 decision.<sup>22</sup>

OWCP then properly exercised its discretion by noting that it had considered the matter and denied appellant's request for a hearing because the issue could equally well be addressed through a request for reconsideration.<sup>23</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>24</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>25</sup>

### CONCLUSION

The Board finds that appellant has not established an injury causally related to the accepted October 27, 2015 employment incident. The Board further finds that OWCP properly denied appellant's request for an oral hearing as untimely filed under 5 U.S.C. § 8124.

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<sup>22</sup> 20 C.F.R. § 10.616(a); *supra* note 20 at Chapter 2.1601.4(a) (October 2011).

<sup>23</sup> *M.H.*, Docket No. 15-0774 (issued June 19, 2015).

<sup>24</sup> *Daniel J. Perea*, 42 ECAB 214, 221 (1990).

<sup>25</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 April 26 and February 22, 2016 are affirmed.

Issued: March 27, 2017  
Washington, DC

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

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

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board