United States Department of Labor
Employees' Compensation Appeals Board

R.R., Appellant	)	
and	)	**Docket No. 20-0369**
	)	**Issued: September 11, 2020**
U.S. POSTAL SERVICE, WARWICK POST OFFICE, Warwick, RI, Employer	)	

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 6, 2019 appellant filed a timely appeal from an October 1, 2019 merit decision and a November 13, 2019 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 diagnosed medical condition causally related to the accepted August 16, 2019 employment incident; and (2) whether OWCP properly denied appellant's request for an oral hearing before an OWCP hearing representative as untimely filed pursuant to 5 U.S.C. § 8124(b).

FACTUAL HISTORY

On August 16, 2019 appellant, then a 35-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on that date she injured her neck, back, and left arm when a flats

[1] 5 U.S.C. § 8101 *et seq.*

sequencing systems (FSS) tray fell as she was reaching for it while in the performance of duty. She stopped work on the date of the claimed injury.

In an August 16, 2019 authorization for examination and/or treatment (Form CA-16), the employing establishment authorized appellant to seek medical care at an urgent care facility for pain in the neck, back, and left arm. In Part B of the Form CA-16, attending physician's report, an unidentifiable healthcare provider diagnosed left trapezius and sternocleidomastoid strains and checked a box marked "Yes," indicating that the diagnosed conditions were caused or aggravated by the described employment activity.

In an August 16, 2019 duty status report (Form CA-17), the same unidentifiable healthcare provider diagnosed left trapezius and sternocleidomastoid strains and recommended that appellant not resume work. In a work excuse note of even date from an urgent care facility, the same unidentifiable healthcare provider excused appellant from work until August 23, 2019.

In a development letter dated August 28, 2019, OWCP informed appellant of the deficiencies in her claim. It advised her of the type of factual and medical evidence needed to establish her claim and provided a questionnaire for her completion. OWCP afforded her 30 days to submit the necessary evidence.

Brooke Lemme, a physician assistant, reported on August 16, 2019 that when appellant leaned down to pick up a piece of mail at work, her back suddenly spasmed and she experienced sharp pain down her left arm. Ms. Lemme diagnosed left trapezius and sternocleidomastoid strains.

In an August 23, 2019 Form CA-17, the unidentifiable healthcare provider from the urgent care facility diagnosed left trapezius and sternocleidomastoid strains and recommended that appellant could return to work with restrictions.

Ms. Lemme indicated in an August 26, 2019 report that appellant was improving, but continued to have throbbing and aching in the left shoulder with radiation of burning into her left arm. She noted that appellant could move her neck much better, but was still in moderate pain. Ms. Lemme diagnosed left trapezius and sternocleidomastoid strains.

In an August 30, 2019 Form CA-17, the unidentifiable healthcare provider diagnosed left trapezius and sternocleidomastoid strains and recommended that appellant could return to work with restrictions. In a note of even date, the same unidentifiable healthcare provider noted that appellant could return to modified-duty work. In a report of even date, Ms. Lemme again diagnosed left trapezius and sternocleidomastoid strains.

In a September 6, 2019 medical report, Elizabeth Dyer, a nurse practitioner, saw appellant for a recheck and noted that she was improving. In a Form CA-17 and a note of even date, Ms. Dyer recommended that appellant could return to work with restrictions.

In a September 6, 2019 response to OWCP's development questionnaire, appellant noted that she had placed her FSS tray on the top of a bin under her case, but it dropped behind, and when she reached down to grab it, she felt multiple cracking sensations in the left side of her back, up to her left shoulder. She indicated that when she stood up, she felt pain in her neck and left shoulder. Appellant asserted that she immediately notified her supervisor after the incident. She

noted that when she turned around to look at her supervisor, the pain increased and she became nauseous.

A September 7, 2019 witness statement from a coworker noted witnessing appellant bend down to grab an FSS tray and that she reported experiencing pain radiating down her back thereafter.

In another witness statement dated September 7, 2019, P.S., appellant's safety officer, noted that his supervisor had approached him on August 16, 2019 to notify him that appellant had reported feeling pain in her back around her shoulder blade. He indicated that he went to check on her and saw that she was in a great deal of pain and could hardly move her left arm. Appellant informed him that when she reached down for an empty tray that had fallen behind a bucket, she felt a popping sensation in her back and her pain increased. P.S. advised her to seek medical treatment.

In a September 12, 2019 Form CA-3 worksheet, the employing establishment advised OWCP that appellant had returned to full-time limited-duty work on August 31, 2019.

In an undated attending physician's report (Form CA-20), Ms. Dyer diagnosed left upper back spasm with severe pain and left trapezius and sternocleidomastoid strains. She advised that appellant was cleared for full-time full-duty work on September 6, 2019.

By decision dated October 1, 2019, OWCP found that the factual evidence was sufficient to establish that the August 16, 2019 employment incident occurred as alleged. However, it denied the claim, finding that the medical evidence of record was insufficient to establish a medical diagnosis in connection with the accepted employment incident. Thus, OWCP concluded that the requirements had not been met to establish an injury as defined by FECA.

In an October 30, 2019 appeal request form, postmarked November 1, 2019, and received by OWCP's Branch of Hearing and Review on November 7, 2019, appellant requested an oral hearing before an OWCP hearing representative.

By decision dated November 13, 2019, OWCP denied appellant's request for an oral hearing as untimely filed, finding that her request was not made within 30 days of the October 1, 2019 OWCP decision as the request was postmarked on November 1, 2019. It also considered whether to grant appellant a discretionary hearing, but determined that the issue in the case could equally well be addressed through the reconsideration process.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA[2] has the burden of proof to establish the essential elements of his or her claim, including 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 of FECA,[3] that an injury was sustained in the performance of duty, as alleged, and that

[2] *Supra* note 1.

