

FACTUAL HISTORY

On September 7, 2017 appellant, then a 63-year-old rural carrier, filed an occupational disease claim (Form CA-2) alleging that she sustained an injury while in the performance of duty. She indicated that she first became aware of her claimed condition and related it to factors of her federal employment on May 31, 2017. On the reverse side of the claim form the employing establishment indicated that appellant stopped work on August 24, 2017 and has not returned.

OWCP received a report dated March 27, May 31, June 21, August 24, and September 8, 2017 from Dr. Herbert Kunkle, Jr., a Board-certified orthopedic surgeon. In the March 27, 2017 report, Dr. Kunkle related that appellant was a right-handed mail carrier who had experienced at least six months of right hand tingling, numbness, weakness and a “band” radiating up her right arm and shoulder. He indicated that “it seems like she has over use tenosynovitis along with a carpal tunnel in the right hand.” Dr. Kunkle diagnosed right wrist pain, transient synovitis of the right wrist, and carpal tunnel syndrome of the right wrist. He also treated appellant on May 31 and June 21, 2017. Dr. Kunkle performed a right carpal tunnel release on August 24, 2017 and saw her for follow up on September 8, 2017.

OWCP also received an August 18, 2017 nurse’s note and a May 17, 2017 electromyography study which was interpreted as within normal limits.

By development letter dated October 16, 2017, OWCP informed appellant that additional factual and medical evidence was necessary to establish her claim. It explained that she had not alleged employment factors or activities which she believed caused her condition. OWCP requested that appellant complete a questionnaire describing those activities. It also informed her that rationalized medical evidence from a physician establishing causal relationship between a diagnosed condition and alleged employment factors was necessary to establish her claim. OWCP afforded appellant 30 days to submit the necessary evidence.

In response, OWCP received a September 28, 2017 attending physician’s report (Form CA-20) from Dr. Kunkle, who explained that appellant’s pain worsened over a period of time. Dr. Kunkle checked a box marked “no” in response to whether appellant had a preexisting condition. He diagnosed: pain in right wrist; transient synovitis, right wrist; and carpal tunnel syndrome. Dr. Kunkle checked a box marked “yes” in response to whether he believed the conditions were caused or aggravated by an employment activity and added in “consistent use.” He indicated that appellant had been disabled from August 24 to September 28, 2017 and indicated she could resume work. OWCP also received an October 2, 2017 light-duty form from Dr. Kunkle, who indicated that he last saw appellant on September 28, 2017. Dr. Kunkle noted that appellant did not have any physical restrictions.

OWCP received nurses’ notes dated September 28 and October 17, 2017.

In an October 28, 2017 response, appellant indicated that her employment duties included the casing of raw mail and delivery point sequence (DPS) mail and pulling down of mail and delivery of mail. She indicated that she had performed these duties for over 10 years on an intermittent basis for up to 8 hours and continuously for up to 4 hours. Appellant advised that she first noticed her condition in March 2017. She indicated that she had pain, swelling, stiffness, and

stabbing pain, of the right wrist which was continuous. Appellant also noted that she was not able to hold the mail in her hand while casing mail and that her condition was worsened by “everyday work.” She confirmed that she was claiming an occupational disease.

In an October 31, 2017 statement, the postmaster advised that he concurred with appellant’s statements. He noted her repetitive hand and wrist movements included: casing mail; pulling down; and delivery of mail on a daily basis.

By decision dated December 20, 2017, OWCP found that appellant had established the alleged employment factors and that she had been diagnosed with a medical condition. However, it denied her claim as the medical evidence did not demonstrate that her right wrist conditions were causally related to the accepted employment factors.

On an appeal request form dated March 13, 2018 appellant requested a review of the written record before an OWCP hearing representative. Her request was postmarked March 13, 2018 and received by OWCP on March 23, 2018. OWCP continued to receive medical evidence.

By decision dated April 2, 2018, OWCP determined that appellant was not entitled to an oral hearing or a review of the written record as a matter of right under section 8124(b) because her March 13, 2018 request was not made within 30 days of the December 20, 2017 merit decision. Appellant considered whether to grant a discretionary hearing or a review of the written record on her case, but determined that the matter could be equally well addressed by appellant requesting reconsideration and providing new evidence supporting that she sustained an employment-related condition.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA has the burden of establishing the essential elements of his or her claim including the fact that the individual is an employee of the United States within the meaning 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.² 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.³

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is

² *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

³ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *Victor J. Woodhams*, 41 ECAB 345 (1989).

claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.⁴

The medical evidence required to establish causal relationship, generally, is rationalized medical opinion 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.⁵

ANALYSIS -- ISSUE 1

The Board finds that appellant has not established that her right wrist conditions were causally related to the accepted factors of her federal employment.

In a March 27, 2017 report, Dr. Kunkle diagnosed transient synovitis on the right wrist, and carpal tunnel syndrome. However, this report did not opine as to whether appellant's employment factors as a rural mail carrier caused or aggravated the diagnosed conditions. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.⁶ Therefore, this report is insufficient to establish appellant's claim.

