United States Department of Labor
Employees' Compensation Appeals Board

E.C., Appellant	)	
and	)	**Docket No. 19-0736**
	)	**Issued: October 8, 2019**
DEPARTMENT OF VETERANS AFFAIRS, CENTRAL ARKANSAS HEALTHCARE SYSTEM, North Little Rock, AR, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On February 12, 2019 appellant filed a timely appeal from a September 26, 2018 merit decision and a December 11, 2018 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant has met her burden of proof to establish a left knee condition causally related to the accepted February 13, 2018 employment incident; and (2) whether OWCP properly denied appellant's request for a review of the written record as untimely filed.

[1] 5 U.S.C. § 8101 *et seq*.

FACTUAL HISTORY

On February 20, 2018 appellant, then a 64-year-old nurse, filed a traumatic injury claim (Form CA-1) alleging that on February 13, 2018 she slipped on a substance on the floor and fell while in the performance of duty, causing injury to her left knee. On the reverse side of the claim form, the employing establishment acknowledged that she was injured while in the performance of duty. Appellant did not stop work.

In an incident report dated February 13, 2018, appellant reported walking in a hallway in the primary care clinic in front of the patient waiting room when she slipped and fell, striking her left knee on the floor. She indicated that she was wearing heeled shoes when she fell. Appellant noted that the floor was covered in a slippery powdery substance. She initially refused treatment, but after her knee became swollen and painful she sought medical care.

By letter dated March 27, 2018, the employing establishment controverted appellant's claim, contending that she had not established causal relationship between her claimed condition and factors of her federal employment.

OWCP subsequently received a March 6, 2018 report from Dr. Jonathan Wyatt, a Board-certified orthopedist, who treated appellant for left knee pain after an injury. Appellant provided a history significant for left knee arthroscopy in 2000 and osteoarthritis of the left knee with an onset of May 1, 2014. Findings on examination of the left knee revealed numbness, trace effusion, and tenderness on the joint line. X-rays of the left knee revealed no fracture or dislocation. Dr. Wyatt diagnosed left knee pain, contusion, and possible meniscus tear. He continued a pain reliever, anti-inflammatories, and physical therapy. In a return to work slip dated March 6, 2018, Dr. Wyatt returned appellant to normal duty.

In an April 3, 2018 development letter, OWCP advised appellant that, when her claim was first received, it appeared to be a minor injury that resulted in minimal or no lost time from work. The claim was administratively approved to allow payment for limited medical expenses, but the merits of the claim had not been formally adjudicated. OWCP advised that because the employing establishment challenged appellant's claim, it would be formally adjudicated. It requested that she submit additional factual and medical information, including a comprehensive report from her physician regarding how a specific work incident contributed to her claimed injury. OWCP provided a questionnaire for appellant's completion and afforded her 30 days to respond.

In an undated statement, appellant indicated that there were no witnesses to her fall. Immediately after the fall she got up with the help of two patients and experienced swelling and knee pain the remainder of the day. She continued to work as there was a full schedule of patients which could not be cancelled. The following day appellant reported intense pain, increased swelling, and difficulty walking. She indicated that the hallway had been recently waxed and the surface was covered with a powdery substance which could not be seen.

On April 3, 2018 Dr. Wyatt treated appellant in follow-up for left knee pain after a recent work injury. He noted that conservative treatment with medication and physical therapy provided minimal improvement. Findings on examination of the left knee revealed a mild effusion, tenderness of the medial and lateral joint line, and a positive McMurray's sign. Dr. Wyatt

diagnosed continued knee pain and recommended a magnetic resonance imaging (MRI) scan of the left knee. On April 3, 2018 he returned appellant to normal duty.

On May 8, 2018 appellant presented with little improvement in her condition with conservative management. Dr. Wyatt reviewed the results of the MRI scan and diagnosed left knee pain and mild-to-moderate chondromalacia patella. He opined that there was a "reasonable medical probability" that the underlying chondromalacia was worsened by her employment injury. Dr. Wyatt anticipated improvement with conservative management.

