

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

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**S.P., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Carol Stream, IL, Employer**

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**Docket No. 22-0766  
Issued: August 17, 2022**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On April 20, 2022 appellant filed a timely appeal from a December 23, 2021 merit decision and an April 11, 2022 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (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 a diagnosed medical condition causally related to the accepted July 31, 2021 employment incident; and (2) whether OWCP properly denied appellant's request for an oral hearing as untimely filed, pursuant to 5 U.S.C. § 8124(b).

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

On August 11, 2021 appellant, then a 53-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that on July 31, 2021 he injured his shoulder when the access door on a postal machine struck his left shoulder and neck while in the performance of duty. He did not stop work.

In a statement dated July 31, 2021, appellant alleged that, while cleaning the jams in a postal machine, he slipped on a moving footstep, which caused his left shoulder to hit a sharp door handle.

In an August 7, 2021 medical report, Dr. Theresa Gandor, a Board-certified emergency medicine specialist, diagnosed shoulder and neck pain and also advised that he could return to work with restrictions of no heavy lifting for two weeks. In a hospital report of even date, she related that appellant fell from a foot stool and injured his left shoulder and neck after landing on the machine. Dr. Gandor further noted that he had been experiencing pain of the left shoulder and neck due to the claimed employment incident.

On August 11, 2021 appellant was seen by Dr. Vijay Patel, a chiropractor, who related that on July 31, 2021 appellant attempted to remove a jam from a postal machine when he fell backwards hitting the sharp counter of the machine. Dr. Patel further noted that a magnetic resonance imaging (MRI) scan of the shoulder, revealed supraspinatus tendinopathy, a superior labrum from anterior to posterior tear (SLAP) lesion, and disc bulge. He diagnosed tenosynovitis and a superior glenoid labrum lesion of the left shoulder and radiculopathy and joint/ligament sprain of the neck.

OWCP received chiropractic notes dated August 12, 16, and 18, 2021 from Dr. Patel, outlining appellant's treatment plan and ongoing medical assessments.

In a November 17, 2021 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence required and provided a questionnaire for his completion. OWCP afforded appellant 30 days to submit the necessary evidence.

By decision dated December 23, 2021, OWCP denied appellant's traumatic injury claim, finding that the medical evidence of record was insufficient to establish a diagnosed medical condition causally related to the July 31, 2021 employment incident. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

In a March 1, 2022 statement, appellant indicated that he was still experiencing pain of the left shoulder and that he was continuing medical treatment.

On March 25, 2022 OWCP received appellant's undated and unsigned request for an oral hearing before a representative of OWCP's Branch of Hearings and Review.

By decision dated April 11, 2022, OWCP denied appellant's request for an oral hearing, finding that his request was not made within 30 days of its December 23, 2021 decision as it was received on March 25, 2022. It 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.

### **LEGAL PRECEDENT -- ISSUE 1**

An employee seeking benefits under FECA<sup>2</sup> 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,<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup>

To determine if an employee has 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 that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred.<sup>6</sup> The second component is whether the employment incident caused a personal injury.<sup>7</sup>

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue. A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background. Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factor(s).<sup>8</sup>

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<sup>2</sup> *Id.*

<sup>3</sup> *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *Joe D. Cameron*, 41 ECAB 153 (1989).

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

<sup>5</sup> *R.R.*, Docket No. 19-0048 (issued April 25, 2019); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

<sup>6</sup> *T.J.*, Docket No. 19-0461 (issued August 11, 2020); *Delores C. Ellyett*, 41 ECAB 992 (1990); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>7</sup> *D.M.*, Docket No. 20-0386 (issued August 10, 2020); *John J. Carlone*, 41 ECAB 354 (1989).

<sup>8</sup> *Id.*

## **ANALYSIS -- ISSUE 1**

The Board finds that appellant has not met his burden of proof to establish a diagnosed medical condition causally related to the accepted July 31, 2021 employment incident.

