

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

S.I., Appellant)	
)	
and)	Docket No. 22-0538
)	Issued: October 3, 2022
DEPARTMENT OF VETERANS AFFAIRS,)	
EDWARD HINES, JR. VA HOSPITAL,)	
Hines, IL, Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On February 18, 2021 appellant filed a timely appeal from an October 25, 2021 merit decision and a December 23, 2021 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.²

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the December 23, 2021 decision, appellant submitted additional evidence to OWCP. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

ISSUES

The issues are: (1) whether appellant has established a medical condition causally related to the accepted July 28, 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).

FACTUAL HISTORY

On August 25, 2021 appellant, then a 61-year-old medical supply aid and technician, filed a traumatic injury claim (Form CA-1) alleging that on July 28, 2021 he injured his leg when he tripped over an electrical outlet sticking out of the floor while in the performance of duty. He explained that he was carrying a surgical tray at the time. On the reverse side of the claim form, appellant's supervisor indicated that he was not injured in the performance of duty because he had been instructed not to sit at the back-end table to prevent injury as the workstation was not functioning due to computer issues.

In support of his claim, appellant submitted a partial emergency department report dated July 28, 2021 from Dr. Bernadette B. Gniadecki, Board-certified in emergency medicine, whose physical examination of the right lower extremity revealed tenderness in the anterior mid-upper leg. X-ray scans of the right femur, pelvis, and right hip revealed no fracture or dislocation. Dr. Gniadecki diagnosed acute right upper leg strain. She advised that appellant should be off work and recommended ice and rest. In a work excuse note of even date, Dr. Gniadecki advised that appellant should be off work pending clearance by the employing establishment's healthcare unit.

In a July 30, 2021 occupational medicine report, Timothy R. Newcomb, a physician assistant, related that appellant injured his right hip and low back on July 28, 2021 at work when he tripped on a floor outlet and fell in a split, hyperextending his right hip. Appellant reported feeling stinging pain in the right anterior hip and right lumbar region and continued to have persistent pain and stiffness in the right hip and low back, especially with walking, sitting, and pivoting. Mr. Newcomb's examination revealed guarded gait with use of axial crutches, range of motion (ROM) limited by pain in forward bend, extension, lateral flexion, and rotation, normal right hip ROM with pain in all planes of motion, and tenderness to palpation in the right proximal femur and iliac crest. He diagnosed right hip and low back injury, likely a strain of hip flexor, quad lumborum, and pelvis. In an employing establishment emergency treatment report of even date, Mr. Newcomb diagnosed right hip and low back injury and checked a box indicating that the condition was work related. He advised that appellant could not return to work.

An August 3, 2021 medical report from Dr. Sowmya Mikkilineni, a Board-certified geriatrician, related that appellant fell at work on July 28, 2021 when he tripped on an outlet projecting out of the floor, falling forward and doing the splits. Appellant reported pain in the right hip and thigh anteriorly, lower and upper back pain, and right leg pain. Dr. Mikkilineni's examination revealed tenderness over the right thigh and mild tenderness over the lumbosacral spine. She noted that appellant came in on crutches and recommended a rollator and bathroom equipment. In a work excuse note of even date, Dr. Mikkilineni noted that appellant had an acute musculoskeletal injury from a fall at work. She recommended that appellant remain off work for 30 days given his level of pain and limited ROM.

In an August 29, 2021 Occupational Safety and Health Administration (OSHA) injury and illness incident report (OSHA Form 301), appellant reported that on July 28, 2021 he retrieved a medical tray to process and tripped over an electrical outlet in the floor. He reported that he sustained a muscle strain in his leg and low back pain.

OWCP also received an August 29, 2021 statement from D.W., a coworker, relating that on the morning of July 28, 2021, appellant informed him that he was injured. He stated that he did not witness the incident that led to the injury, but that appellant stated that he was going to the emergency room. An August 30, 2021 statement bearing an illegible signature indicated that the author did not witness appellant's July 28, 2021 accident. An August 30, 2021 e-mail from M.T., indicates that on July 26, 2021 appellant was informed not to sit at the back-end table because another employee was electrocuted on June 7, 2021 due to the junction box sticking out of the ground.

