



OWCP properly denied appellant's request for an oral hearing before an OWCP hearing representative as untimely filed under 5 U.S.C. § 8124(b).

### **FACTUAL HISTORY**

On August 17, 2018 appellant, then a 60-year-old food service worker, filed an occupational disease claim (Form CA-2) alleging that he contracted dyshidrotic dermatitis, a skin condition, as a result of his federal employment duties which included washing dishes and working in the dish room. He first became aware of his condition on December 1, 2017 and first attributed it to factors of his federal employment on that date. On the reverse side of the CA-1 form, appellant's supervisor listed appellant's duties as washing carts, feeding and unloading the dish machine, assorting silverware, driving food carts, and delivering trays to patients.

In an August 30, 2018 development letter, OWCP advised appellant of the deficiencies of his claim. It requested additional factual and medical evidence and provided a questionnaire for his completion. OWCP afforded appellant 30 days to respond.

On September 26, 2018 appellant completed the questionnaire and noted that he worked with latex gloves and a plastic apron, but that when he washed pots, pans, and dishes, he was exposed to solvents and chemicals which required him to dry his hands and change his gloves. He described his symptoms as dry and cracked skin with bleeding of both hands. Appellant noted that he was allergic to latex gloves and that the employing establishment had ordered special gloves for him to use.

OWCP also received medical evidence, including a December 1, 2017 nurse's note that reported discoloration and darkening to both of appellant's palms, right thumb, and right long finger. Appellant attributed this condition to the gloves he wore while working in the kitchen and handling food.

In a December 6, 2017 note, Dr. William W. Webb, a Board-certified dermatologist, noted that appellant began working as a dishwasher in September 2017. He reported that appellant wore white rubber gloves for two to three hours at a time. Dr. Webb reported that appellant sweated profusely in his gloves. He opined that perspiration was causing appellant's rash and diagnosed dyshidrotic dermatitis. Dr. Webb noted that the etiology of dyshidrotic dermatitis was unknown, and that no causal relationship with sweating had been shown. He also noted that dyshidrotic eczema was associated with contact irritants and allergens, atopic dermatitis, dermatophyte, and bacterial infections, hyperhidrosis, hot weather, high dietary intake of nickel or cobalt, and emotional stress. Dr. Webb recommended that appellant work where he did not get wet.

On September 26, 2018 Dr. Jennifer Caicedo, Board-certified in allergy and immunology, diagnosed bilateral hand atopic dermatitis, pruritus, and latex allergy.

By decision dated October 29, 2018, OWCP denied appellant's occupational disease claim finding that he had not submitted medical evidence to establish a causal relationship between his diagnosed conditions and accepted factors of his federal employment.

On an appeal request form dated November 28, 2018, but postmarked November 29, 2018, appellant requested an oral hearing and a review of the written record before an OWCP hearing representative.

By decision dated December 19, 2018, OWCP's hearing representative determined that appellant was not entitled to an oral hearing or a review of the written record as a matter of right because his request was untimely filed. The hearing representative also denied a discretionary hearing, finding that the contested issue could equally well be addressed by appellant requesting reconsideration and providing new evidence or argument to establish that his diagnosed condition was causally related to the accepted factors of his federal employment.

### **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,<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup>

In an occupational disease claim, appellant's burden of proof requires submission of the following: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.<sup>6</sup>

Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical opinion evidence.<sup>7</sup> The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical

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<sup>3</sup> *T.H.*, Docket No. 18-1585 (issued March 22, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>4</sup> *T.H.*, *id.*; *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>5</sup> *T.H.*, *id.*; *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).

<sup>6</sup> *A.H.*, Docket No. 19-0270 (issued June 25, 2019); *R.H.*, 59 ECAB 382 (2008); *Ernest St. Pierre*, 51 ECAB 623 (2000).

<sup>7</sup> *A.H.*, *id.*; *I.R.*, Docket No. 09-1229 (issued February 24, 2010); *D.I.*, 59 ECAB 158 (2007).

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 employee.<sup>8</sup>

### **ANALYSIS -- ISSUE 1**

The Board finds that appellant has not met his burden of proof to establish a diagnosed skin condition causally related to accepted factors of his federal employment.

In support of his claim appellant submitted a September 26, 2018 medical report in which Dr. Caicedo diagnosed several conditions. Dr. Caicedo listed bilateral hand atopic dermatitis, pruritus, and latex allergy. Her note, however, did not offer an opinion on the causal relationship between appellant's diagnosed conditions and his federal employment duties. 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.<sup>9</sup>

In a December 6, 2017 note, Dr. Webb reported appellant's employment duties of washing dishes and wearing gloves. He found that appellant would sweat in his gloves and opined that perspiration was causing appellant's dyshidrotic dermatitis. Dr. Webb further noted that the etiology of dyshidrotic dermatitis was unknown, and that no causal relationship with sweating had been shown. The Board finds that his opinion is insufficient to establish causal relationship between appellant's employment duties and his dermatitis. Dr. Webb opined both that perspiration was causing appellant's dyshidrotic dermatitis and that the etiology of dyshidrotic dermatitis was unknown, and that no causal relationship with sweating had been shown. As his opinion is vague, speculative, and internally inconsistent, it is of diminished probative value.<sup>10</sup> This report cannot establish appellant's occupational disease claim.

