

abused its discretion in denying appellant's request for a review of the written record under 5 U.S.C. § 8124 as untimely filed.

FACTUAL HISTORY

On June 29, 2017 appellant, then a 49-year-old medical technician, filed a traumatic injury claim (Form CA-1) alleging that, on April 15, 2016,³ she sustained a right upper forearm injury when someone accidentally touched her or she accidentally touched something, resulting in a rash on her arm one week later. She reported that she subsequently tested positive for Hepatitis A. On the reverse side of the claim form, the employing establishment controverted the claim.

By development letter dated July 14, 2017, OWCP informed appellant that the evidence of record was insufficient to establish her claim. Appellant was advised of the factual and medical evidence needed and provided a questionnaire for her completion. She was afforded 30 days to respond. In a separate letter of the same date, OWCP similarly requested additional information from the employing establishment pertaining to appellant's traumatic injury claim.

In a June 5, 2017 statement, appellant explained that she did not complete an incident report at the time of occurrence because the incident happened on her last day of work in the emergency department and the rash did not develop until one week later. She reported that she continued to work for the employing establishment in a different department and detailed the June 2016 incident in her resignation letter from the emergency department. Appellant alleged that she subsequently had blood work done which revealed an illness from the claimed incident. No other evidence was received.

By decision dated August 25, 2017, OWCP denied appellant's claim, finding that the evidence of record was insufficient to establish that she sustained an injury. It found that the incident occurred as alleged, but the evidence submitted failed to provide a firm medical diagnosis which could be reasonably attributed to the accepted employment incident. OWCP noted that appellant failed to submit any medical evidence with her claim.

By appeal request form received on October 12, 2017, appellant requested review of the written record before an OWCP hearing representative. The request was postmarked October 6, 2017.

In a June 27, 2016 narrative statement received on October 16, 2017, appellant reported that her injury occurred on June 20, 2016, her last day of employment in the emergency department, when someone touched the skin on her arm with feces causing, her medical condition.

In support of her claim, appellant submitted medical reports and laboratory results dated November 7, 2016 through June 20, 2017 documenting treatment for her condition.

³ The Board notes that, while appellant's Form CA-1 reported the date of injury as April 15, 2016, she noted the date of notice as June 20, 2016. Appellant's subsequent narrative statements further refer to a June 20, 2016 date of injury, the last day of her employment in the emergency department. As such, the Board will utilize June 20, 2016 as the date of injury.

In a September 30, 2017 narrative statement, appellant described the circumstances surrounding the June 20, 2016 employment incident, diagnoses, and subsequent course of treatment.

By decision dated October 23, 2017, an OWCP hearing representative denied appellant's request for a review of the written record finding that her request was not made within 30 days of the August 25, 2017 OWCP decision. The hearing representative further determined that the issue in the case could equally well be addressed by requesting reconsideration from OWCP and submitting evidence not previously considered which established that she sustained a work-related injury.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA⁴ 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 or specific condition for which compensation is claimed are causally related to the employment injury.⁵ 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.⁶

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 which is alleged to have occurred.⁷ The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.

To establish causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence supporting such causal relationship.⁸ 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. This medical opinion must include an accurate history of the employee's employment injury and must explain how the condition is related to the injury. The weight of medical evidence is

⁴ *Supra* note 2.

⁵ *Gary J. Watling*, 52 ECAB 278 (2001); *Elaine Pendleton*, 40 ECAB 1143, 1154 (1989).

⁶ *Michael E. Smith*, 50 ECAB 313 (1999).

⁷ *Elaine Pendleton*, *supra* note 5 at 1143 (1989).

⁸ *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

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.⁹

ANALYSIS -- ISSUE 1

The Board finds that appellant has not established that she sustained an injury causally related to the accepted June 20, 2016 employment incident.

OWCP accepted that the employment incident occurred as alleged. The issue, therefore, is whether appellant submitted sufficient medical evidence to establish that the employment incident caused an injury. The Board finds that she did not submit any medical evidence to support a firm diagnosis which could be related to the accepted employment incident.¹⁰

The only evidence of record is appellant's (Form CA-1) and a June 5, 2017 statement alleging a right arm rash and Hepatitis A as a result of the June 20, 2016 employment incident. By letter dated July 14, 2017, OWCP informed her of the medical evidence needed in order to establish her claim. Appellant did not respond and failed to submit any evidence, medical or otherwise. The Board notes that the underlying issue in this case was whether she sustained an injury causally related to the accepted June 20, 2016 employment incident. That is a medical issue which must be addressed by relevant medical evidence.¹¹ In this case, appellant failed to submit any medical evidence addressing a medical diagnosis and causal relationship in support of her claim.¹²

The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference of causal relation.¹³ An award of compensation may not be based on surmise, conjecture, speculation, or on the employee's own belief of causal relation.¹⁴ To establish a firm medical diagnosis and causal relationship, appellant must submit a physician's report in which the physician reviews the established incident or factors of employment alleged to have caused her condition and, taking these factors into consideration, as well as findings upon examination and her medical history, explain how the incident or factors of employment caused or aggravated any diagnosed condition, and present medical rationale in support of his opinion.¹⁵

In the instant case, the record is without rationalized medical evidence establishing a diagnosed medical condition causally related to the accepted employment incident. Thus,

⁹ *James Mack*, 43 ECAB 321 (1991).