In an attending physician's report (Form CA-20) dated June 6, 2018, Dr. Wyatt diagnosed left knee pain. He checked a box marked "yes" that the condition was caused or aggravated by the described employment activity noting there was a reasonable medical probability that the underlying chondromalacia was worsened by her work injury. Dr. Wyatt noted no period of disability.

On July 18, 2018 Dr. Wyatt diagnosed chondromalacia patella. He noted that the workers' compensation injury caused a minor worsening of the underlying arthritis. Dr. Wyatt advised that there were no permanent changes to her condition which would alter the natural history of appellant's previous arthritis.

A left knee MRI scan dated May 7, 2018 revealed no new internal derangement, unchanged chondromalacia most severe at the patellar apex at grade 4, and prepatellar subcutaneous soft tissue contusion.

By decision dated September 26, 2018, OWCP denied appellant's traumatic injury claim finding that the medical evidence of record was insufficient to establish that the medical condition was causally related to the accepted work incident.

In an appeal request form dated November 9, 2018, appellant requested a review of the written record.[2]

In support of the request OWCP received a September 28, 2018 report from Dr. Wyatt. In a note of that visit, Dr. Wyatt opined that the February 13, 2018 injury caused appellant's patella chondromalacia symptoms to increase, but it had not changed her underlying condition as she already had severe patella chondromalacia.

By decision dated December 11, 2018, OWCP denied appellant's request for a review of the written record. It found that her request was not made within 30 days of OWCP's September 26, 2018 decision. As such, appellant was not entitled to an oral hearing or a review of the written record as a matter of right. OWCP exercised its discretion and determined that it would not review the written record for the reason that the issue in the case could equally well be addressed by requesting reconsideration and submit new evidence establishing an employment-related injury.

[2] The postmark on the envelope was illegible.

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,[3] 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.[4] 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.[5] To determine whether an employee sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Fact of injury consists of two components, which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.[6] The second component is whether the employment incident caused a personal injury and can be established only by medical evidence.[7]

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 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.[8] Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that a disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[9]

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met her burden of proof to establish a left knee condition causally related to the accepted February 13, 2018 employment incident.

Appellant submitted a March 6, 2018 report from Dr. Wyatt who treated her for left knee pain after an injury. Dr. Wyatt diagnosed left knee pain, contusion, and possible meniscus tear.

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

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

[5] *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).

[6] *R.E.*, Docket No. 17-0547 (issued November 13, 2018); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[7] *D.C.*, Docket No. 18-1664 (issued April 1, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

[8] *H.B.*, Docket No. 18-0781 (issued September 5, 2018).

[9] *D.H.*, Docket No. 18-1410 (issued March 21, 2019).

In a return to work slips dated March 6 and April 3, 2018, appellant was returned to normal duty. Dr. Wyatt's reports are insufficient to establish the claim as he did not specifically address whether appellant's employment activities had caused or aggravated a diagnosed medical condition. As the Board has held, medical evidence which does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship. As such, these reports of Dr. Wyatt are of no probative value.[10]

On April 3, 2018 Dr. Wyatt reported that he treated appellant in follow-up for left knee pain after a recent work injury. He diagnosed continued knee pain. A diagnosis of pain, however, does not constitute a basis for the payment of compensation under FECA as pain is considered a symptom rather than a diagnosis.[11]

On May 8, 2018 Dr. Wyatt reviewed the results of the MRI scan and diagnosed left knee pain and mild-to-moderate chondromalacia patella. He opined within a reasonable medical probability that her underlying chondromalacia was worsened by the employment injury. Similarly, on July 18, 2018, Dr. Wyatt diagnosed chondromalacia patella and opined that the work injury caused minor worsening of her underlying arthritis. He did not, however, provide medical rationale for his causation opinion. Medical conclusions unsupported by rationale are of little probative value.[12]

