

FACTUAL HISTORY

On March 1, 2018 appellant, then a 37-year-old border patrol agent, filed a traumatic injury claim (Form CA-1) alleging that he sustained a bruise to his left foot on February 25, 2018 when a horse he was grooming stepped on his foot while in the performance of duty. He stopped work on February 26, 2018 and returned on March 1, 2018.

On February 26, 2018 the employing establishment executed an authorization for examination and/or treatment (Form CA-16) authorizing medical treatment for appellant's February 25, 2018 employment incident. The reverse side of the form, the attending physician's report, was completed on February 26, 2018 by a nurse practitioner, who indicated that appellant sustained a contusion to his left foot when he was "stepped on by a horse." She checked the box marked "yes" indicating that the condition had been caused or aggravated by an employment activity and recommended light work. The nurse practitioner completed a patient's work status report on February 26, 2018, and noted that appellant was cleaning horses' feet when a horse stepped on his left foot. She prescribed light-duty work.

OWCP received a March 1, 2018 duty status report (Form CA-17) from a physician assistant who noted that appellant was engaged in cleaning horses' feet when a horse stepped on his left foot. The physician assistant diagnosed contusion of left foot and released him to work without restrictions on March 2, 2018. The March 1, 2018 duty status report was countersigned by Dr. Hersh V. Goel, a general practitioner.

In a development letter dated March 6, 2018, OWCP advised appellant of the additional evidence that was needed to establish his claim. It explained that the evidence then of record included reports that were signed by a physician assistant, or nurse practitioner, but these medical providers were not considered physicians under FECA, and thus their reports were not considered as medical evidence, because they had not been countersigned by a physician within the meaning of FECA. OWCP afforded appellant 30 days to submit the necessary medical evidence.

A February 26, 2018 x-ray of the left foot read by Dr. Laura Taylor, a family medicine specialist, revealed no acute left foot abnormality.

OWCP received a February 26, 2018 report from a nurse, March 1, 2018 treatment notes from a physician assistant, a copy of a March 1, 2018 work status report from a physician assistant, and a copy of the previously submitted March 1, 2018 duty status report, which had been countersigned by Dr. Goel.

By decision dated April 5, 2018, OWCP denied appellant's claim. It accepted that the February 25, 2018 employment incident occurred as alleged, but denied the claim, finding that appellant had not met his burden of proof to establish causal relationship between the accepted employment incident and a diagnosed condition. OWCP found that they were not signed by a physician.

OWCP then received another copy of the March 1, 2018 duty status report countersigned by Dr. Goel.

On June 6, 2018 OWCP received a request for a telephonic hearing before an OWCP hearing representative. The hearing request was dated April 17, 2018, but the envelope was postmarked May 25, 2018.

By decision dated June 28, 2018, OWCP denied appellant's request for a hearing. It found that the request was untimely as it was not made within 30 days of the April 5, 2018 decision. OWCP exercised its discretion and determined that it would not grant a hearing because the issue in the case could equally well be addressed by requesting reconsideration and submitting new evidence not previously considered pertaining to appellant's claim for an injury causally related to his accepted February 25, 2018 employment incident.

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,² that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.³ 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.⁴

To determine if an employee has sustained a traumatic 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 that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred.⁵ The second component is whether the employment incident caused a personal injury.⁶

Rationalized medical opinion evidence is required to establish causal relationship. 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 incident.⁷

² *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

³ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁴ *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁵ *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁶ *M.H.*, Docket No. 18-1737 (issued March 13, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

⁷ *S.S.*, Docket No. 18-1488 (issued March 11, 2019).

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met his burden of proof to establish a medical condition causally related to the accepted employment incident.

In support of his claim appellant has submitted to reports which bear the signature of a physician. First, he submitted a February 26, 2018 diagnostic report by Dr. Laura Taylor. Although the report is signed by a physician, the Board has held that diagnostic studies lack probative value as they do not address whether the employment incident caused any of the diagnosed conditions.⁸ Therefore the February 26, 2018 diagnostic report is insufficient to establish causal relationship as it does not provide an opinion on causal relationship. Second, appellant submitted a duty status report (Form CA-17) which was countersigned by Dr. Goel.⁹ The duty status report is merely a form report and does not contain an opinion on whether the accepted employment incident was sufficient to cause a left foot contusion. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.¹⁰ This duty status report is, therefore, insufficient to establish appellant's claim.