¹⁰ *Id.*

¹¹ *See Bobbie F. Cowart*, 55 ECAB 746 (2004).

¹² *C.B.*, Docket No. 08-1583 (issued December 9, 2008).

¹³ *Daniel O. Vasquez*, 57 ECAB 559 (2006).

¹⁴ *D.D.*, 57 ECAB 734 (2006).

¹⁵ *See Robert Broome*, 55 ECAB 339 (2004).

appellant has not met her burden of proof to establish an injury causally related to the accepted employment incident.¹⁶

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, concerning a claimant's entitlement to a hearing before a representative of OWCP's Branch of Hearings and Review, provides in pertinent part: "Before review under section 8128(a) of this title, 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 Section 10.615 of the federal regulations implementing this section of FECA provides that a claimant shall be afforded a choice of an oral hearing or a review of the written record.¹⁸ As section 8124(b)(1) is unequivocal in setting forth the time limitation for requesting a hearing, a claimant is not entitled to a hearing as a matter of right unless the request is made within the requisite 30 days.¹⁹ OWCP's regulations and the Board precedent provide that the request for an oral hearing or review of the written record must be sent within 30 days of the date of issuance of the decision (as determined by the postmark or other carrier's date marking) for which an oral hearing or review of the written record is sought.²⁰

The Board has held that OWCP, in its broad discretionary authority in the administration of FECA,²¹ has the power to hold hearings in certain circumstances where no legal provision was made for such hearings and that OWCP must exercise this discretionary authority in deciding whether to grant a hearing.²² OWCP procedures, which require OWCP to exercise its discretion to grant or deny a hearing when the request is untimely or made after reconsideration, are a proper interpretation of FECA and Board precedent.²³

ANALYSIS -- ISSUE 2

The Board finds that OWCP's hearing representative properly found in the October 23, 2017 decision that appellant was not entitled to an oral hearing or examination of the written record

¹⁶ *Id.*

¹⁷ 5 U.S.C. § 8124(b)(1).

¹⁸ 20 C.F.R. § 10.615.

¹⁹ *Ella M. Garner*, 36 ECAB 238, 241-42 (1984).

²⁰ *Supra* note 6 at § 10.616(a).

²¹ *Supra* note 2.

²² *Marilyn F. Wilson*, 52 ECAB 347 (2001).

²³ *Teresa M. Valle*, 57 ECAB 542 (2006).

as a matter of right because her request was not made within 30 days of its August 25, 2017 decision.²⁴

In the present case, appellant requested review of the written record and OWCP found that the reconsideration request was postmarked on October 6, 2017. Her request was made more than 30 days after the date of issuance of OWCP's prior August 25, 2017 merit decision.²⁵ The time limitation to request a review of the written record by OWCP's Branch of Hearings and Review expired on September 25, 2017, 30 days after the August 25, 2017 decision.²⁶ Therefore, OWCP properly found in its October 23, 2017 decision that appellant was not entitled to an oral hearing or examination of the written record as a matter of right because her request was not made within 30 days of its August 25, 2017 decision.²⁷

While OWCP also has the discretionary power to grant a hearing when a claimant is not entitled to a hearing as a matter of right, OWCP's hearing representative, in her October 23, 2017 decision, properly exercised her discretion by indicating that she had carefully considered appellant's request and had determined that the issue of the case could equally well be addressed by requesting reconsideration and submitting additional evidence in support of her claim for a work-related traumatic injury. 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.²⁸ In this case, the evidence of record does not indicate that OWCP abused its discretion in its denial of appellant's request for review of the written record. Accordingly, the Board finds that OWCP properly denied her request.²⁹

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish an injury causally related to the accepted June 20, 2016 employment incident. The Board also finds that OWCP properly denied her request for a review of the written record under 5 U.S.C. § 8124 as it was untimely filed.

²⁴ *Supra* note 19; Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.4(a) (October 2011).

²⁵ *J.A.*, Docket No. 17-1744 (issued January 9, 2018).

²⁶ The Board notes that the 30-day time limitation ran on Sunday, September 24, 2017. Because the time limitation expired on a nonbusiness day, the limitation is extended to include the next business day and did not expire until Monday, September 25, 2017. *See M.H.*, Docket No. 13-1901 (issued January 8, 2014); *Debra McDavid*, 57 ECAB 149, 150 (2005); *Angel M. Lebron, Jr.*, 51 ECAB 488, 490 (2000); *Gary J. Martinez*, 41 ECAB 427, 427-28 (1990).

²⁷ *Supra* note 23.

²⁸ *Daniel J. Perea*, 42 ECAB 214, 221 (1990).

²⁹ *D.P.*, Docket No. 14-0308 (issued April 21, 2014); *D.J.*, Docket No. 12-1332 (issued June 21, 2013).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decisions dated October 23 and August 25, 2017 are affirmed.

Issued: July 2, 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