

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

C.G., Appellant

and

U.S. POSTAL SERVICE, KENSINGTON POST
OFFICE, Detroit, MI, Employer

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**Docket No. 20-0957
Issued: January 27, 2021**

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 March 26, 2020 appellant filed a timely appeal from a March 17, 2020 merit decision and a January 14, 2020 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (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 his burden of proof to establish medical conditions causally related to the accepted factors of his federal employment; 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(b).

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On August 16, 2019 appellant, then a 52-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that he developed a partial anterior cruciate ligament (ACL) tear in his right knee and a heel spur in his left foot due to factors of his federal employment. He explained that his right knee first swelled up and became painful to walk and bend two years after he started working as a mail carrier. Appellant indicated that he first became aware of his conditions and realized that they were caused or aggravated by factors of his federal employment on January 14, 2019. He did not stop work.

In an August 30, 2019 development letter, OWCP informed appellant that the evidence of record was insufficient to establish his claim. It advised him of the type of factual and medical evidence needed and provided a questionnaire for his completion. OWCP afforded appellant 30 days to submit the necessary evidence.

A December 26, 2018 magnetic resonance imaging (MRI) scan of the right knee demonstrated a partial ACL tear.

A July 24, 2019 MRI scan of the left ankle revealed planter fasciitis with reactive bone marrow edema, tiny osteochondral lesion along the posterior lateral talar dome, degenerative spurring at the talonavicular joint, and a possible old healed sprain in the left spring ligament.

In a September 6, 2019 work excuse note, Dr. Sadiq Haque, a sports medicine specialist, diagnosed left plantar fasciitis and held appellant off work until October 10, 2019.

In a September 6, 2019 response to OWCP's questionnaire, appellant indicated that he worked 9 to 11 hours a day, six days a week, which required him to climb up and down many stairs. He asserted that he was also attacked by dogs several times during his shifts, causing certain jerks, twists, and turns while fending off the dogs. Appellant indicated that he had not been involved in any activities or physical sports outside of his work.

On October 1, 2019 OWCP received undated and unsigned notes, listing appellant's work restrictions for the period January 26 through November 2, 2019.

By decision dated October 18, 2019, OWCP denied appellant's occupational disease claim, finding that the medical evidence of record was insufficient to establish that his diagnosed conditions were causally related to the accepted factors of his federal employment.

January 25, 2019 x-rays of the knees demonstrated bilateral minimal degenerative joint disease.

In a January 25, 2019 medical report, Dr. Haque noted that appellant was evaluated for right knee pain and indicated that appellant had no prior injury. Appellant reported to him that his symptoms were worse with walking and using stairs. Dr. Haque reviewed appellant's x-rays of the bilateral knee, conducted a physical examination, and diagnosed degenerative joint disease (DJD).

February 22, 2019 x-rays of the pelvis and right hip revealed mild degenerative changes.

In a February 22, 2019 medical report, Dr. Haque indicated that appellant took time off from his work due to right knee pain. Appellant reported to him that he was now having persistent pain in his knee localized to the medial joint, as well as in his back and hip. He also reported that his symptoms were worse with carrying mail and better with rest. Dr. Haque conducted a physical examination, reviewed appellant's x-rays, and diagnosed right knee DJD, right hip osteoarthritis, and lumbar spondylosis.

In a March 20, 2019 medical report, Dr. Haque reiterated his examination findings and diagnosis of right hip osteoarthritis. He indicated that appellant underwent a right hip injection to alleviate his pain.

In a May 3, 2019 medical report, Dr. Haque noted that the March 20, 2019 injection had provided appellant complete relief from pain for three to four weeks and that he initially returned to work without any discomfort, but that his pain now returned. Appellant reported to Dr. Haque that he had been running and walking without any discomfort before pain returned. Dr. Haque diagnosed right hip femoroacetabular impingement and osteoarthritis.

A June 28, 2019 magnetic resonance imaging (MRI) scan of the right hip demonstrated moderate right and mild left greater trochanteric bursitis and mild subcortical cystic changes in the superior aspect of the right acetabulum. It revealed no avascular necrosis of the femoral head.

