

FACTUAL HISTORY

On July 3, 2007 appellant, then a 29-year-old immigration enforcement agent, filed a traumatic injury claim (Form CA-1) alleging that on June 29, 2007 he injured his left knee when he struck it on a wall attempting to complete a track obstacle course while in the performance of duty. On September 6, 2007 OWCP accepted his claim for tear of the left medial meniscus and sprain of the left cruciate ligament. On September 10, 2007 it entered appellant on the periodic rolls for wage-loss compensation. On November 7, 2007 appellant returned to full-duty work with a knee brace for jogging.

On April 22, 2013 appellant filed a notice of recurrence (Form CA-2a) for medical treatment, alleging that on April 16, 2013 he sustained a recurrence of his June 29, 2007 employment injury. He alleged an onset of pain in his left knee on April 16, 2013 with no precipitating event. Appellant asserted that his condition was causally related to his June 29, 2007 employment injury. On May 9, 2013 OWCP accepted that he had sustained a recurrence of his June 29, 2007 medical conditions as well as expanded the acceptance of his claim to include the additional conditions of chondromalacia left patella and left patellar tendinitis. It authorized wage-loss compensation from June 24 through August 5, 2013. Appellant underwent a functional capacity evaluation on November 5, 2013 and was found capable of returning to his date-of-injury position performing heavy physical demands. His attending physician released him to full duty on November 8, 2013.

On July 25, 2018 appellant again filed a notice of recurrence (Form CA-2a) for medical treatment, alleging that on July 2, 2018 he sustained a recurrence causally related to his accepted June 29, 2007 employment injury. He indicated that he was claiming medical treatment only noting that, after returning to work, he experienced strength and stability issues and was required to wear a knee brace, which hindered his reaction time, flexibility, and mobility. Appellant alleged that during the month of June 2018 he had increased pain in his left knee limiting the time he could stand, walk, or be active. He denied any new left knee injury and attributed his condition to his June 29, 2007 employment injury. On the reverse side of the claim form, appellant's supervisor indicated that he had not returned to work and was in a leave without pay (LWOP) status.

In a note dated July 2, 2018, Dr. Francisco Garcia, a Board-certified orthopedic surgeon, examined appellant and noted a current tear of medial cartilage or meniscal tear and sprain of the cruciate ligament with an onset of August 27, 2007. He indicated that on physical examination appellant exhibited persistent atrophy, degenerative changes, and limited range of motion in the left knee. Dr. Garcia reported moderate atrophy of the quadriceps with limited painful range of motion along with patellofemoral crepitus and moderate medial joint tenderness and effusion. He reviewed appellant's left knee x-rays and diagnosed sprain of the cruciate ligament of the left² knee and posterior cruciate ligament injury with post-traumatic osteoarthritis.³ Dr. Garcia noted

² Dr. Garcia mentions a right knee sprain of the cruciate ligament, but as the remainder of the report focuses on appellant's left knee conditions and examinations, the Board considers this to be a typographical error.

³ Dr. Garcia indicated that appellant's knee condition was "the least of his problems." He found appellant was also disabled due to the additional conditions of retinal detachment, diabetic retinopathy as well as neuropathy. Dr. Garcia noted that appellant was interested in retiring from government service.

that appellant requested a cortisone shot in his left knee, but questioned whether this was appropriate given appellant's medical conditions.

In an October 17, 2018 development letter, OWCP advised appellant of the deficiencies of his recurrence claim. It requested additional factual and medical evidence from him, and provided a questionnaire for his completion. OWCP requested bridging information for the period November 8, 2013 through the present including a history of intervening injuries, diagnostic test results, and treatment reports from appellant's physician. It afforded him 30 days to respond.

On October 24, 2018 appellant completed OWCP's questionnaire and reported that symptoms of pain in his left knee began in March 2018 without any additional incident or injury. He experienced difficulty standing and walking. Appellant noted that following the 2013 recurrence he had resumed working and training without any problems and had not sustained any new injury. He reported in 2013 that he received a cortisone shot and a knee brace which allowed him to maintain mobility and function until March 2018 when he sought additional medical treatment. Appellant reported that the July 2, 2018 recurrence occurred while he was in nonpay status, but still an employee of the employing establishment and that he had not returned to work.