[3] *F.H.*, Docket No. 18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

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 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, place, and in the manner alleged. Second component is whether the employment incident caused a personal injury and can be established only by medical evidence.[6]

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.[7] The opinion of the physician must be based on a complete factual and medical background of the employee, 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 specific employment factors identified by the employee.[8]

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met her burden of proof to establish a diagnosed medical condition causally related to the accepted August 16, 2019 employment incident.

In support of her claim, appellant submitted Form CA-17s dated August 16, 23, and 30, 2019 and Part B of the Form CA-16 dated August 16, 2019, which provided a diagnosis of left trapezius and sternocleidomastoid strains. However, the reports contained illegible signatures from an unidentifiable healthcare provider at an urgent care facility. The Board has held that reports that bear illegible signatures cannot be considered probative medical evidence because they lack proper identification that the author is a physician.[9] Accordingly, these reports are of no probative value and are insufficient to meet appellant's burden of proof to establish causal relationship between a diagnosed medical condition and the August 16, 2019 employment incident.[10]

[4] *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr*., 40 ECAB 312 (1988).

[5] *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

[6] *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

[7] *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

[8] *T.L.*, Docket No. 18-0778 (issued January 22, 2020); *Y.S.*, Docket No. 18-0366 (issued January 22, 2020); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[9] *J.P.*, Docket No. 19-0197 (issued June 21, 2019); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

[10] *D.S.*, Docket No. 19-0163 (issued July 17, 2019); *C.B.*, Docket No. 09-2027 (issued May 12, 2010).

Appellant further submitted medical reports signed by Ms. Dyer, a nurse practitioner, and Ms. Lemme, a physician assistant. These reports, however, do not constitute competent medical evidence because neither nurse practitioners nor physician assistants are considered physicians as defined under FECA.[11] Consequently, this evidence is also insufficient to establish appellant's claim.

Accordingly, as there is no rationalized medical evidence of record establishing a diagnosed medical condition causally related to the accepted August 16, 2019 employment incident, the Board finds that appellant has not met her burden of proof.

On appeal appellant asserts that she submitted all necessary documents signed by a physician. As explained above, the evidence of record does not contain medical evidence by a physician, diagnosing a medical condition and explaining with rationale, its connection to the accepted August 16, 2019 employment incident.

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."[12]

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.[13] 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.[14] Although there is no right to a review of the written record or an oral hearing,

[11] Section 8101(2) of FECA provides that physician "includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law." 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA). *See also C.S.*, Docket No. 19-1279 (issued December 30, 2019) (nurse practitioners are not considered physicians as defined under FECA); *B.R.*, Docket No. 19-0088 (issued August 13, 2019) (physician assistants are not considered physicians as defined under FECA).

[12] 5 U.S.C. § 8124(b)(1).

[13] 20 C.F.R. §§ 10.616, 10.617.

[14] *Id.* at § 10.616(a).

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.[15]

ANALYSIS -- ISSUE 1

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).

Appellant sought review of an October 1, 2019 OWCP decision by requesting an oral hearing on an appeal request form dated October 30, 2019 and postmarked November 1, 2019. OWCP denied her request for a hearing in a decision dated November 13, 2019, finding that her request was not timely filed. The 30-day time period for determining the timeliness of appellant's hearing request began on October 1, 2019, and ended on October 31, 2019, a Thursday. The October 30, 2019 hearing request was postmarked November 1, 2019. Because the postmark date of the hearing request was more than 30 days after the date of OWCP's October 1, 2019 decision, the Board finds that it was untimely filed and she was not entitled to a hearing as a matter of right.[16]

Although appellant's October 30, 2019 request for an oral hearing was untimely filed, OWCP has the discretionary authority to grant the request and it must exercise such discretion.[17] The Board finds that, in the November 13, 2019 decision, OWCP properly exercised its discretion by determining that the issue in the case could be equally well addressed by a request for reconsideration before OWCP along with submitting additional medical evidence. The Board has held that the only limitation on OWCP's authority is reasonableness.[18] 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 both logic and probable deductions from established facts.[19] In this case, the evidence of record does not indicate that OWCP abused its discretion by denying appellant's request for an oral hearing. Accordingly, the Board finds that OWCP properly denied appellant's request for an oral hearing before an OWCP hearing representative 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 diagnosed medical condition causally related to the accepted August 16, 2019 employment incident. The

[15] *D.S.*, Docket No. 19-1764 (issued March 13, 2020); *E.D.*, Docket No. 19-1562 (issued March 3, 2020); *Eddie Franklin*, 51 ECAB 223 (1999); *Delmont L. Thompson*, 51 ECAB 155 (1999).

[16] *J.M.*, Docket No. 19-1111 (issued November 20, 2019); *Eddie Franklin*, *supra* note 15. 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).

[17] *Id.*

[18] *S.M.*, Docket No. 19-0989 (issued May 12, 2020); *D.R.*, Docket No. 19-1899 (issued April 15, 2020).

[19] *Id.*

Board further finds that OWCP properly denied appellant's request for an oral hearing as untimely filed pursuant to 5 U.S.C. § 8124(b).[20]

ORDER

IT IS HEREBY ORDERED THAT the November 13 and October 1, 2019 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: September 11, 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

[20] The Board notes that the employing establishment issued a Form CA-16. A completed Form CA-16 authorization may constitute a contract for payment of medical expenses to a medical facility or physician, when properly executed. The form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. *See* 20 C.F.R. § 10.300(c); *J.G.*, Docket No. 17-1062 (issued February 13, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).