Dr. Kunkle treated appellant on May 31 and June 21, 2017. He performed a right carpal tunnel release on August 24, 2017. Dr. Kunkle saw her for follow up on September 8, 28 and October 2, 2017; however, he merely noted that appellant did not have any restrictions. He did not offer an opinion regarding causal relationship in these reports. Thus, they are of no probative value in establishing causal relationship.⁷

In a September 28, 2017 attending physician's report, Dr. Kunkle diagnosed: pain in right wrist; transient synovitis, right wrist; and carpal tunnel syndrome. He checked the box marked "yes" indicating that he believed the conditions were caused or aggravated by an employment activity. The Board has held, however, that when a physician's opinion on causal relationship consists only of checking a box marked "yes" to a form question, without explanation or rationale, that opinion has limited probative value and is insufficient to establish a claim.⁸ As such

⁴ *C.D.*, Docket No. 17-2011 (issued November 6, 2018); *Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

⁵ *Id.*

⁶ *See M.H.*, Docket No. 18-1737 (issued March 13, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

⁷ *Id.*

⁸ *M.O.*, Docket No. 18-1056 (issued November 6, 2018). *See Deborah L. Beatty*, 54 ECAB 340 (2003).

Dr. Kunkle has not provided a rationalized medical explanation as to how appellant's employment factors caused her diagnosed conditions. His reports are therefore of limited probative value.⁹

The August 18, September 28, and October 17, 2017 nurses' notes are also insufficient to establish the claim. Health care providers such as nurses, physician assistants, and physical therapists are not considered "physician[s]" as defined under FECA.¹⁰ Thus, a nurse's opinion does not constitute competent medical evidence¹¹ and has no probative value.¹²

OWCP also received evidence of diagnostic testing. The Board, however, has held that diagnostic tests lack probative value as they do not provide an opinion on causal relationship between appellant's employment factors and a diagnosed condition.¹³

As there is no reasoned medical evidence explaining how appellant's employment duties caused or aggravated her right wrist condition, appellant has not met her burden of proof to establish that her right wrist conditions were causally related to the accepted factors of her federal employment.

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 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."¹⁴

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.¹⁵ A request for either an oral hearing or a review of the written record must be

⁹ *Id.*

¹⁰ 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). 5 U.S.C. § 8102(2) of FECA provides that 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 also Roy L. Humphrey*, 57 ECAB 238 (2005).

¹¹ *See T.F.*, Docket No. 17-0645 (issued August 15, 2018) (the Board has long held that nurses are not considered physicians under FECA and are therefore not competent to render a medical opinion).

¹² *R.A.*, Docket No. 17-1498 (issued August 1, 2018).

¹³ *T.H.*, Docket No. 18-1736 (issued March 13, 2019); *S.G.*, Docket No. 17-1054 (issued September 14, 2017).

¹⁴ 5 U.S.C. § 8124(b)(1).

¹⁵ 20 C.F.R. § 10.615.

sent, in writing, within 30 days of the date of the decision for which the hearing is sought.¹⁶ 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.¹⁷

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 and must properly exercise such discretion.¹⁸

ANALYSIS -- ISSUE 2

The Board finds that OWCP did not abuse its discretion by denying appellant's request for review of the written record before an OWCP hearing representative pursuant to 5 U.S.C. § 8124.

OWCP properly determined that appellant's request for a review of the written record was untimely filed. Its regulations provide that the hearing request or request for a review of the written record must be sent within 30 days of the date of the decision for which a hearing is sought.¹⁹ As appellant's request was postmarked March 13, 2018, more than 30 days after OWCP's December 20, 2017 decision, it was untimely filed and she was not entitled to an oral hearing or a review of the written record as a matter of right.²⁰

The Board further finds that OWCP properly exercised its 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 well through a request for reconsideration and the submission of new evidence relevant to the issue at hand.²¹ 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.²² In this case, the evidence of record does not establish that OWCP abused its discretion in denying appellant's request for a review of the written record. Accordingly, the Board finds that OWCP properly denied her request for a review of the written record.²³

¹⁶ *Id.* at § 10.616(a); *G.W.*, Docket No. 10-0782 (issued April 23, 2010); *James Smith*, 53 ECAB 188 (2001).

¹⁷ *See S.M.*, Docket No. 17-1876 (issued January 24, 2018); *R.T.*, Docket No. 08-0408 (issued December 16, 2008).

¹⁸ 20 C.F.R. § 10.616(b); *see also F.M.*, Docket No. 18-0161 (issued May 18, 2018).

¹⁹ *See supra* note 17.

²⁰ *See W.C.*, Docket No. 18-1651 (issued March 7, 2019).

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

²² *See R.G.*, Docket No. 16-0994 (issued September 9, 2016); *Teresa M. Valle*, 57 ECAB 542 (2006).

²³ *See J.O.*, Docket No. 17-0789 (issued May 15, 2018).

CONCLUSION

The Board finds that appellant has not established that her right wrist conditions were causally related to the accepted factors of her federal employment. The Board further finds that OWCP properly denied her request for a review of the written record before an OWCP hearing representative, pursuant to 5 U.S.C. § 8124.

ORDER

IT IS HEREBY ORDERED THAT the April 2, 2018 and December 20, 2017 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: April 18, 2019
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