In support of his August 17, 2018 occupational disease claim appellant also provided a nurse's note dated December 1, 2017. This note is of no probative medical value in establishing appellant's claim. Certain healthcare providers such as physician assistants, nurses, nurse practitioners, physical therapists, and social workers are not considered "physician[s]" as defined under FECA.<sup>11</sup> Consequently, their medical findings and/or opinions do not suffice for purposes of establishing entitlement to FECA benefits.<sup>12</sup> As such, the December 1, 2017 note is insufficient to satisfy appellant's burden of proof.

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<sup>8</sup> *T.H.*, *supra* note 3; *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>9</sup> *M.W.*, Docket No. 18-1624 (issued April 3, 2019); *S.B.*, Docket No. 18-1296 (issued January 24, 2019).

<sup>10</sup> *E.D.*, Docket No. 17-1064 (issued March 22, 2018); *I.B.*, Docket No. 11-1796 (issued March 23, 2012).

<sup>11</sup> 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t).

<sup>12</sup> *S.J.*, Docket No. 17-0783, n.2 (issued April 9, 2018) (a nurse practitioner is not considered a physician under FECA); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as nurses, physician assistants, and physical therapists are not competent to render a medical opinion under FECA). Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013).

As appellant has not submitted rationalized medical evidence to establish a medical condition causally related to the accepted employment factors, the Board finds that he has not met his burden of proof to establish his claim.

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 that a claimant is entitled to a hearing before an OWCP representative when a request is made 30 days after the date of the issuance of an OWCP final decision.<sup>13</sup>

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.<sup>14</sup> A request for either an oral hearing or a review of the written record must be sent, in writing, within 30 days of the date of the decision for which the hearing is sought.<sup>15</sup> 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.<sup>16</sup>

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.<sup>17</sup>

### **ANALYSIS -- ISSUE 2**

The Board finds that OWCP properly denied appellant's November 29, 2018 request for an oral hearing before an OWCP hearing representative as untimely filed pursuant to 5 U.S.C. § 8124(b).

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<sup>13</sup> 5 U.S.C. § 8124(b)(1).

<sup>14</sup> 20 C.F.R. § 10.615.

<sup>15</sup> *Id.* at § 10.616(a); *B.H.*, Docket No. 18-0874 (issued October 10, 2018); *James Smith*, 53 ECAB 188 (2001).

<sup>16</sup> *B.H.*, *id.*

<sup>17</sup> 20 C.F.R. § 10.616(b); *id.*

OWCP's regulations provide that the hearing request must be sent within 30 days of the date of the decision for which a hearing is sought.<sup>18</sup> As his request was postmarked<sup>19</sup> November 29 2018, more than 30 days after OWCP's October 29, 2018 merit decision, it was untimely filed and appellant was not entitled to an oral hearing as a matter of right.<sup>20</sup>

The Board further finds that OWCP properly exercised its discretion in denying appellant's request for an oral hearing by determining that the issue in the case could equally well be addressed by requesting reconsideration and submitting new evidence relevant to the issue of causal relationship.<sup>21</sup> 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.<sup>22</sup> Herein, the evidence of record does not establish that OWCP abused its discretion in denying appellant's request for an oral hearing. Accordingly, the Board finds that OWCP properly denied his November 29, 2018 request for an oral hearing as untimely filed pursuant to 5 U.S.C. § 8124(b).<sup>23</sup>

### CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a diagnosed skin condition causally related to accepted factors of his federal employment. The Board further finds that OWCP properly denied his request for an oral hearing before an OWCP hearing representative as untimely filed under 5 U.S.C. § 8124(b).

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<sup>18</sup> *B.H.*, see *supra* note 15.

<sup>19</sup> Under OWCP's 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. *Supra* note 12 at Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.4a (October 2011).

<sup>20</sup> See *B.W.*, Docket No. 16-1860 (issued May 4, 2017) (in computing a time period, the date of the event from which the designated period of time begins to run shall not be included while the last day of the period shall be included). In this case, appellant's request for an oral hearing was postmarked on November 29, 2018, the thirty-first day after the issuance of the October 29, 2018 OWCP decision.

<sup>21</sup> *B.H.*, see *supra* note 15.

<sup>22</sup> *Id.*; *Teresa M. Valle*, 57 ECAB 542 (2006).

<sup>23</sup> *B.H.*, see *supra* note 15.

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 19 and October 29, 2018 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: August 23, 2019  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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