By decision dated December 17, 2018, OWCP denied appellant's claimed recurrence of medical treatment on July 2, 2018 as causally related to his June 29, 2007 employment injuries of tear of the medial meniscus of the left knee, sprain of the left cruciate ligament, chondromalacia on the left patella, and patellar tendinitis of the left knee. It noted that he had returned to full duty following his June 29, 2007 employment injury, and the medical evidence did not establish causal relationship between his current diagnosed condition and his accepted employment injury.

In a request for an oral hearing postmarked January 17, 2019, appellant requested an oral hearing with a representative of OWCP's Branch of Hearings and Review to review the December 17, 2018 OWCP decision.

By decision dated January 30, 2019, OWCP's Branch of Hearings and Review denied appellant's request for an oral hearing finding that his request for review was postmarked on January 17, 2019, more than 30 days after the December 17, 2018 decision. It further exercised its discretion and determined that the issue in the case could equally well be addressed by requesting reconsideration and submitting evidence not previously considered which established that he sustained a recurrence of the need for medical treatment due to the June 29, 2007 employment injury.

LEGAL PRECEDENT -- ISSUE 1

A recurrence of a medical condition means a documented need for further medical treatment after release from treatment for the accepted condition or injury when there is no accompanying work stoppage.⁴ An employee has the burden of proof to establish that he or she

⁴ 20 C.F.R. § 10.5(y).

sustained a recurrence of a medical condition that is causally related to his or her accepted employment injury without intervening cause.⁵

If a claim for recurrence of medical condition is made more than 90 days after release from medical care, a claimant is responsible for submitting a medical report supporting a causal relationship between the employee's current condition and the original injury in order to meet his or her burden of proof.⁶

To meet this burden the claimant must submit medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, supports that the condition is causally related and supports his or her conclusion with sound medical rationale.⁷ Where no such rationale is present, medical evidence is of diminished probative value.⁸

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met his burden of proof to establish a recurrence of the need for medical treatment causally related to his accepted June 29, 2007 employment injury.

OWCP accepted appellant's original claim for tear of the left medial meniscus and sprain of the left cruciate ligament as a result of the June 29, 2007 employment injury. Appellant stopped work on April 16, 2013 and OWCP accepted that he had sustained a recurrence of his June 29, 2007 employment injury and also expanded the acceptance of his claim to include the additional conditions of chondromalacia left patella and left patellar tendinitis. He returned to full duty on November 8, 2013. On July 25, 2018 appellant claimed a recurrence of medical treatment only commencing on July 2, 2018 due to the accepted June 29, 2007 employment injury.

Appellant submitted a report dated July 2, 2018 from Dr. Garcia who noted appellant's previously accepted conditions and reported that appellant had moderate atrophy of the quadriceps, painful limited range of motion in the left knee, patellofemoral crepitus, and moderate medial joint tenderness and effusion on physical examination. Dr. Garcia diagnosed a sprain of the cruciate ligament of the left knee and left posterior cruciate ligament injury with post-traumatic osteoarthritis. He noted that appellant had requested a cortisone shot in his left knee, but questioned whether this treatment was appropriate.

Dr. Garcia did not causally relate appellant's current conditions of sprain of the cruciate ligament of the left knee and left posterior cruciate ligament injury with post-traumatic

⁵ *M.P.*, Docket No. 19-0161 (issued August 16, 2019); *E.G.*, Docket No. 18-1383 (issued March 8, 2019); *T.B.*, Docket No. 18-0762 (issued November 2, 2018); *E.R.*, Docket No. 18-0202 (issued June 5, 2018).

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.4(b) (June 2013); *see also J.M.*, Docket No. 09-2041 (issued May 6, 2010).

⁷ *A.C.*, Docket No. 17-0521 (issued April 24, 2018); *O.H.*, Docket No. 15-0778 (issued June 25, 2015).