In a September 8, 2021 work excuse note, Dr. Mikkilineni noted that appellant was receiving treatment for an acute musculoskeletal injury from a fall at work and continued to have significant pain with movement. She held him off work until his pain and ROM improved and he made good progress with physical therapy.

In a September 14, 2021 statement, R.N., a human resources specialist, challenged appellant's claim due to a lack of medical evidence.

In an October 8, 2021 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him as to the type of factual and medical evidence required and provided a questionnaire for his completion. OWCP afforded appellant 30 days to respond.

OWCP subsequently received a September 20, 2021 medical report from Dr. Mikkilineni, relating that appellant hurt himself over the summer when he tripped over a socket in the floor at work and that he continued to have thigh, buttocks, and back pain. Examination revealed that appellant was walking with a cane and had decreased strength in the right lower extremity due to pain. Dr. Mikkilineni diagnosed low back and neck pain.³

In an October 20, 2021 letter, Dr. Mikkilineni related appellant's history of injury and treatment and reviewed October 19, 2021 diagnostic reports. She concluded that "[g]iven [the] temporal relation of pain starting after the fall, the pain/limitations of movement were related to the fall at work." In a Family and Medical Leave Act form of even date, Dr. Mikkilineni indicated that appellant would be incapacitated and unable to work until approximately December 1, 2021.

³ On October 19, 2021 appellant underwent a pelvic x-ray, which revealed no abnormalities. A pelvic computerized tomography (CT) scan taken the same day demonstrated no acute abnormalities and mildly enlarged left inguinal lymph node of uncertain etiology and clinical significance. A magnetic resonance imaging (MRI) scan of the lumbar spine also taken that day demonstrated intact lumbar spine vertebral bodies without evidence of acute compression fracture, mild lumbar spine degenerative disc and facet disease, and mild bilateral neural foraminal narrowing at L4-L5.

By decision dated October 25, 2021, OWCP denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish that his medical condition was causally related to the accepted July 28, 2021 employment incident.

OWCP continued to receive medical evidence.

In a November 17, 2021 memorandum of telephone call (Form CA-110), OWCP noted that appellant had called and inquired regarding the status of his case, as he had not received a decision by mail. Appellant indicated that the decision could be resent to the same address OWCP had on file.

By appeal request form postmarked December 10, 2021, appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. He provided additional evidence in support of his claim.

By decision dated December 23, 2021, OWCP denied appellant's request for an oral hearing, finding that the request was not made within 30 days of the October 25, 2021 decision and, therefore, was untimely filed. 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 FECA⁴ 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,⁵ 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.⁶ 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.⁷

To determine whether 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 at the time and

⁴ *Supra* note 1.

⁵ *S.S.*, Docket No. 19-1815 (issued June 26, 2020); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁶ *M.H.*, Docket No. 19-0930 (issued June 17, 2020); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁷ *S.A.*, Docket No. 19-1221 (issued June 9, 2020); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

place and in the manner alleged.⁸ The second component is whether the employment incident caused a personal injury.⁹

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.¹⁰ 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.¹¹

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met his burden of proof to establish a medical condition causally related to the accepted February 11, 2021 employment incident.

In an October 20, 2021 letter, Dr. Mikkilineni opined that “[g]iven [the] temporal relation of pain starting after the fall, the pain/limitations of movement were related to the fall at work.” While she provided an affirmative opinion suggestive of causal relationship, she did not offer medical rationale sufficient to explain why she believed appellant’s employment duties could have resulted in or contributed to his diagnosed conditions. Without identifying specific employment duties or explaining how they caused or aggravated appellant’s conditions, this medical report is of limited probative value, and is insufficient to meet appellant’s burden of proof.¹²

In an August 3, 2021 report, Dr. Mikkilineni related that appellant fell at work on July 28, 2021 when he tripped on an outlet projecting out of the floor, falling forward and doing the splits. In a work excuse note of even date, she noted that appellant had an acute musculoskeletal injury from a fall at work. In a September 8, 2021 work excuse note, Dr. Mikkilineni indicated that appellant was receiving treatment for an acute musculoskeletal injury from a fall at work and continued to have significant pain with movement. In a September 20, 2021 medical report, she related that he hurt himself over the summer when he tripped over a socket in the floor at work and diagnosed low back and neck pain. Although Dr. Mikkilineni suggested a work-related cause for appellant’s medical condition in each report, she did not provide a rationalized medical opinion relating the specific diagnosed condition to the July 28, 2021 employment incident. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how an employment activity could have caused or aggravated

⁸ *R.K.*, Docket No. 19-0904 (issued April 10, 2020); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁹ *Y.D.*, Docket No. 19-1200 (issued April 6, 2020); *John J. Carlone*, 41 ECAB 354 (1989).

