

ISSUES

The issues are: (1) whether appellant has met her burden of proof to establish a recurrence of the need for medical treatment causally related to her accepted October 26, 2017 employment injury; and (2) whether OWCP properly denied appellant's request for an oral hearing as untimely filed under 5 U.S.C. § 8124(b).

FACTUAL HISTORY

On December 1, 2017 appellant, then a 33-year-old food service worker, filed a traumatic injury claim (Form CA-1) alleging that on October 26, 2017 she injured her right shoulder while lifting a heavy sheet pan from the refrigerator in the performance of duty. On March 20, 2018 OWCP accepted her claim for right rotator cuff tendinopathy; right rotator cuff contusion; sprain of right rotator cuff capsule, sequela; and loose body in right shoulder. It paid appellant wage-loss compensation and authorized two surgical procedures which were performed on August 9, 2018 and May 2, 2019 by Dr. Scott A. Sigman, a Board-certified orthopedic surgeon.³ Following her surgical procedures, appellant returned to light-duty work with restrictions on lifting, pushing or pulling and lifting above the shoulder. On September 16, 2019 Dr. Sigman released appellant to return to full-duty work with no restrictions.⁴ Appellant returned to full-duty work with no restrictions on September 17, 2019.

On January 20, 2021 appellant filed a notice of recurrence (Form CA-2a) for medical treatment, alleging that on January 15, 2021 she sustained a recurrence of her October 26, 2017 employment injury. She alleged that since August/September 2019 she had trouble lifting, pushing and pulling with constant swelling, some loss of range of motion and strength, and a burning pain up to her neck. Appellant indicated that she always felt sore, but pushed through the pain. On the reverse side of the claim form, appellant's supervisor related that appellant's shoulder area was swollen and uncomfortable, but she kept working.

A January 15, 2021 request from Dr. Sigman for authorization of a right shoulder diagnostic magnetic resonance imaging (MRI) scan was received, along with physical therapy progress notes from 2018.

In a February 5, 2021 development letter, OWCP advised appellant of the deficiencies of her recurrence claim. It requested additional medical evidence to substantiate that her current condition was causally related to the original injury. OWCP requested bridging information for appellant's work-related condition from her date of discharge/date of last medical care through the present including a history of intervening injuries, diagnostic test results, and treatment reports from appellant's physician. It afforded her 30 days to respond.

³ Following the August 9, 2018 surgery, OWCP paid appellant on its supplemental rolls from August 9 through September 13, 2018 and on its periodic rolls from September 16 through November 10, 2018. Following the May 2, 2019 revision surgery, OWCP paid appellant on its supplemental rolls from May 2 through 25, 2019.

⁴ Dr. Sigman noted that appellant had a complete rotator cuff tear or rupture of right shoulder, not specified as traumatic.

In a January 15, 2021 report, Dr. Sigman indicated that appellant had a previous work-related injury for which she underwent a full-thickness rotator cuff tear repair with a repeat surgical intervention for recurrence of pain. He noted that she had not been seen since September 2019. Dr. Sigman noted that examination findings for appellant's right shoulder revealed tenderness of the acromial and the greater tuberosity, supraspinatus with positive impingement and O'Brien tests, and 4/5 abduction. He indicated that the x-ray demonstrated lucency within the humeral head consistent with her previous rotator cuff repair and previous acromioplasty. Dr. Sigman provided an assessment of right shoulder pain. He also referred her for a diagnostic right shoulder MRI scan.

By decision dated May 3, 2021, OWCP denied appellant's claimed recurrence of the need for medical treatment commencing January 15, 2021. It noted that she was released from medical care for her work-related condition on September 16, 2019 following her October 26, 2017 employment injury and that the medical evidence of record was insufficient to establish causal relationship between her current need for medical treatment and her accepted work-related conditions without intervening cause.

