

FACTUAL HISTORY

On May 11, 2017 appellant, then a 57-year-old clerk, filed an occupational disease claim (Form CA-2) alleging that in December 2016 she developed right hand and wrist pain as a result of repetitive lifting while sorting parcels. She did not stop work.

In support of her claim, appellant submitted a report dated February 13, 2017 from Dr. Leonard F. Hubbard, a Board-certified orthopedic surgeon specializing in hand surgery.² On examination, Dr. Hubbard found tenderness at the site of a recent spur excision. He noted appellant's account of pain at the base of the right thumb after lifting a large package at work in December 2016. Dr. Hubbard observed tenderness over the ulnar collateral ligament and the basal joint. He diagnosed right thumb tendinitis and basal joint arthrosis. Dr. Hubbard prescribed a splint. In a follow-up report dated June 7, 2017, he diagnosed right thumb tendinitis and basal joint synovitis. Dr. Hubbard opined that appellant's symptoms were "causally related to the incident when she was picking up a package at work." He returned appellant to full duty without restrictions.

By development letter dated June 20, 2017, OWCP notified appellant of the additional evidence needed to establish her occupational disease claim, including factual evidence in corroboration of her exposure to the identified employment factors, and a well-reasoned medical opinion from her attending physician which established a medical diagnosis causally related to her employment. It requested that appellant clarify whether she claimed an occupational disease or a traumatic injury. OWCP also requested that she respond to an attached development questionnaire in order to substantiate the factual elements of her claim. Appellant was afforded 30 days to submit the additional evidence. A similar letter was sent to the employing establishment.

In response, appellant provided a report dated July 5, 2017 from Dr. Hubbard, in which he diagnosed persistent right thumb tendinitis and basal joint synovitis. Dr. Hubbard noted that "[d]iscussion with [appellant] confirms that the incident when she lifted the package in December of 2016 was causally related to her current symptomatology."

In a letter dated July 5, 2017, an employing establishment supervisor explained that appellant's duties required her to lift packages up to 60 pounds for up to eight hours a day, grasp mail, and twist and turn as necessary. The supervisor noted that on average, appellant sorted parcels three to four hours a day, sorted letters and flats, pitched post office box mail, gathered return to sender mail, and performed computer data entry tasks.

By decision dated July 24, 2017, OWCP denied appellant's occupational disease claim. It accepted her employment duties as a clerk and that she had been diagnosed with a right hand condition, but denied her claim because the medical evidence of record was insufficient to establish causal relationship between appellant's right thumb conditions and her employment. OWCP determined that Dr. Hubbard referred to a specific lifting incident in December 2016, but failed to provide the date. While he attributed appellant's symptoms to that incident, Dr. Hubbard did not

² Appellant also provided a February 19, 2017 imaging study of the right hand.

provide medical rationale explaining how lifting packages and sorting mail and other work activities caused or aggravated appellant's right thumb tendinitis and basal joint synovitis.

On an appeal request form dated and postmarked August 30, 2017, appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.

Also provided was an August 2, 2017 letter from Dr. Hubbard in which he related appellant's account of the onset of radiating pain across the volar aspect of her right thumb when she lifted a five-pound package at work on December 8, 2016. Dr. Hubbard opined that this incident revealed previously asymptomatic basal joint arthrosis of the right thumb. He therefore asserted that appellant's "symptomatology for basal joint arthrosis [was] causally related to the incident as described."

By decision dated September 26, 2017, an OWCP hearing representative denied appellant's request for review of the written record as it was untimely filed. She noted that OWCP had issued its decision denying appellant's claim on July 24, 2017. The hearing representative found that as appellant's request for a review of the written record was postmarked on August 30, 2017, more than 30 days after OWCP's decision, it was untimely filed. After exercising her discretion, she further denied the request finding that the issue could be equally well addressed through a request for reconsideration before OWCP's district office.

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 by the weight of the reliable, probative, and substantial evidence⁴ including that an injury occurred in the performance of duty and that any specific condition or disability from work for which he or she claims compensation is causally related to that employment injury.⁵ In an occupational disease claim, appellant's burden requires submission of the following: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.⁶

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.⁷ The opinion of the physician must be based on a complete factual and medical background of the employee, must be

³ *Supra* note 1.

⁴ *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

⁵ *M.M.*, Docket No. 08-1510 (issued November 25, 2010); *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁶ *N.G.*, Docket No. 17-0190 (issued February 23, 2018); *R.H.*, 59 ECAB 382 (2008); *Ernest St. Pierre*, 51 ECAB 623 (2000).

⁷ *I.R.*, Docket No. 09-1229 (issued February 24, 2010); *D.I.*, 59 ECAB 158 (2007).

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 employee.⁸

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met her burden of proof to establish a right hand condition causally related to the accepted factors of her federal employment.

Appellant claimed that she sustained a right hand condition in the performance of duty on or before an unspecified date in December 2016. Dr. Hubbard, a Board-certified orthopedic surgeon specializing in hand surgery, diagnosed right thumb tendinitis and basal joint arthrosis. In a February 13, 2017 report, he noted that appellant had recently undergone surgical excision of a spur somewhere on her right hand or wrist, but did not describe the date or nature of the procedure. As appellant claimed an occupational condition of the right hand, the lack of detail about a contemporaneous surgery in the same region is a significant omission.

