

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

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| C.L., Appellant |) | |
| |) | |
| and |) | Docket No. 18-0213 |
| |) | Issued: June 18, 2018 |
| U.S. POSTAL SERVICE, PLANO COIT |) | |
| STATION, Plano, TX, Employer |) | |
| |) | |

Appearances:
Jennifer D. Fulbright, for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On November 7, 2017 appellant, through his representative, filed a timely appeal from a July 31, 2017 merit decision and an October 10, 2017 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.³

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that, following the issuance of OWCP's October 10, 2017 decision, appellant submitted new evidence. The Board is precluded from reviewing evidence which was not before OWCP at the time it issued its final decision. Thus, the Board may not consider the new evidence for the first time on appeal. 20 C.F.R. § 501.2(c)(1).

ISSUES

The issues are: (1) whether appellant met his burden of proof to establish back and right wrist conditions causally related to the accepted June 10, 2017 employment incident; and (2) whether OWCP properly denied appellant's request for an oral hearing as untimely filed pursuant to 5 U.S.C. § 8124.

FACTUAL HISTORY

On June 22, 2017 appellant, then a 53-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that, on June 10, 2017, he experienced tightness in his lower back and shooting pain in his right wrist while pushing a "gondola" loaded with mail and parcels while at work. He did not indicate whether he had stopped work.

In a June 23, 2017 memorandum, the employing establishment controverted the claim, contending that appellant neither immediately reported an incident to management, nor mentioned having any pain due to the alleged June 10, 2017 employment incident.

By development letter dated June 30, 2017, OWCP advised appellant of the deficiencies of his claim and afforded him 30 days to submit additional factual and medical evidence. It also requested that the employing establishment submit treatment notes if appellant was treated at an employing establishment medical facility.

In a July 17, 2017 right wrist magnetic resonance imaging (MRI) scan report, Dr. Nicholas G. Iwasko, a Board-certified radiologist, provided an impression of chondromalacia, cyst formation, and edema within the lunate and to a lesser extent within the capitate and scaphoid, which could be due to underlying carpal instability or abnormal joint mechanics. He advised that a magnetic resonance arthrogram should be performed to evaluate for underlying intercarpal ligament tears or a triangular fibrocartilage complex tear. Dr. Iwasko reported an increased signal was present within the triangular fibrocartilage complex (TFCC), which could be due to a tear or TFCC degeneration. He also reported tricompartmental wrist effusions and a grade 1 strain of the extensor carpi ulnaris tendon with mild generalized extensor tenosynovitis.

By decision dated July 31, 2017, OWCP denied appellant's traumatic injury claim, finding that the medical evidence of record did not contain a medical diagnosis in connection with the accepted June 10, 2017 employment incident.

OWCP received a series of medical reports from Dr. Charles E. Willis, II, an attending Board-certified anesthesiologist. In reports dated July 11 and August 4, 2017, Dr. Willis examined appellant, diagnosed right wrist and lumbar strain, and opined that the diagnosed conditions were caused by the accepted June 10, 2017 employment incident. In additional reports dated August 15 to September 12, 2017, he addressed appellant's right wrist condition, disability status, and physical restrictions.

OWCP also received reports dated August 22, 2017 from Dr. Tuong Huu Le, a Board-certified radiologist, and Dr. Iwasko who discussed the findings of a right wrist arthrogram and a

post-right wrist magnetic resonance arthrogram, respectively. Dr. Huu Le noted that appellant had right wrist pain with a history of a work-related injury.

In an appeal request form and letter dated September 1, 2017, appellant requested an oral hearing before an OWCP hearing representative. The envelope containing the form and letter was postmarked September 6, 2017 and was received by OWCP on September 12, 2017.

In an additional report and a work capacity evaluation (Form OWCP-5c) dated September 12, 2017, Dr. Willis discussed findings on physical examination and appellant's response to physical therapy and disability status.

By decision dated October 10, 2017, OWCP denied appellant's hearing request as it was untimely filed. It found that the request was postmarked September 6, 2017, which was not within 30 days of the issuance of its July 31, 2017 decision. After exercising its discretion, OWCP further found that the issue in the case could be equally well addressed through the reconsideration process.

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 by the weight of the reliable, probative, and substantial evidence⁵ including that he or she sustained an injury in the performance of duty and that any specific condition or disability for work for which he or she claims compensation is causally related to that employment injury.⁶

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established.⁷ There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time and place, and in the manner alleged.⁸

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.⁹ The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon complete factual and medical background, showing a causal relationship between the claimed condition and the identified

⁴ *Supra* note 2.