In a July 16, 2019 medical report, Dr. Haque reiterated his examination findings from the May 3, 2019 report, but added that appellant continued to experience right knee and left foot pain. He also noted that appellant thought his conditions might be related to prolonged walking required to deliver mail. Dr. Haque reviewed appellant's x-rays and the MRI scan and diagnosed greater trochanteric bursitis of the right hip, a meniscus tear in the right knee, right knee DJD, and left plantar fasciitis.

A July 24, 2019 MRI scan of the right knee revealed no evidence of a meniscus tear, but demonstrated synovial/ganglion cyst at the lateral femoral epicondyle, chondromalacia patella, and minimal knee joint effusion.

In a July 30, 2019 medical report, Dr. Haque reviewed the July 24, 2019 right knee MRI scan and the left foot MRI scan, which revealed edema and plantar fascial thickening. He again diagnosed left plantar fasciitis and right knee DJD.

In an August 7, 2019 medical report, Dr. Jonathan Nzoma, a Board-certified orthopedic surgeon, noted that appellant was evaluated for his right knee. Appellant reported to him that walking for long periods of time aggravated his conditions. Dr. Nzoma diagnosed right knee pain and chondromalacia. He indicated that appellant was scheduled for surgery to remove the cyst at the lateral femoral epicondyle.

In a September 6, 2019 medical report, Dr. Haque noted that appellant was evaluated for left foot pain and again diagnosed left plantar fasciitis.

In a September 27, 2019 medical report, Dr. Haque noted that appellant was unsure if his symptoms were improving because he was not walking as much as he used to at his work.

Appellant reported that he used to walk approximately 10 miles a day at work. Dr. Haque again diagnosed left plantar fasciitis.

Dr. Nzoma noted in an October 3, 2019 medical report that appellant underwent right knee arthroscopy with partial meniscectomy that day. He diagnosed right knee pain, lateral meniscus tear, chondromalacia patella, and chondromalacia trochlear. Dr. Nzoma reiterated that appellant's belief that prolonged walking over long periods of time aggravated his right knee condition.

In an October 9, 2019 medical report, Vanessa Delgado, a physician assistant, noted that appellant returned for evaluation after he underwent partial right knee arthroscopic meniscectomy on October 3, 2019. She prescribed physical therapy.

On November 12, 2019 OWCP received illegible medical notes dated June 11 and September 9, 2019 from Dr. Barry Braver, an osteopathic manipulative therapy specialist. It also received another partially illegible medical note dated July 30, 2019, in which Dr. Braver diagnosed left plantar fasciitis.

In a request form dated December 16, 2019 and postmarked December 17, 2019, appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.

By decision dated January 14, 2020, the hearing representative denied appellant's request for a review of the written record as untimely filed, finding that his request was not made within 30 days of the October 18, 2019 OWCP decision as it was postmarked on December 17, 2019. The hearing representative further exercised discretion and determined that the issue in this case could equally well be addressed by a request for reconsideration before OWCP along with the submission of new evidence.

On February 14, 2020 appellant requested reconsideration of the October 18, 2019 decision.

By decision dated March 17, 2020, OWCP denied modification.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA² 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 any disability or medical condition for which compensation is claimed is causally related to the

² *Supra* note 1.

³ *J.W.*, Docket No. 18-0678 (issued March 3, 2020); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

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 establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.⁶

Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical 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 met not his burden of proof to establish medical conditions causally related to the accepted factors of his federal employment.

In medical reports dated July 16 and September 27, 2019, Dr. Haque noted that appellant walked approximately 10 miles a day while delivering mail and that appellant thought his conditions might be related to prolonged walking required to deliver mail. He diagnosed greater trochanteric bursitis of right hip, a meniscus tear in the right knee, a right knee DJD, and left plantar fasciitis. Dr. Haque, however, did not provide his own opinion which addressed the cause of the diagnosed conditions. Similarly, Dr. Nzoma, in his August 7 and October 3, 2019 reports, did not provide his own opinion on the cause of appellant's diagnosed chondromalacia and other conditions. 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.⁹ As such, these reports are sufficient to establish appellant's claim.

⁴ *J.S.*, Docket No.18-0657 (issued February 26, 2020); *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁵ *L.J.*, Docket No. 19-1343 (issued February 26, 2020); *R.R.*, Docket No.18-0914 (issued February 24, 2020); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁶ *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *R.H.*, 59 ECAB 382 (2008).

