United States Department of Labor
Employees' Compensation Appeals Board

M.A., Appellant	)	
and	)	**Docket No. 22-0850**
	)	**Issued: November 8, 2022**
U.S. POSTAL SERVICE, POST OFFICE, Hartford, CT, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On May 12, 2022 appellant filed a timely appeal from a February 25, 2022 merit decision and an April 26, 2022 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 medical condition causally related to the accepted January 3, 2022 employment incident; and (2) whether OWCP properly denied appellant's request for 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 January 6, 2022 appellant, then a 29-year-old carrier technician, filed a traumatic injury claim (Form CA-1) alleging that on January 3, 2022 she developed back and chest pain while dismounting packages to doors while in the performance of duty. She noted that she felt a sudden sharp pain in the center of her back and chest, and gradually her body began to shake. Appellant stopped work on January 4, 2022.

In a statement dated January 3, 2021,[2] appellant reiterated that as she was delivering packages, she suddenly felt a sharp pain in the center of her back and that her body began to shake. She asserted that as she made her way back to her truck, the pain extended to her chest area.

In a letter dated January 5, 2022, A.R., the employing establishment postmaster, controverted appellant's claim, contending that she had not been injured in a traumatic employment incident while delivering packages, as alleged, noting that she had reported being previously diagnosed with pleurisy, a respiratory condition that causes sharp chest pain.

In a January 6, 2022 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed and provided a questionnaire for her completion. In a separate development letter of even date, OWCP requested that the employing establishment provide comments from a knowledgeable supervisor regarding the accuracy of appellant's allegations. It afforded both parties 30 days to respond.

OWCP thereafter received general discharge instructions dated January 3, 2022, which noted that appellant's doctor advised of her pleurisy condition.

In an after-visit summary and work excuse note dated January 3, 2022, Lisa A. McCarroll, a physician assistant, diagnosed inflammation of the lining of the lung. She held appellant off work until January 6, 2022.

In a note dated January 5, 2022, Dr. Maria Cristofaro, Board-certified in internal medicine, indicated that appellant complained of generalized body aches. She diagnosed muscle spasm. In a separate note of even date, Dr. Cristofaro held appellant off work until January 8, 2022.

On January 10, 2022 an unsigned work excuse note indicated that appellant was seen by Dr. Elzbieta Dyjak, a family medicine specialist, and that she held appellant off work until January 18, 2022.

In a January 12, 2022 response to OWCP's development questionnaire, Postmaster A.R. continued to controvert appellant's claim, asserting that there was no evidence that she was injured while delivering packages, as alleged.

[2] The date of this statement appears to be a typographical error as appellant contended that the employment incident occurred on January 3, 2022.

A duty status report (Form CA-17) dated January 13, 2022, bearing an illegible signature, contained diagnoses of back pain and muscle spasm and indicated that appellant was able to return to full-duty work, effective January 17, 2022.

By decision dated February 25, 2022, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish that her diagnosed conditions were causally related to the accepted January 3, 2022 employment incident.

On April 5, 2022[3] appellant filed a request for review of the written record by a representative of OWCP's Branch of Hearings and Review.

By decision dated April 26, 2022, OWCP's Branch of Hearings and Review denied appellant's request for review of the written record, 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 by OWCP, along with the submission of new evidence.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA 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,[4] that the claim was timely filed within the applicable time limitation period of FECA, 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.[5] 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.[6]

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. The first component is that the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time and place, and in the manner alleged. The second component is whether the employment incident caused a personal injury and can be established only by medical evidence.[7]

[3] The request was unsigned, undated and postmarked April 1, 2022.

[4] *K.R.*, Docket No. 20-0995 (issued January 29, 2021); *A.W.*, Docket No. 19-0327 (issued July 19, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

[5] *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[6] *J.B.*, Docket No. 20-1566 (issued August 31, 2021); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

[7] *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).

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.[8] 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 incident identified by the employee.[9]

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met her burden of proof to establish a medical condition causally related to the accepted January 3, 2022 employment incident.

In support of her claim, appellant submitted January 5, 2022 notes from Dr. Cristofaro who diagnosed muscle spasm. However, the notes did not contain an opinion as to the cause of the diagnosed condition. The Board has held that a medical report that does not render an opinion on causal relationship is of no probative value and, thus, is insufficient to establish the claim.[10] Therefore, these notes are insufficient to meet appellant's burden of proof.

Likewise, the unsigned January 10, 2022 work excuse note from Dr. Dyjak did not contain an opinion on the issue of causal relationship.[11] Moreover, reports that are unsigned or that bear illegible signatures cannot be considered probative medical evidence because they lack proper identification[12] as the author cannot be identified as a physician.[13] Thus, Dr. Dyjak's January 10, 2022 note is insufficient to establish appellant's claim.

The remaining medical evidence of record consists of notes by a physician assistant and a Form CA-17 bearing an illegible signature. This Board has long held that certain healthcare providers such as physician assistants are not considered physicians as defined under FECA.[14] Their medical findings, reports and/or opinions, unless cosigned by a qualified physician, will not

[8] *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).

[9] *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).

[10] *T.D.*, Docket No. 19-1779 (issued March 9, 2021).

[11] *Id*.

[12] *W.L.*, Docket No. 19-1581 (issued August 5, 2020).

[13] *D.T.*, Docket No. 20-0685 (issued October 8, 2020); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

[14] 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). *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *C.G.*, Docket No. 20-0957 (issued January 27, 2021); *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 K.A.*, Docket No. 18-0999 (issued October 4, 2019).

suffice for purposes of establishing entitlement to FECA benefits.[15] Further, and as noted above, a report bearing an illegible signature cannot be considered probative because it lacks proper identification and the author cannot be identified as a physician.[16] Consequently, these reports are also insufficient to meet appellant's burden of proof.

As appellant has not submitted rationalized medical evidence to establish a medical condition causally related to the accepted January 3, 2022 employment incident, the Board finds that she has not met her 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."[17] 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.[18] 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.[19] 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.[20]

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied appellant's request for a review of the written record before an OWCP hearing representative as untimely filed, pursuant to 5 U.S.C. § 8124.

OWCP's regulations provide that the request for a hearing or review of the written record must be made within 30 days of the date of the decision for which a review is sought. Because appellant's request for a review of the written record was postmarked on April 1, 2022, more than

[15] *K.A., id.*; *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk, id.*

[16] *Supra* note 14.

[17] *Supra* note 2 at § 8124(b)(1).

[18] 20 C.F.R. §§ 10.616, 10.617.

[19] *Id.* at § 10.616(a).

[20] *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).

30 days after OWCP's February 25, 2022 decision, the Board finds that it was untimely. Appellant was, therefore, not entitled to a review of the written record as a matter of right.[21]

OWCP, however, has the discretionary authority to grant the request and it must exercise such discretion.[22] 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, clearly unreasonable exercise of judgment or actions taken which are contrary to both logic and probable deductions from established facts.[23] The Board finds that the evidence of record indicates that OWCP did not abuse its discretion in connection with its denial of 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 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 medical condition causally related to the accepted January 3, 2022 employment incident. The Board further finds that OWCP properly denied appellant's request for review of the written record as untimely filed, pursuant to 5 U.S.C. § 8124(b).

[21] *See K.B.*, Docket No. 21-1038 (issued February 28, 2022); *M.F.*, Docket No. 21-0878 (issued January 6, 2022); *see also P.C.*, Docket No. 19-1003 (issued December 4, 2019).

[22] *Id*.

[23] *Id*.

ORDER

IT IS HEREBY ORDERED THAT the February 25 and April 26, 2022 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: November 8, 2022
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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