

ISSUES

The issues are: (1) whether appellant has met her burden of proof to establish a knee injury causally related to the accepted December 5, 2016 employment incident; and (2) whether OWCP properly denied appellant's request for an oral hearing as untimely filed.

FACTUAL HISTORY

On December 7, 2016 appellant, then a 57-year-old management analyst, filed a traumatic injury claim (Form CA-1) alleging that on December 5, 2016 she was sitting in a chair at a table when she got up and tripped over the leg of a chair and fell hard to the floor. She noted that her kneecap hit the floor and immediately swelled and turned red. The employing establishment checked a box marked "yes" in response to whether appellant was in the performance of duty. Appellant stopped work that day.

In a December 5, 2016 treatment note, Dr. Leah Jacoby, Board-certified in emergency medicine, diagnosed left knee pain.

In December 12, 2016 reports, Dr. Dennis Carlini, a Board-certified orthopedic surgeon, noted that appellant related that she injured her left knee during a training class, when she tripped over a chair. He examined appellant and noted previous left knee issues and diagnosed prepatellar bursitis of the knee. Dr. Carlini placed appellant in a knee brace and recommended physical therapy.

On January 9, 2017 Dr. Carlini examined appellant, noted that she was somewhat improved and recommended continued physical therapy. He repeated his diagnosis of prepatellar bursitis of the left knee. Dr. Carlini recommended additional therapy. He also completed a certificate of disability and indicated that appellant was disabled from work for the period January 9 to 31, 2017. Dr. Carlini designated that appellant could return to work, full duty, without restrictions on February 1, 2017.

By development letter dated January 31, 2017, OWCP advised appellant that she initially filed a claim for a traumatic injury which originally appeared to be for a minor injury resulting in minimal or no lost time. It advised her that her claim was reopened because she had requested medical authorization. OWCP informed appellant of the type of factual and medical evidence needed to support her claim, which included responding to questions presented in a questionnaire. It afforded her 30 days to submit the requested evidence.

In a February 23, 2017 statement, appellant indicated that on December 5, 2016 she was attending a training class when she got out of her chair to walk. She explained that she tripped over the leg of a chair and fell to the floor. Appellant noted that the direct impact of the fall was to her left knee which was bent after she hit the floor. She advised that the instructor came to her aid. Appellant noted that the instructor also tripped over the leg of the chair, but that she did not fall. She explained that she could not move her leg and her knee bent and began to instantly swell. Thereafter, the instructor asked if she could get up and appellant responded that she could not. Appellant indicated that the instructor called 911 and that when she arrived in the emergency room (ER), the ER physician ordered x-rays of her knee to ensure there were no broken bones. She

explained that once he reviewed the x-rays, which revealed that no bones were broken, the physician informed her that her knee was bruised and sprained. Appellant noted that a leg brace was ordered to keep her knee secure until she could get an appointment with an orthopedic specialist.

Appellant noted that on December 12, 2016 she saw Dr. Carlini, who examined her knee and reviewed the ER report and x-rays. She advised that he prescribed icing, rest, an anti-inflammatory medication (oral and topical), physical therapy twice a week, and to follow up with him in one month. Appellant explained that it took almost three weeks before the swelling started to subside. She also noted that she attended physical therapy sessions and returned to work. Appellant explained that the physical therapy was helping her to recover. However, she explained that she was unable to complete the physical therapy prescribed by the doctor because after returning to work on February 1, 2017, while walking back to her desk, her left knee gave out and she fell to the floor in her office, reinjuring her left knee.

OWCP also received physical therapy notes from January 4 to February 6, 2017.

By decision dated March 13, 2017, OWCP denied appellant's claim, finding that it was insufficient to establish an injury causally related to the accepted work events. It noted that the December 12, 2016 report from Dr. Carlini listed multiple knee conditions. However, there was no medical evidence to differentiate the work-related knee conditions from the preexisting knee conditions. OWCP explained as they had not received a well-reasoned opinion from her physician linking the diagnoses to the December 5, 2016 injury, causal relationship could not be established.

On April 18, 2017 OWCP received appellant's request for a hearing. The postmark indicated that it was mailed on April 14, 2017.

OWCP also received physical therapy reports and December 15, 2016 x-rays of the left knee read by Dr. Nimisha Mehta, a radiologist.

By decision dated April 25, 2017, OWCP denied appellant's request for a hearing. It found that she was not entitled to a hearing for the reason that her request was not made within 30 days of the issuance of its March 13, 2017 decision. OWCP exercised its discretion and determined that it would not grant a hearing for the reason that the issue in the case could equally well be addressed by requesting reconsideration and submitting new evidence not previously considered pertaining to her claim for an injury in the performance of duty.

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,⁴ and that an injury was sustained in the performance of duty as alleged and that any specific condition or disability claimed is causally related to the employment

⁴ *Joe D. Cameron*, 41 ECAB 153 (1989).

injury.⁵ These are the essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁶

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether 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.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

Causal relationship is a medical issue and the evidence required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is evidence which includes a physician's opinion on the issue of whether there is 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, 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.⁹

Certain healthcare providers such as physician assistants, nurse practitioners, physical therapists, and social workers are not considered "physician[s]" as defined under FECA.¹⁰ Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.¹¹

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met her burden of proof to establish a knee injury causally related to the accepted December 5, 2016 employment incident.

