

incident; and (2) whether OWCP properly denied appellant's request for a review of the written record as untimely filed pursuant to 5 U.S.C. § 8124.

FACTUAL HISTORY

On February 28, 2018 appellant, then a 54-year-old nurse, filed a traumatic injury claim (Form CA-1) alleging that, on February 26, 2018, she experienced pain in her right shoulder and lower back after helping a patient off of a scale while in the performance of duty. She related that she was holding onto the patient's left arm as he tried to sit in a wheelchair. The patient missed the wheelchair and fell. He pulled appellant pulled down to the floor while trying to break his fall. On the reverse side of the claim form the employing establishment controverted the claim contending that there was no medical evidence to support a work-related injury. No evidence was submitted with appellant's claim.

In a development letter dated March 19, 2018, OWCP advised appellant of the deficiencies of her claim. It requested that she respond to a questionnaire regarding her symptoms and medical treatment and submit a medical report from her attending physician including a diagnosis, history of the injury, examination findings, and a rationalized opinion explaining how the reported work incident caused or aggravated her medical conditions. It afforded appellant 30 days to submit the necessary evidence.

In a March 9, 2018 letter, received by OWCP on April 6, 2018, the employing establishment further controverted appellant's claim. It did not dispute that the February 26, 2018 employment incident occurred as described, but asserted that appellant had not submitted medical evidence to establish a diagnosed medical condition causally related to the incident.

On April 4, 2018 appellant responded to OWCP's March 19, 2018 development questionnaire. She listed the physician who first provided care for her injury and described her right shoulder and lower back symptoms.

A medical report dated April 4, 2018 from Dr. Natalia Shrestha, a Board-certified internist, was received by OWCP. Dr. Shrestha related a history of injury that on February 26, 2018 appellant fell at work while trying to catch a patient who was falling as he stepped off a scale to sit in a wheelchair. She noted that she first treated appellant on February 28, 2018 for continuing back and shoulder pain. Dr. Shrestha discussed her physical examination and diagnostic test findings. She assessed low back and right shoulder joint pain.

Right shoulder and lumbar spine x-ray reports dated April 4, 2018 from Dr. Omar S. Hajibrahim, a Board-certified diagnostic radiologist, were also received. In the right shoulder x-ray report, Dr. Hajibrahim provided an impression of degenerative changes with no acute bony abnormality. In the lumbar spine x-ray, he provided an impression of degenerative change without acute fracture.

An unsigned report dated April 13, 2018 from Saint Joseph Hospital provided diagnoses of low back pain, other spondylosis, lumbar region, right shoulder pain, and primary osteoarthritis, right shoulder.

On April 23, 2018 Dr. Shrestha responded by completing the medical questionnaire attached to OWCP's March 19, 2018 development letter. She indicated that she examined and treated appellant on February 28 and April 4, 2018. Dr. Shrestha reiterated appellant's history of injury. She noted that a lumbar x-ray revealed degenerative disc disease and a right shoulder x-ray showed degenerative changes of the acromioclavicular (AC) joint. Dr. Shrestha restated her diagnosis of right shoulder and low back pain. She opined that the diagnosed conditions started after appellant's fall. Dr. Shrestha indicated that appellant had been working since her injury, but she had pain with walking and using her right arm. She advised that her prognosis for recovery was fair.

By decision dated April 27, 2018, OWCP denied appellant's traumatic injury claim, finding that she had not established a diagnosed medical condition due to the accepted February 26, 2018 employment incident.

OWCP subsequently received a report dated April 23, 2018 in which Dr. David C. Dome, a Board-certified orthopedic surgeon, opined that appellant's diagnosed conditions of strain of the right rotator cuff capsule and sprain of the right AC joint were causally related to the accepted February 26, 2018 employment incident.³

By appeal request form dated June 7, 2018 postmarked June 14, 2018, and received by OWCP on June 20, 2018, appellant requested a review of the written record by an OWCP hearing representative.

Dr. Shrestha, in a letter dated May 21, 2018, reiterated her opinion that appellant's right anterior shoulder pain resulted from her fall at work on February 26, 2018. In addition, she reported a new condition of low back pain with occasional radiation into both calves which started after her fall at work.

By decision dated July 17, 2018, an OWCP hearings and review examiner denied appellant's request for a review of the written record as it was untimely filed. She found that the request was not postmarked within 30 days of the issuance of the April 27, 2018 OWCP merit decision. After exercising her discretion, the hearings and review examiner further found that the issue in the case could equally well be 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, 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 is causally related to the

³ Dr. Dome inadvertently noted that the date of injury as February 28, 2018, not February 26, 2018. However, he accurately described the accepted employment incident.