⁵ *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

⁶ *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁷ *S.P.*, 59 ECAB 184 (2007); *Alvin V. Gadd*, 57 ECAB 172 (2005).

⁸ *Bonnie A. Contreras*, 57 ECAB 364 (2006); *Edward C. Lawrence*, 19 ECAB 442 (1968).

⁹ *John J. Carlone*, 41 ECAB 354 (1989); *see* 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. §§ 10.5(ee), 10.5(q) (traumatic injury and occupational disease defined, respectively).

factors.¹⁰ The belief of the claimant that a condition was caused or aggravated by employment is insufficient to establish a causal relationship.¹¹

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met his burden of proof to establish back and right wrist injuries caused or aggravated by the accepted June 10, 2017 employment incident. Appellant failed to submit sufficient medical evidence to establish that he had back and right wrist conditions causally related to the accepted employment incident.

In a July 17, 2017 diagnostic test report, Dr. Iwasko addressed appellant's right wrist conditions, but failed to offer a medical opinion addressing whether the diagnosed conditions were caused or aggravated by the June 10, 2017 employment incident. The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.¹²

Appellant has not submitted rationalized, probative medical evidence sufficient to establish back and right wrist injuries causally related to the June 10, 2017 employment incident. He therefore has not met his burden of proof.

On appeal appellant's representative contends that appellant thought his physician's office had submitted everything on his behalf. She further contends that appellant's injury is real and supported by documentation. For the reasons stated above, the Board finds that the medical evidence submitted prior to OWCP's July 31, 2017 merit decision does not establish that appellant sustained back and right wrist conditions causally related to the accepted June 10, 2017 work incident.

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 his or her claim before a representative of the Secretary.¹³ 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

¹⁰ *Lourdes Harris*, 45 ECAB 545 (1994); see *Walter D. Morehead*, 31 ECAB 188 (1979).

¹¹ *Kathryn Haggerty*, 45 ECAB 383, 389 (1994).

¹² See *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *A.D.*, 58 ECAB 149 (2006).

¹³ 5 U.S.C. § 8124(b)(1).

representative of the Secretary.¹⁴ 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 carrier's date marking and before the claimant has requested reconsideration.¹⁵ 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 appellant's request and must exercise its discretion.¹⁶ OWCP procedures require that it exercise its discretion to grant or deny a hearing when the request is untimely or made after reconsideration under section 8128(a).¹⁷

ANALYSIS -- ISSUE 2

A request for a hearing or review of the written record must, as noted above, be made within 30 days after the date of the issuance of a final OWCP decision. Appellant's September 1, 2017 hearing request was postmarked on September 6, 2017, more than 30 days after the issuance of OWCP's July 31, 2017 decision. Because the postmark date was more than 30 days after the date of OWCP's July 31, 2017 decision, the Board finds that the request was untimely filed and he was not entitled to an oral hearing as a matter of right.¹⁸

The Board further finds that OWCP properly exercised its discretion in denying appellant's request for a hearing because the issue could equally well be addressed by requesting reconsideration and submitting new evidence relevant to the issue at hand.¹⁹ 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.²⁰ In this case, the evidence of record does not indicate that OWCP abused its discretion in denying appellant's request for an oral hearing under these circumstances. Accordingly, the Board finds that OWCP properly denied his request for a hearing as untimely filed under section 8124.²¹

CONCLUSION

The Board finds that appellant has failed to meet his burden of proof to establish back and right wrist conditions causally related to the accepted June 10, 2017 employment incident. The

¹⁴ 20 C.F.R. §§ 10.616, 10.617.

¹⁵ *Id.* at § 10.616(a).

¹⁶ *Eddie Franklin*, 51 ECAB 223 (1999); *Delmont L. Thompson*, 51 ECAB 155 (1999).

¹⁷ See *R.T.*, Docket No. 08-0408 (issued December 16, 2008); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Review of the Written Record*, Chapter 2.1601.2(a) (October 2011).

¹⁸ The 30-day period for determining the timeliness of an employee's request for an oral hearing or review commences the day after the issuance of OWCP's decision. See *Donna A. Christley*, 41 ECAB 90 (1989).

¹⁹ *M.H.*, Docket No. 15-0774 (issued June 19, 2015).

²⁰ *Daniel J. Perea*, 42 ECAB 214, 221 (1990).

²¹ *R.P.*, Docket No. 16-0554 (issued May 17, 2016).

Board further finds that OWCP properly denied appellant's request for an oral hearing as untimely filed pursuant to 5 U.S.C. § 8124.

ORDER

IT IS HEREBY ORDERED THAT the October 10 and July 31, 2017 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: June 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