⁷ *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *T.H.*, 59 ECAB 388, 393 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

⁸ *R.G.*, Docket No. 18-0792 (issued March 11, 2020); *D.J.*, Docket No. 19-1301 (issued January 29, 2020); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁹ *L.G.*, Docket No. 20-0433 (issued August 6, 2020); *S.D.*, Docket No. 20-0413 (July 28, 2020); *S.K.*, Docket No. 20-0102 (issued June 12, 2020).

In other reports dated from January 25 through September 6, 2019, Dr. Haque provided multiple diagnoses related to appellant's right knee, right hip, and left foot conditions. However, he offered no opinion on causal relationship in these reports. As previously noted, medical evidence that fails to address causation is of no probative value on that issue.¹⁰ These reports, therefore, are also insufficient to establish appellant's claim.

Appellant submitted unsigned and undated notes containing appellant's work restrictions. The Board has held that reports that are unsigned or bear an illegible signature lack proper identification and cannot be considered probative medical evidence as the author cannot be identified as a physician.¹¹ Therefore, these notes are insufficient to establish appellant's claim.

Appellant also submitted an October 9, 2019 medical report signed solely by Ms. Delgado, a physician assistant. Certain healthcare providers such as physician assistants are not considered "physician[s]" as defined under FECA.¹² Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.¹³

Finally, the record also contains the results from diagnostic testing. The Board has held that diagnostic studies, standing alone, lack probative value on the issue of causal relationship as they do not address whether the employment incident caused any of the diagnosed conditions.¹⁴ Thus, these reports are also insufficient to establish appellant's claim.

As appellant has not submitted rationalized medical evidence explaining the causal relationship between his diagnosed medical conditions and the accepted factors of his federal employment, the Board finds that he has not met his 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

¹⁰ *Id.*

¹¹ *M.A.*, Docket No. 19-1551 (issued April 30, 2020).

¹² *Supra* note 1 at § 8101(2); 20 C.F.R. § 10.5(t).

¹³ 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). *See also* 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); *K.W.*, 59 ECAB 271, 279 (2007).

¹⁴ *K.S.*, Docket No. 19-1623 (issued March 19, 2020); *M.J.*, Docket No. 19-1287 (issued January 13, 2020).

of the decision, to a hearing on his [or her] claim before a representative of the Secretary.”¹⁵ 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.¹⁶ 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.¹⁷ 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.¹⁸

ANALYSIS -- ISSUE 2

The Board 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.

Appellant’s December 16, 2019 request for a review of the record was postmarked on December 17, 2019, more than 30 days after the issuance of OWCP’s October 18, 2019 merit decision. Because the postmark date was more than 30 days after the date of OWCP’s October 18, 2019 decision, the Board finds that the request was untimely filed and he was not entitled to a review of the written record as a matter of right.¹⁹

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.²⁰ The Board finds that, in the January 14, 2020 decision, OWCP’s Branch of Hearings and Review properly exercised discretion by determining that the issue in the case could be equally well addressed through a request for reconsideration before OWCP, along with the submission of additional evidence. The Board has held that the only limitation on OWCP’s authority is reasonableness.²¹ 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.²² In this case, the evidence of record does not indicate

¹⁵ *Supra* note 1 at § 8124(b)(1).

¹⁶ *Supra* note 17 at §§ 10.616, 10.617.

¹⁷ *Id.* at § 10.616(a).

¹⁸ *W.H.*, Docket No. 20-0562 (issued August 6, 2020); *P.C.*, Docket No. 19-1003 (issued December 4, 2019); *M.G.*, Docket No. 17-1831 (issued February 6, 2018); *Eddie Franklin*, 51 ECAB 223 (1999); *Delmont L. Thompson*, 51 ECAB 155 (1999).

¹⁹ 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).

²⁰ *Supra* note 21.

²¹ *R.M.*, Docket No. 19-1088 (issued November 17, 2020). See also *E.S.*, Docket No. 18-1750 (issued March 11, 2019).

²² *P.C.*, *supra* note 18.

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 met not his burden of proof to establish right knee, right hip, and left foot conditions causally related to the accepted factors of his federal employment. The Board further finds that OWCP properly denied his request for an oral hearing as untimely filed pursuant to 5 U.S.C. § 8124(b).

ORDER

IT IS HEREBY ORDERED THAT the March 17 and January 14, 2020 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: January 27, 2021
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