The remainder of the medical evidence of record was prepared by a nurse practitioner and a physician assistant. As neither provider is considered a physician as defined under FECA, these reports are of no probative value and are insufficient to establish causal relationship.¹¹

The Board thus finds that appellant has not presented a medical report from a physician which provides a rationalized medical opinion on the issue of causal relationship and therefore he has not met his burden of proof to establish his claim.

⁸ See *J.S.*, Docket No. 17-1039 (issued October 6, 2017).

⁹ 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).

¹⁰ See *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹¹ 5 U.S.C. § 8101(2) (this subsection defines a physician as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by state law); 20 C.F.R. § 10.5(t). See also *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses and physical therapists are not competent to render a medical opinion under FECA); *K.S.*, Docket No. 18-0954 (issued February 26, 2019); *K.W.*, 59 ECAB 271, 279 (2007).

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 10.607.¹²

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.¹³

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: An oral hearing or a review of the written record.”¹⁴

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.”¹⁵

OWCP’s regulations further provide that a request received more than 30 days after OWCP’s decision is subject to OWCP’s discretion and the Board has held that OWCP must exercise this discretion when a hearing request is untimely.¹⁶

ANALYSIS -- ISSUE 2

The Board finds that OWCP has not abused its discretion by denying appellant’s request for an oral hearing as untimely filed, pursuant to 5 U.S.C. § 8124(b).

Appellant requested an oral hearing utilizing the appeal request form that accompanied OWCP’s April 5, 2018 merit decision. His request was postmarked May 25, 2018, which was

¹² On return of the case record OWCP shall also review the Form CA-16 of record. The Board notes that the employing establishment issued appellant a signed authorization for examination and/or treatment (Form CA-16) authorizing medical treatment. The Board has held that where an employing establishment properly executes a CA-16 form, which authorizes medical treatment as a result of an employee’s claim for an employment-related injury, it creates a contractual obligation which does not involve the employee directly to pay the cost of the examination or treatment regardless of the action taken on the claim. *See* 20 C.F.R. §§ 10.300, 10.304; *R.W.*, Docket No. 18-0894 (issued December 4, 2018).

¹³ 5 U.S.C. § 8124(b)(1).

¹⁴ 20 C.F.R. § 10.615.

¹⁵ *Id.* at § 10.616(a).

¹⁶ *D.W.*, Docket No. 17-1413 (issued December 18, 2018); *Samuel R. Johnson*, 51 ECAB 612, 613-14 (2000).

more than 30 days after OWCP's April 5, 2018 decision.¹⁷ Section 8124 (b)(1) is unequivocal on the time limitation for requesting a hearing.¹⁸ For this reason, the Board finds that the request for an oral hearing was untimely and appellant was not entitled to an oral hearing as a matter of right.

Although appellant was not entitled to a hearing, OWCP may exercise its discretion to either grant or deny an oral hearing even if appellant is not entitled to a review as a matter of right.¹⁹ The Board finds that OWCP, in its June 28, 2018 decision, properly exercised its discretionary authority by noting that it had carefully considered the matter and denied appellant's request for an oral hearing as his claim could be equally well addressed through a reconsideration application.²⁰

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.²¹ Herein, the evidence of record does not indicate that OWCP committed an abuse of discretion in connection with its denial of appellant's request for an oral hearing.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a medical condition causally related to the accepted employment incident. The Board also finds that OWCP has not abused its discretion by denying appellant's request for an oral hearing as untimely filed, pursuant to 5 U.S.C. § 8124(b).

¹⁷ Under OWCP regulations and procedures, the timeliness of a request for a hearing is determined on the basis of the postmark of the envelope containing the request. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.4(a) (October 2011).

¹⁸ *J.G.*, Docket No. 19-0555 (issued March 14, 2019); *William F. Osborne*, 46 ECAB 198 (1994).

¹⁹ *D.E.*, 59 ECAB 438, 442-43 (2008); *J.C.*, 59 ECAB 206, 210-11 (2007).

²⁰ 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 deductions from known facts. See *E.S.*, Docket No. 18-1750 (issued March 11, 2019); *André Thyratron*, 54 ECAB 257, 261 (2002).

²¹ See *T.M.*, Docket No. 18-1418 (issued February 7, 2019); *Daniel J. Perea*, 42 ECAB 214, 221 (1990).

ORDER

IT IS HEREBY ORDERED THAT the April 5, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 12, 2019
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board