In support of his claim, appellant submitted an August 7, 2021 medical report from Dr. Gandor, who examined him and diagnosed neck and left shoulder pain. The Board, however, has consistently held that pain is a symptom and not a compensable medical diagnosis.<sup>9</sup> A medical report lacking a firm diagnosis is of no probative value.<sup>10</sup> Appellant also submitted chiropractor notes dated August 11, 12, 16, and 18, 2021 from Dr. Patel, a chiropractor, who diagnosed appellant's medical conditions and provided an assessment of medical treatment. The Board notes that section 8101(2) of FECA<sup>11</sup> provides that the term physician, as used therein, includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist and subject to regulation by the Secretary.<sup>12</sup> OWCP's implementing federal regulation at 20 C.F.R. § 10.5(bb) defines subluxation as an incomplete dislocation, off-centering, misalignment, fixation or abnormal spacing of the vertebrae which must be demonstrated on x-ray. As these reports do not diagnose a subluxation as demonstrated by x-ray, they do not constitute probative medical evidence.<sup>13</sup> Dr. Patel did not diagnose subluxation as demonstrated by x-ray to exist. Therefore, these reports also do not constitute competent medical evidence.<sup>14</sup>

As the medical evidence of record is insufficient to establish a diagnosed medical condition causally related to the accepted July 31, 2021 employment incident, the Board finds that appellant 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 of the decision, to a hearing on his [or her] claim before a representative of the Secretary."<sup>15</sup>

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<sup>9</sup> See *B.T.*, Docket No. 22-0022 (issued May 23, 2022); *S.L.*, Docket No. 19-1536 (issued June 26, 2020); *B.P.*, Docket No. 12-1345 (issued November 13, 2012).

<sup>10</sup> *J.P.*, Docket No. 20-0381 (issued July 28, 2020); *R.L.*, Docket No. 20-0284 (issued June 30, 2020).

<sup>11</sup> 5 U.S.C. § 8101(2).

<sup>12</sup> *Id.*; 20 C.F.R. § 10.311.

<sup>13</sup> *T.H.*, Docket No. 17-0833 (issued September 7, 2017); *Robert H. St. Onge*, 43 ECAB 1169 (1992).

<sup>14</sup> *M.J.*, Docket No. 20-1263 (issued September 14, 2021); *C.S.*, Docket No. 19-1279 (issued December 30, 2019).

<sup>15</sup> 5 U.S.C. § 8124(b)(1).

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.<sup>16</sup> 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.<sup>17</sup> 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.

### **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 request for an oral hearing must be made within 30 days of the date of the decision for which a review is sought.<sup>18</sup> On March 25, 2022 OWCP received appellant's undated request for an oral hearing regarding OWCP's December 23, 2021 denial decision. As the request was received by OWCP's Branch of Hearings and Review more than 30 days after the issuance of the December 23, 2021 decision, the Board finds that appellant's request for an oral hearing was not timely filed. Therefore, OWCP properly found in its April 11, 2022 decision that appellant was not entitled to an oral hearing as a matter of right because his request was not made within 30 days of its December 23, 2021 decision.<sup>19</sup>

Although appellant's March 25, 2022 request for a hearing was untimely, OWCP has the discretionary authority to grant the request and it must exercise such discretion.<sup>20</sup> The Board finds that OWCP properly exercised its discretion in the April 11, 2022 decision by determining that the issue in the case could be equally well addressed by a request for reconsideration before OWCP along with the submission of new evidence relevant to the issue at hand.

The Board has held that the only limitation on OWCP's 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 both logic and probable deductions from established facts.<sup>21</sup> The Board finds that OWCP did not abuse its discretion by denying

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<sup>16</sup> 20 C.F.R. §§ 10.616, 10.617.

<sup>17</sup> *Id.* at § 10.616(a).

<sup>18</sup> *Id.*

<sup>19</sup> *B.H.*, Docket No. 20-0777 (issued October 21, 2020); *R.W.*, Docket No. 13-0044 (issued February 22, 2013); *A.L.*, Docket No. 09-1851 (issued March 9, 2010); *F.W.*, Docket No. 08-0722 (issued August 7, 2008).

<sup>20</sup> *R.H.*, Docket No. 19-1488 (issued February 20, 2020).

<sup>21</sup> *Id.*

appellant's request for an oral hearing and, thus, it properly denied his oral hearing request as untimely filed, pursuant to 5 U.S.C. § 8124(b).<sup>22</sup>

**CONCLUSION**

The Board finds that appellant has not met his burden of proof to establish a diagnosed medical condition causally related to the accepted July 31, 2021 employment incident. 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 December 23, 2021 and April 11, 2022 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: August 17, 2022  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

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

  
James D. McGinley, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>22</sup> See *J.O.*, Docket No. 17-0789 (issued May 15, 2018).