⁸ *O.H.*, *id.*; *Michael Stockert*, 39 ECAB 1186 (1988); *see Ronald C. Hand*, 49 ECAB 113 (1997).

osteoarthritis to the accepted June 29, 2007 employment injury.⁹ As OWCP has not accepted post-traumatic osteoarthritis as causally related to the June 29, 2007 employment injury, supportive medical evidence is required to meet appellant's burden of proof.¹⁰ While he mentioned the prior injuries in his July 2, 2018 report, Dr. Garcia did not provide a definite opinion on causal relationship between appellant's various diagnosed conditions and his accepted employment conditions as required to establish appellant's recurrence claim.¹¹ Furthermore, he did not offer any medical explanation of how the accepted conditions for which appellant last received treatment in 2013, resulted in further diagnoses and need for additional treatment five years later.¹² Finally, Dr. Garcia failed to explain that appellant's current need for further medical care was due to his accepted June 29, 2007 employment conditions.¹³ As appellant filed the recurrence of the need for medical treatment more than 90 days following his last medical treatment for his accepted employment conditions, he was required to submit a rationalized medical opinion establishing causal relationship between his current condition and the original employment injury.¹⁴ A physician must provide an opinion that the employment injury caused or contributed to the claimant's diagnosed medical condition, supported by medical reasoning sufficient to demonstrate that the conclusion reached is sound, logical, and rational.¹⁵ The Board finds that Dr. Garcia provided a conclusory opinion which did not include a rationalized medical opinion establishing that appellant required further medical care after November 8, 2013 causally related to his accepted June 29, 2007 employment injury. Therefore, the Board finds that Dr. Garcia's report is insufficient to establish appellant's recurrence claim.¹⁶

As appellant has not submitted medical evidence sufficient to establish a recurrence of the need for medical treatment causally related to his accepted June 29, 2007 employment injury, the Board finds that he has not met his burden of proof.¹⁷

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.

⁹ *C.B.*, Docket No. 19-0121 (issued July 2, 2019); *E.G.*, *supra* note 5; Docket No. 18-1383 (issued March 8, 2019).

¹⁰ *E.G.*, *id.*

¹¹ *See H.A.*, Docket No. 18-1466 (issued August 23, 2019) (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).

¹² *See id.*; (medical evidence must also include rationale explaining how the physician reached the conclusion he or she is supporting).

¹³ *T.M.*, Docket No. 18-1418 (issued February 7, 2019).

¹⁴ *Supra* note 6.

¹⁵ *A.C.*, *supra* note 7; *John W. Montoya*, 54 ECAB 306 (2003).

¹⁶ *A.C.*, *id.*; *G.G.*, Docket No. 18-1788 (issued March 26, 2019).

¹⁷ *A.C.*, *id.*; *K.G.*, Docket No. 15-0669 (issued April 8, 2016).

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.¹⁸

A hearing is a review of an adverse decision by an OWCP hearing representative. Initially, the claimant can choose between either 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.¹⁹ 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.²⁰ 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.²¹

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.²²

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied appellant's January 17, 2019 request for an oral hearing before an OWCP hearing representative as untimely filed pursuant to 5 U.S.C. § 8124(b).

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.²³ As his request was postmarked²⁴ January 17,

¹⁸ 5 U.S.C. § 8124(b)(1).

¹⁹ 20 C.F.R. § 10.615.

²⁰ *Id.* at § 10.616(a); *B.H.*, Docket No. 18-0874 (issued October 10, 2018); *James Smith*, 53 ECAB 188 (2001).

²¹ *B.H.*, *id.*

²² 20 C.F.R. § 10.616(b); *Id.*

²³ *See supra* note 8.

²⁴ 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. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.4a (October 2011).

2019, more than 30 days after OWCP's December 17, 2018 decision, it was untimely filed and he was not entitled to an oral hearing as a matter of right.²⁵

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 be addressed equally well through a request for reconsideration and the submission of new evidence relevant to the issue of causal relationship between the accepted employment injury on June 29, 2007 and the claimed July 25, 2018 recurrence of the need for medical treatment.²⁶ 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.²⁷ In this case, 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 January 17, 2019 request for an oral hearing as untimely filed pursuant to 5 U.S.C. § 8124(b).²⁸

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a recurrence of the need for medical treatment causally related to his accepted June 29, 2007 employment injury. The Board further finds that OWCP properly denied appellant's January 17, 2019 request for an oral hearing before an OWCP hearing representative as untimely filed pursuant to 5 U.S.C. § 8124(b).

²⁵ 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 January 17, 2019, the 31st day after the issuance of the December 17, 2018 OWCP decision.

²⁶ *Id.*

²⁷ *Id.*; *Teresa M. Valle*, 57 ECAB 542 (2006).

²⁸ See *supra* note 19.

ORDER

IT IS HEREBY ORDERED THAT the January 30, 2019 and December 17, 2018 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: November 20, 2019
Washington, DC

Christopher J. Godfrey, 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