In a request for an oral hearing dated June 3, 2021, appellant requested a telephonic oral hearing before a representative of OWCP's Branch of Hearings and Review. Additional medical evidence was received.

By decision dated June 23, 2021, OWCP's Branch of Hearings and Review denied appellant's request for an oral hearing, finding that it was untimely filed. It further exercised its discretion and determined that the issue in the case could equally well be addressed by requesting reconsideration and submitting evidence not previously considered which established that she sustained a recurrence of the need for medical treatment due to the October 26, 2017 employment injury.

LEGAL PRECEDENT -- ISSUE 1

A recurrence of a medical condition means a documented need for further medical treatment after release from treatment for the accepted condition or injury when there is no accompanying work stoppage.⁵ An employee has the burden of proof to establish that he or she sustained a recurrence of a medical condition that is causally related to his or her accepted employment injury without intervening cause.⁶

If a claim for recurrence of medical condition is made more than 90 days after release from medical care, a claimant is responsible for submitting a medical report supporting a causal

⁵ 20 C.F.R. § 10.5(y).

⁶ *M.P.*, Docket No. 19-0161 (issued August 16, 2019); *E.G.*, Docket No. 18-1383 (issued March 8, 2019); *T.B.*, Docket No. 18-0762 (issued November 2, 2018); *E.R.*, Docket No. 18-0202 (issued June 5, 2018).

relationship between the employee's current condition and the original injury in order to meet his or her burden of proof.⁷

To meet this burden the claimant must submit medical evidence from a physician who, on the basis of a complete, and accurate factual and medical history, supports that the condition is causally related and supports his or her conclusion with sound medical rationale.⁸ Where no such rationale is present, medical evidence is of diminished probative value.⁹

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met her burden of to establish a recurrence of the need for medical treatment causally related to her accepted October 26, 2017 employment injury.

OWCP accepted appellant's claim for right rotator cuff tendinopathy and right rotator cuff contusion as a result of the October 26, 2017 employment injury. Following each of her right shoulder surgical procedures on August 9, 2018 and May 2, 2019, appellant returned to light-duty work with restrictions. She returned to full-duty work with no restrictions on September 17, 2019. On January 20, 2021 appellant claimed a recurrence of medical treatment only commencing on January 15, 2021 due to the accepted October 26, 2017 employment injury.

In a January 15, 2021 report, Dr. Sigman noted that appellant had a previous work-related injury that resulted in two surgical interventions, that she had positive findings on examination and the lucency within the humeral head on x-ray was consistent with her previous rotator cuff repair and previous acromioplasty. He provided an assessment of right shoulder pain and referred appellant for a diagnostic right shoulder MRI scan. The Board has consistently held that pain is a symptom, not a compensable medical diagnosis.¹⁰ Furthermore, Dr. Sigman did not offer any medical explanation of how the accepted conditions for which appellant last received treatment in September 2019, resulted in the need for further medical care almost two years later¹¹ or that appellant's current need for further medical care was due to her accepted October 26, 2017 employment conditions.¹² As appellant filed the recurrence of the need for medical treatment more than 90 days following her last medical treatment for her accepted employment conditions in September 2019, she was required to submit a rationalized medical opinion establishing causal relationship between her current condition and the original employment injury.¹³ A physician must provide an opinion that the employment injury caused or contributed to the claimant's diagnosed

⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.4(b) (June 2013); *see also* *J.M.*, Docket No. 09-2041 (issued May 6, 2010).

⁸ *A.C.*, Docket No. 17-0521 (issued April 24, 2018); *O.H.*, Docket No. 15-0778 (issued June 25, 2015).

⁹ *O.H.*, *id.*; *Michael Stockert*, 39 ECAB 1186 (1988); *see Ronald C. Hand*, 49 ECAB 113 (1997).

¹⁰ *R.C.*, Docket No. 20-1321 (issued July 7, 2021); *J.S.*, Docket No. 0764 (issued January 21, 2021).

