

**United States Department of Labor
Employees' Compensation Appeals Board**

A.M., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Nashville, TN, Employer**

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**Docket No. 19-0861
Issued: September 21, 2020**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On December 11, 2018 appellant filed a timely appeal from a July 6, 2018 merit decision and a September 6, 2018 nonmerit decision of the Office of Workers' Compensation Programs (OWCP).¹ Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.³

¹ Appellant timely requested an oral argument before the Board pursuant to 20 C.F.R. § 501.5(b). By order dated July 20, 2020, the Board exercised its discretion and denied the request for oral argument as the matter could be adequately addressed based on a review of the evidence of record. *Order Denying Request for Oral Argument*, Docket No. 19-0861 (issued July 20, 2020).

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that, following the September 6, 2018 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

ISSUES

The issues are: (1) whether appellant has met her burden of proof to establish a right upper extremity condition causally related to the accepted March 8, 2018 employment incident; and (2) whether OWCP properly denied her request for an oral hearing as untimely filed pursuant to 5 U.S.C. § 8124(b).

FACTUAL HISTORY

On March 13, 2018 appellant, then a 53-year-old learning development and diversity manager, filed a traumatic injury claim (Form CA-1) alleging that on March 8, 2018 she experienced right wrist pain radiating into her elbow when she moved a parcel from the bottom of a mail hamper while in the performance of duty. She did not stop work.

In a report dated March 8, 2018, Dr. Cathy Hammond-Moulton, Board-certified in family practice, advised that appellant was “reopening a case from 2016 for pain in the wrist and the forearm.” She reviewed appellant’s complaints of intermittent wrist and forearm pain and altered sensation in the fingers and forearm. Dr. Hammond-Moulton noted that appellant related that she had not fully recovered after the initial injury and had performed “administrative work that she thinks recently could have contributed to the increase in soreness.” On examination she found tenderness in the lateral epicondyle. Dr. Hammond-Moulton diagnosed a right wrist sprain and lateral epicondylitis of the right elbow. She found that appellant’s elbow condition was unrelated to her original injury. Dr. Hammond-Moulton further related that her current symptoms were “not the result of the initial injury, but perhaps strain due to routine, repetitive use of the hand and wrist in general.” She opined that appellant might have degenerative joint disease of the hand and wrist. In an unsigned work activity status report of the same date, Dr. Hammond-Moulton advised that she could return to her usual employment on March 9, 2018.

On March 14, 2018 Dr. Hammond-Moulton evaluated appellant for elbow, wrist, hand, and finger pain and indicated that she was being treated for a workers’ compensation injury. She diagnosed a right forearm strain, lateral epicondylitis of the right elbow, and a right wrist sprain. Dr. Hammond-Moulton found that appellant had reached maximum medical improvement and could resume work without limitations. In an unsigned work activity status report of the same date, she opined that she could return to her usual employment.

In a development letter dated May 17, 2018, OWCP informed appellant that when it had received her claim it had appeared that her injury was minor and had resulted in minimal or no lost time from work. It had administratively approved payment of a limited amount of medical expenses without formally adjudicating the merits of the claim. OWCP requested that she submit additional factual and medical information, including a comprehensive report from a physician addressing the causal relationship between a diagnosed condition and the claimed employment incident. It afforded appellant 30 days to submit the necessary evidence.

In a note dated June 19, 2018, Dr. F. Clarke Holmes, Board-certified in sports medicine, requested that appellant be excused from work for four weeks after a scheduled July 10, 2018 procedure.

In a form report dated June 29, 2018, Dr. Holmes advised that appellant had chronic right lateral epicondylitis with pain and dysfunction. He specified the approximate date that the condition had begun as March 8, 2018. Dr. Holmes indicated that appellant was unable to perform her work duties due to her condition as she could not lift over five pounds or perform repetitive work with the upper extremity. He found that she was disabled from work from July 10 to August 7, 2018 and that she might have periodic flare-ups in the future preventing her from performing her employment.

By decision dated July 6, 2018, OWCP found that appellant had established that the March 8, 2018 employment incident occurred as alleged. It denied the claim, however, finding that the medical evidence of record was insufficient to establish causal relationship between her diagnosed condition and the accepted employment incident.

On an appeal request form dated August 4, 2018 and postmarked August 9, 2018 appellant requested an oral hearing in the form of a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

By decision dated September 6, 2018, OWCP denied appellant's hearing request as untimely filed. It determined that she was not entitled to an oral hearing as a matter of right under 5 U.S.C. § 8124(b) because her hearing request was postmarked more than 30 days after it had issued its July 6, 2018 decision. OWCP considered whether to grant a discretionary hearing, but determined that the matter 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 of FECA,⁵ 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 employment injury.⁶ 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.⁷

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.⁸ 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

⁴ *Supra* note 2.