⁴ *Supra* note 1.

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

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. There are two components involved in establishing 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. Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.⁷

Rationalized medical opinion evidence is generally 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 factors identified by the claimant.⁸

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met her burden of proof to establish right shoulder and back conditions causally related to the accepted February 26, 2018 employment incident.

Dr. Shrestha's April 4, 2018 report and April 23, 2018 response to OWCP's development questionnaire noted a history of the accepted February 26, 2018 employment incident, provided physical examination and diagnostic test findings, and diagnosed right shoulder joint and low back pain. She opined that the diagnosed conditions started after appellant's fall. However, it is not possible to establish the cause of a medical condition if the physician has not provided a diagnosis, but only notes pain.⁹ The Board has consistently held that pain is a symptom and not a compensable medical diagnosis.¹⁰ The Board thus finds that Dr. Shrestha's reports are insufficient to meet appellant's burden of proof.

Dr. Hajibrahim's April 4, 2018 diagnostic test reports addressed appellant's right shoulder and lumbar spine conditions, but failed to offer a medical opinion addressing whether the diagnosed conditions were caused or aggravated by the February 26, 2018 employment incident. The Board has held that reports of diagnostic tests lack probative value as they do not provide an

⁵ *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁶ *S.P.*, 59 ECAB 184 (2007); *Victor J. Woodhams*, 41 ECAB 345 (1989); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁷ *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).

⁸ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, *supra* note 6.

⁹ See *A.C.*, Docket No. 16-1587 (issued December 27, 2016).

¹⁰ *B.P.*, Docket No. 12-1345 (issued November 13, 2012); *C.F.*, Docket No. 08-1102 (issued October 2008).

opinion on causal relationship between the accepted employment incident and a diagnosed condition.¹¹ This report, therefore, is insufficient to establish appellant's claim.

An unsigned report dated April 13, 2018 from Saint Joseph Hospital diagnosed low back pain, other spondylosis, lumbar region, right shoulder pain, and primary osteoarthritis, right shoulder. The Board has held that unsigned reports, and reports that bear illegible signatures, cannot be considered probative medical evidence because they lack proper identification.¹² Thus, this report is of no probative value.

The Board finds that appellant has not submitted rationalized, probative medical evidence sufficient to establish right shoulder and back injuries causally related to the accepted February 26, 2018 employment incident. Appellant, therefore, has not met her burden of proof.

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 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

¹¹ See *D.H.*, Docket No. 17-1146 (issued October 20, 2017); *S.G.*, Docket No. 17-1054 (issued September 14, 2017); *E.V.*, Docket No. 17-0417 (issued September 13, 2017).

¹² *R.R.*, Docket No. 18-1093 (issued December 18, 2018); *C.G.*, Docket No. 18-0549 (issued November 29, 2018).

¹³ 5 U.S.C. § 8124(b)(1).

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).

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied appellant's request for review of the written record.

Appellant's June 7, 2018 request for a review of the written record was postmarked on June 14, 2018, more than 30 days after the issuance of OWCP's April 27, 2018 merit decision. Because the postmark date was more than 30 days after the date of OWCP's April 27, 2018 decision, the Board finds that the request was untimely filed and she was not entitled to a review of the written record as a matter of right.¹⁷

Although appellant's request for a review of the written record was untimely filed, OWCP has the discretionary authority to grant the request and it must exercise such discretion.¹⁸ In its July 17, 2018 decision, OWCP's hearings and review examiner properly exercised her discretion by notifying appellant that she had considered the matter, but determined that the issue involved could be equally well addressed by a request for reconsideration before OWCP. The Board finds that the hearings and review examiner properly exercised her discretionary authority in denying appellant's request for a review of the written record.¹⁹ The Board has held that the only limitation on OWCP's authority is reasonableness. In this case, the evidence of record does not indicate that OWCP abused its discretion by denying appellant's request for a review of the written record. Accordingly, the Board finds that OWCP properly denied appellant's request for a review of the written record.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish right shoulder and back conditions causally related to the accepted February 26, 2018 employment incident. The Board further finds that OWCP properly denied appellant's request for a review of the written record as untimely filed pursuant to 5 U.S.C. § 8124.

¹⁷ 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).

¹⁸ *See supra* note 14.

¹⁹ *M.B.*, Docket No. 18-0717 (issued September 5, 2018); *Mary B. Moss*, 40 ECAB 640, 647 (1989).

ORDER

IT IS HEREBY ORDERED THAT the July 17 and April 27, 2018 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: March 11, 2019
Washington, DC

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

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

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board