¹⁰ *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).

¹¹ *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).

¹² *See A.P.*, Docket No. 19-0224 (issued July 11, 2019).

a medical condition.¹³ Therefore, these reports are insufficient to establish appellant's traumatic injury claim.

In a July 28, 2021 emergency department report, Dr. Gniadecki diagnosed acute right upper leg strain and advised that appellant should be off work. In a work excuse note of even date, she advised that appellant should be off work pending clearance by the employing establishment's healthcare unit. In an October 20, 2021 FMLA form, Dr. Mikkilineni indicated that appellant would be incapacitated and unable to work until approximately December 1, 2021. However, neither Dr. Gniadecki nor Dr. Mikkilineni offered an opinion on causal relationship in any of this evidence. 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.¹⁴ For this reason, this medical evidence is insufficient to meet appellant's burden of proof.

The remaining medical evidence consists of medical records by Mr. Newcomb, a physician assistant. The Board has held that medical reports signed solely by a physician assistant, registered nurse, or medical assistant are of no probative value as such healthcare providers are not considered physicians as defined under FECA and are, therefore, not competent to provide medical opinions.¹⁵ Consequently, their medical findings and/or opinions will not suffice for the purpose of establishing entitlement to FECA benefits.

As appellant has not submitted rationalized medical evidence establishing that his medical condition is causally related to the accepted July 28, 2021 employment incident, the Board finds that he has not met his burden of proof to establish his claim.

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."¹⁶

¹³ *Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

¹⁴ *S.J.*, Docket No. 19-0696 (issued August 23, 2019); *M.C.*, Docket No. 18-0951 (issued January 7, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹⁵ Section § 8102(2) of FECA provides as follows: (2) 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. § 8102(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); *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 S.S.*, Docket No. 21-1140 (issued June 29, 2022) (physician assistants are not considered physicians under FECA and are not competent to provide medical opinions); *George H. Clark*, 56 ECAB 162 (2004) (physician assistants are not considered physicians under FECA).

¹⁶ 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.¹⁷ 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.¹⁸ 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.¹⁹

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 a request for an oral hearing must be made within 30 days of the date of the decision for which a review is sought.²⁰ Appellant, therefore, had 30 days following OWCP's October 25, 2021 merit decision to request an oral hearing before a representative of OWCP's Branch of Hearings and Review. As appellant's request for an oral hearing was postmarked December 10, 2021, more than 30 days after OWCP's October 25, 2021 decision, it was untimely filed and he was, therefore, not entitled to an oral hearing as a matter of right.²¹

OWCP also has the discretionary power to grant an oral hearing or review of the written record even if the claimant is not entitled to review as a matter of right. The Board finds that OWCP, in its December 23, 2021 decision, properly exercised its 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 as the only limitation on OWCP's authority is reasonableness, 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 deduction from established facts.²² In this case, OWCP did not abuse its discretion by denying appellant's

¹⁷ 20 C.F.R. §§ 10.616, 10.617.

¹⁸ *Id.* at § 10.616(a).

¹⁹ *See A.M.*, Docket No. 21-0256 (issued July 22, 2021); *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).

²⁰ *Supra* note 18.

²¹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.4a (September 2020); *see W.N.*, Docket No. 20-1315 (issued July 6, 2021); *see also G.S.*, Docket No. 18-0388 (issued July 19, 2018).

²² *See T.G.*, Docket No. 19-0904 (issued November 25, 2019); *Daniel J. Perea*, 42 ECAB 214 (1990).

request for an oral hearing. Accordingly, the Board finds that OWCP properly denied her request for an oral hearing, as untimely filed, pursuant to 5 U.S.C. § 8124(b)(1).

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a medical condition causally related to the accepted July 28, 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 October 25 and December 23, 2021 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: October 3, 2022
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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