⁵ *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁶ *T.H.*, Docket No. 18-1736 (issued March 13, 2019); *R.C.*, 59 ECAB 427 (2008).

⁷ *T.E.*, Docket No. 18-1595 (issued March 13, 2019); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁸ *S.S.*, Docket No. 18-1488 (issued March 11, 2019); *T.H.*, 59 ECAB 388 (2008).

incident that allegedly occurred.⁹ The second component is whether the employment incident caused a personal injury.¹⁰

Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical opinion evidence. 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 incident.¹¹

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met her burden of proof to establish a right upper extremity condition causally related to the accepted March 8, 2018 employment incident.

On March 8, 2018 Dr. Hammond-Moulton evaluated appellant for intermittent pain in her wrist and forearm and altered sensation of the fingers and forearm. She obtained a history of appellant sustaining an increase in pain after performing administrative work. Dr. Hammond-Moulton diagnosed right wrist sprain and right elbow lateral epicondylitis. She opined that the current conditions may be due to repetitive hand use. Dr. Hammond-Moulton did, however, provide an opinion on causal relationship between appellant's conditions and the accepted March 8, 2018 employment incident.¹² Therefore, her opinion is insufficient to establish causal relationship.

In a progress report dated March 14, 2018, Dr. Hammond-Moulton diagnosed right forearm strain, lateral epicondylitis of the right elbow, and a right wrist sprain. She found that she could perform her usual employment. Dr. Hammond-Moulton did not provide an opinion on causal relationship. 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.¹³ Therefore, this report is insufficient to establish the claim.

On June 19, 2018 Dr. Holmes found that appellant would be unable to work for four weeks after a June 10, 2018 procedure. In a form report dated June 29, 2018, he diagnosed chronic right lateral epicondylitis that had begun on March 8, 2018. Dr. Holmes opined that appellant was disabled from her usual employment. In these reports, he failed to provide an opinion regarding causation. As noted, medical evidence that does not offer an opinion regarding the cause of an

⁹ *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

¹⁰ *Id.*

¹¹ *See S.S.*, *supra* note 8; *H.B.*, Docket No. 18-0781 (issued September 5, 2018).

¹² *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹³ *Id.*

employee's condition is of no probative value on the issue of causal relationship.¹⁴ Therefore, this evidence is insufficient to meet appellant's burden of proof to establish her claim.

As the evidence of record does not contain a rationalized medical opinion explaining causal relationship between appellant's diagnosed condition and the accepted employment incident the Board finds that appellant has not met her burden of proof.

On appeal appellant contends that she sustained an injury while fulfilling her work duties and describes her pain performing activities of daily living. As discussed, however, she has the burden of proof to submit rationalized medical evidence sufficient to establish a medical condition caused or aggravated by the accepted employment incident.¹⁵

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, 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 issuance of an OWCP final decision.¹⁶

A hearing is a review of an adverse decision by an OWCP's 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.¹⁷ 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.¹⁸ 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.¹⁹

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.²⁰

¹⁴ *Id.*

¹⁵ *See W.G.*, Docket No. 20-0439 (issued July 13, 2020).

¹⁶ 5 U.S.C. § 8124(b)(1).

¹⁷ 20 C.F.R. § 10.615.

¹⁸ *Id.* at § 10.616(a); *B.V.*, Docket No. 18-1473 (issued April 23, 2019).

¹⁹ *K.L.*, Docket No. 19-0480 (issued August 23, 2019).

²⁰ *Supra* note 17 at § 10.616(b); *see also F.M.*, Docket No. 18-0161 (issued May 18, 2018).

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied appellant's request for an oral hearing 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.²¹ As appellant's request was postmarked²² August 9, 2018, more than 30 days after OWCP's July 6, 2018 merit decision, it was untimely filed and she was not entitled to an oral hearing as a matter of right.²³

OWCP has the discretionary power to grant an oral hearing even if the claimant is not entitled to a review as a matter of right. The Board finds that OWCP, in its September 6, 2018 nonmerit decision, properly exercised its discretion by indicating that it had considered the matter and had denied appellant's request for a telephonic hearing because her claim could be equally well addressed through a reconsideration application. Because reconsideration exists as an alternative appeal right to address the issue raised by OWCP's July 6, 2018 merit decision, the Board finds that OWCP has not abused its discretion in denying appellant's untimely hearing request.²⁴

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a right upper extremity condition causally related to the accepted March 8, 2018 employment incident. The Board further finds that OWCP properly denied her request for an oral hearing as untimely filed pursuant to 5 U.S.C. § 8124(b).

²¹ See *supra* note 16.

²² 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).

²³ S.A., Docket No. 19-0613 (issued August 22, 2019).

²⁴ See *J.N.*, Docket No. 18-0646 (issued January 28, 2019).

ORDER

IT IS HEREBY ORDERED THAT the September 6 and July 6, 2018 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: September 21, 2020
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

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