¹¹ *Id.*

¹² *T.M.*, Docket No. 18-1418 (issued February 7, 2019).

¹³ *Supra* note 8.

medical condition, supported by medical reasoning sufficient to demonstrate that the conclusion reached is sound, logical, and rational.¹⁴ Therefore, the Board finds that Dr. Sigman's report is insufficient to establish appellant's recurrence claim.

The Board notes that the physical therapy reports from 2018 are not relevant to the current claim as they predate the claimed January 15, 2021 recurrence.¹⁵

As appellant has not submitted medical evidence sufficient to establish a recurrence of the need for medical treatment causally related to her accepted October 26, 2017 employment injury, the Board finds that she has not met her burden of proof.¹⁶

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, 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 the date of the issuance of an OWCP final decision.¹⁷

A hearing is a review of an adverse decision by an OWCP hearing representative. Initially, the claimant can choose between either 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.¹⁸ 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.¹⁹ 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.²⁰

¹⁴ *A.C.*, *supra* note 8; *John W. Montoya*, 54 ECAB 306 (2003).

¹⁵ *See generally*, *B.P.*, Docket No. 21-0872 (issued December 8, 2021); *D.A.*, Docket No. 21-0939 (issued November 22, 2021).

¹⁶ To the extent that appellant is alleging a new injury, she may file a new claim with OWCP.

¹⁷ 5 U.S.C. § 8124(b)(1).

¹⁸ 20 C.F.R. § 10.615.

¹⁹ *Id.* at § 10.616(a); *B.H.*, Docket No. 18-0874 (issued October 10, 2018); *James Smith*, 53 ECAB 188 (2001).

²⁰ *B.H.*, *id.*

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.²¹

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.²² As her request was dated²³ June 3, 2021, more than 30 days after OWCP's May 3, 2021 decision, it was untimely filed and she was not entitled to an oral hearing as a matter of right.²⁴

The Board further finds that OWCP properly exercised its discretion in denying appellant's request for an oral hearing by determining that the issue in the case could be addressed equally well through a request for reconsideration and the submission of new evidence relevant to the issue of causal relationship between the accepted employment injury on October 26, 2017 and the claimed January 15, 2021 recurrence of the need for medical treatment.²⁵ The Board has held that the only limitation on OWCP's discretionary 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 logic and probable deduction from established facts.²⁶ In this case, the evidence of record does not establish that OWCP abused its discretion in denying appellant's request for an oral hearing. Accordingly, the Board finds that OWCP properly denied her June 3, 2021 request for an oral hearing as untimely filed pursuant to 5 U.S.C. § 8124(b).²⁷

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a recurrence of the need for medical treatment causally related to her accepted October 26, 2017 employment

²¹ 20 C.F.R. § 10.616(b); *id.*

²² *See J.M., supra* note 7; *see also supra* note 10.

²³ 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, if available. Federal (FECA) Procedure Manual, Part 2 – Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.4a (October 2011). Otherwise, the date of the letter itself should be used. *See J.H.*, Docket No. 06-1565 (issued February 20, 2007); *James B. Moses*, 52 ECAB 465 (2001), *citing William J. Kapfhammer*, 42 ECAB 271 (1990); *see also Douglas McLean*, 42 ECAB 759 (1991).

²⁴ *D.M.*, Docket No. 20-1465 (issued March 1, 2021); *A.L.*, Docket No. 09-1851 (issued March 9, 2010); *F.W.*, Docket No. 08-0722 (issued August 7, 2008).

²⁵ *Id.*

²⁶ *Id.*; *Teresa M. Valle*, 57 ECAB 542 (2006).

²⁷ *See supra* note 18; *J.M., supra* note 7.

injury. The Board further finds that OWCP properly denied appellant's request for an oral hearing as untimely filed under 5 U.S.C. § 8124(b).

ORDER

IT IS HEREBY ORDERED THAT the May 3 and June 23, 2021 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: February 28, 2022
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