In a Form CA-20 dated June 6, 2018, Dr. Wyatt diagnosed left knee pain and checked a box marked "yes" indicating that the condition was caused or aggravated by the described employment incident noting there was a reasonable medical probability that the underlying chondromalacia was worsened by her work injury. The Board has held, however, that an opinion on causal relationship which consists only of a physician checking a box marked "yes" in response to a medical form report question regarding whether the claimant's condition or disability was related to the history given is of little probative value.[13] Without an explanation or rationale for the conclusion reached, such report is insufficient to establish causal relationship.[14] Dr. Wyatt did not provide rationale for his opinion, and thus his report is of diminished probative value.[15]

Appellant underwent a left knee MRI scan on May 7, 2018. The Board has held, however, that reports of diagnostic tests lack probative value as they do not provide an opinion on causal relationship between an employment incident and a diagnosed condition.[16]

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

[11] *T.T.*, Docket No. 17-0681 (issued March 13, 2018).

[12] *See T.A.*, Docket No. 18-0431 (issued November 7, 2018).

[13] *M.R.*, Docket No. 17-1388 (issued November 2, 2017).

[14] *J.R.*, Docket No. 18-0801 (issued November 26, 2018).

[15] *M.C.*, Docket No. 18-0361 (issued August 15, 2018).

[16] *See J.M.*, Docket No. 17-1688 (issued December 13, 2018).

As appellant has not submitted rationalized medical evidence establishing causal relationship between her left knee condition and the accepted February 13, 2018 employment incident, the Board finds that she has not met her burden of proof to establish her 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 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.[17]

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."[18]

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."[19]

OWCP's regulations further provide that a request received more than 30 days after OWCP's decision is subject to OWCP's discretion[20] and the Board has held that OWCP must exercise this discretion when a hearing request is untimely.[21]

ANALYSIS -- ISSUE 2

Appellant requested a review of the written record utilizing the appeal request form dated November 9, 2018, which was more than 30 days after OWCP's September 26, 2018 decision.[22] Section 8124(b)(1) is unequivocal on the time limitation for requesting a hearing or a review of

[17] 5 U.S.C. § 8124(b)(1).

[18] 20 C.F.R. § 10.615.

[19] *Id*. at § 10.616(a).

[20] *Id*. at § 10.616(b).

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

[22] 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). If the postmark is not legible, the request will be deemed timely unless OWCP has kept evidence of date of delivery on the record reflecting that the request is untimely. *Id*. In this case, the date of appellant's request for a review of the written record was November 9, 2018 which was greater than 30 days after the September 26, 2018 decision and therefore untimely.

the written record.[23] For this reason, the Board finds that the request was untimely filed and appellant was not entitled to a review of the written record as a matter of right.

Although appellant was not entitled to a review of the written record, OWCP may exercise its discretion to either grant or deny the request even if she is not entitled to a written review of the record as a matter of right.[24] The Board finds that OWCP, in its December 11, 2018 decision, properly exercised its discretionary authority by noting that it had carefully considered the matter and denied appellant's request for a review of the written record as her claim could be equally well addressed through a reconsideration application.[25]

Accordingly, the Board finds that OWCP properly denied appellant's November 9, 2018 request for a review of the written record as untimely filed pursuant to 5 U.S.C. § 8124(b).

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a left knee injury was causally related to the accepted February 13, 2018 employment incident. The Board further finds that OWCP properly denied her November 9, 2018 request for a review of the written record as untimely.

[23] *William F. Osborne*, 46 ECAB 198 (1994).

[24] *S.A.*, Docket No. 19-0613 (issued August 22, 2019); *D.E.*, 59 ECAB 438, 442-43 (2008); *J.C.*, 59 ECAB 206, 210-11 (2007).

[25] 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 M.K.*, Docket No. 19-0428 (issued July 15, 2019); *André Thyratron*, 54 ECAB 257, 261 (2002).

ORDER

IT IS HEREBY ORDERED THAT the December 11 and September 26, 2018 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: October 8, 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