On June 7, 2017 Dr. Hubbard opined that appellant's symptoms were "causally related to the incident when she was picking up a package at work." He reiterated in a report dated July 5, 2017 that "[d]iscussion with [appellant] confirms that the incident when she lifted the package in December of 2016 was causally related to her current symptomatology." However, the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the right thumb condition had been caused by the identified employment factors, is sufficient to establish causal relationship.⁹ Dr. Hubbard did not provide his independent opinion explaining how any factors of appellant's federal employment would cause or contribute to the diagnosed right thumb conditions. Without explaining how physiologically the acts of lifting and sorting packages caused or contributed to the development of right thumb tendinitis and basal joint arthrosis, Dr. Hubbard's opinion is of limited probative value.¹⁰

The Board notes that OWCP notified appellant by development letter dated June 20, 2017 of the type of rationalized, well-reasoned medical opinion needed to establish that she sustained a right thumb condition as alleged. As appellant did not provide such evidence, she failed to meet her burden of proof.

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.

⁸ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

⁹ *Daniel O. Vasquez*, 57 ECAB 559 (2006).

¹⁰ *N.G.*, *supra* note 6. *See Lee R. Haywood*, 48 ECAB 145 (1996).

LEGAL PRECEDENT -- ISSUE 2

Section 8124(b)(1) of FECA, concerning a claimant's entitlement to a hearing before an OWCP hearing representative, provides: Before review under section 8128(a) of this title, a claimant for compensation not satisfied with a decision of the Secretary under subsection (a) of this section 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.¹¹

A hearing is a review of an adverse decision by an OWCP hearing representative. Initially, the claimant can choose between two formats: an oral hearing or a review of the written record. In addition to the evidence of record, the claimant may submit new evidence to the hearing representative.¹²

A request for either an oral hearing or a review of the written record must be sent, in writing, within 30 days of the date of the decision for which the hearing is sought.¹³ A claimant is not entitled to a hearing or a review of the written record if the request is not made within 30 days of the date of the decision.¹⁴

OWCP has discretion to grant or deny a request that is made after the 30-day period for requesting an oral hearing or review of the written record. In such a case, it will so advise the claimant with reasons.¹⁵

ANALYSIS -- ISSUE 2

By decision dated July 24, 2017, OWCP denied appellant's occupational disease claim. In an appeal request form and a letter dated and postmarked August 30, 2017, appellant requested a review of the written record. A request for a review of the written record must be made within 30 days after the date of the issuance of OWCP's final decision. The Board finds that OWCP's hearing representative properly determined, in her September 26, 2017 decision, that appellant's August 30, 2017 request for a review of the written record was untimely as it was filed more than 30 days after the issuance of OWCP's July 24, 2017 decision.

The Board further finds that OWCP's hearing representative properly exercised her discretion in denying appellant's request for a review of the written record by determining that the issue in the case could be addressed equally as well by requesting reconsideration and submitting

¹¹ 5 U.S.C. § 8124(b)(1).

¹² 20 C.F.R. § 10.615.

¹³ *James Smith*, 53 ECAB 188 (2001); *Id.* at § 10.616(a).

¹⁴ *See R.T.*, Docket No. 08-0408 (issued December 16, 2008).

¹⁵ *G.W.*, Docket No. 10-0782 (issued April 23, 2010).

new evidence relevant to the issue at hand.¹⁶ The Board has held that the only limitation on OWCP's discretionary 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 logic and probable deduction from established facts.¹⁷ In this case, the evidence of record does not indicate that OWCP abused its discretion in denying appellant's request for a review of the written record under these circumstances. Accordingly, the Board finds that OWCP properly denied appellant's request for a review of the written record.

On appeal appellant explains that she could not obtain an updated medical report from Dr. Hubbard within 30 days of OWCP's July 24, 2017 decision. She acknowledges that when she mailed her request for a review of the written record, "the 30 days were expired a couple of days." As set forth above, appellant's August 30, 2017 request for a review of the written record was untimely filed.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a right hand condition causally related to the accepted factors of her federal employment. The Board further finds that OWCP properly denied appellant's request for a review of the written record before a representative of its Branch of Hearings and Review as untimely filed, pursuant to 5 U.S.C. § 8124.

¹⁶ *D.P.*, Docket No. 14-0308 (issued April 21, 2014); *D.J.*, Docket No. 12-1332 (issued June 21, 2013); *Mary B. Moss*, 40 ECAB 640, 647 (1989).

¹⁷ *See R.G.*, Docket No. 16-0994 (issued September 9, 2016); *Teresa M. Valle*, 57 ECAB 542 (2006); *Daniel J. Perea*, 42 ECAB 214 (1990).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated September 26 and July 24, 2017 are affirmed.

Issued: April 19, 2018
Washington, DC

Patricia H. Fitzgerald, Deputy 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