⁵ *James E. Chadden, Sr.*, 40 ECAB 312, 314 (1988).

⁶ *Delores C. Ellyett*, 41 ECAB 992, 994 (1990).

⁷ *John J. Carlone*, 41 ECAB 354 (1989).

⁸ *Id.*

⁹ *I.J.*, 59 ECAB 408, 415 (2008).

¹⁰ 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t).

¹¹ *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006). A report from a physician assistant or certified nurse practitioner will be considered medical evidence if countersigned by a qualified physician. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013).

OWCP received copies of physical therapy notes from January 4 to February 6, 2017. However, they do not rise to the level of competent medical opinion evidence under FECA because physical therapists are not deemed physicians under FECA.¹²

In a December 5, 2016 treatment note, Dr. Jacoby diagnosed left knee pain. The Board has consistently held that pain is a symptom and not a compensable medical diagnosis.¹³ To establish a personal injury, the medical evidence of record must document a diagnosed condition and must explain how that condition is causally related to the accepted factors appellant's federal employment. Lacking a firm diagnosis and an opinion regarding the cause of appellant's condition, the report from Dr. Jacoby is of no probative value on the issue of causal relationship.¹⁴

In December 12, 2016 reports, Dr. Carlini, a Board-certified orthopedic surgeon, noted that appellant related that she injured her left knee during a training class when she tripped over a chair. He diagnosed prepatellar bursitis of the left knee, and recommended physical therapy. Dr. Carlini did not however provide any opinion on causal relationship. Furthermore, he did not offer any opinion on multiple knee conditions, which appeared to be preexisting. As such, this report is of no probative value on the issue of causal relationship and is therefore insufficient to establish appellant's claim.¹⁵

On January 9, 2017 Dr. Carlini repeated his diagnosis of prepatellar bursitis of the left knee and recommended additional therapy. Again, however, he did not offer any opinion regarding the cause of her conditions or differentiate between work-related knee conditions and preexisting knee conditions.¹⁶

Because the medical evidence of record is insufficient to address how the December 5, 2016 employment incident either caused or contributed to appellant's claimed left knee condition, appellant has not met 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.

LEGAL PRECEDENT -- ISSUE 2

Section 8124 of FECA provides that a claimant is entitled to a hearing before an OWCP representative when a request is made within 30 days after issuance of an OWCP final decision.¹⁷

¹² See *supra* notes 10 and 11.

¹³ *B.P.*, Docket No. 12-1345 (issued November 13, 2012); *C.F.*, Docket No. 08-1102 (issued October 2008).

¹⁴ See *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ 5 U.S.C. § 8124(b)(1).

Section 10.615 of Title 20 of the Code of Federal Regulations provides, “[a] hearing is a review of an adverse decision by a hearing representative. Initially, the claimant can choose between two formats: [a]n oral hearing or a review of the written record.”¹⁸

Under section 10.616(a), “[a] claimant injured on or after July 4, 1966, who had received a final adverse decision by the district OWCP may obtain a hearing by writing to the address specified in the decision. The hearing request must be sent within 30 days (as determined by postmark or other carrier’s date marking) of the date of the decision for which a hearing is sought.”¹⁹

OWCP’s regulations further provide that a request received more than 30 days after OWCP’s decision is subject to OWCP’s discretion²⁰ and the Board has held that OWCP must exercise this discretion when a hearing request is untimely.²¹

ANALYSIS -- ISSUE 2

A request for a hearing must be made within 30 days after the date of the issuance of an OWCP final decision. OWCP noted that appellant’s request for oral hearing was postmarked April 14, 2017. As the request was submitted more than 30 days following issuance of the March 13, 2017 decision, the Board finds that it was untimely filed and appellant was not entitled to an oral hearing as a matter of right.

OWCP has the discretionary power to grant an oral hearing even if the claimant is not entitled to a review as a matter of right. The Board finds that OWCP, in its April 25, 2017 decision, properly exercised its discretion by stating that it had considered the matter and had denied appellant’s request for oral hearing as her claim could be equally well addressed through a reconsideration application. 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, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deduction from established facts.²² In the present case, the evidence of record does not indicate that OWCP committed any abuse of discretion in connection with its denial of appellant’s request for an oral hearing.

¹⁸ 20 C.F.R. § 10.615.

¹⁹ *Id.* at § 10.616(a).

²⁰ *Id.* at § 10.616(b).

²¹ *Samuel R. Johnson*, 51 ECAB 612, 613-14 (2000).

²² *See Daniel J. Perea*, 42 ECAB 214, 221 (1990).

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a knee injury causally related to the accepted December 5, 2016 employment incident. Furthermore, the Board finds that OWCP properly denied appellant's request for a hearing as untimely filed.

ORDER

IT IS HEREBY ORDERED THAT the April 25 and March 13, 2017 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: December 18, 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