United States Department of Labor
Employees' Compensation Appeals Board

B.R., Appellant	)	
and	)	**Docket No. 21-1103**
	)	**Issued: July 14, 2023**
DEPARTMENT OF HOMELAND SECURITY, U.S. CUSTOMS AND BORDER PROTECTION, U.S. BORDER PATROL, San Ysidro, CA, 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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On July 14, 2021 appellant filed a timely appeal from a March 12, 2021 merit decision and a June 15, 2021 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 his burden of proof to establish a diagnosed medical condition in connection with the accepted December 18, 2020 employment incident; 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 December 23, 2020 appellant, then a 27-year-old border patrol agent, filed a traumatic injury claim (Form CA-1) alleging that on December 18, 2020 he strained his left wrist and reinjured his right knee in a motor vehicle accident (MVA) while in the performance of duty. He noted that his vehicle hydroplaned and lost control, impacting a concrete barrier, and that the air bags deployed. Appellant did not stop work.

In a February 8, 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 afforded him 30 days to submit the necessary evidence.

In a December 18, 2020 form report, Dr. Michelle Chastain, an emergency medicine specialist, indicated that she had evaluated appellant on that date. She diagnosed MVA. In an emergency department report of even date, Dr. Chastain indicated that appellant was a driver in a single vehicle accident when he crashed into a median barrier after the rear wheel slipped out from under him. She noted that he was not wearing a seatbelt when the airbags were deployed. Dr. Chastain conducted a physical examination and found no chest pain, airbag burns, or bruising. She indicated that there was no "evidence of trauma or injury at this time." Dr. Chastain diagnosed status post motor vehicle collision (MVC). In an industrial injury form of even date, Dr. Chastain diagnosed MVC. In discharge instructions of even date, she again indicated that appellant was involved in a work-related MVA.

A December 18, 2020 x-ray of the chest revealed no evidence of active cardiopulmonary disease.

In an undated authorization for examination and/or treatment (Form CA-16), the employing establishing authorized appellant to seek medical care after a vehicle accident on December 18, 2020.

By decision dated March 12, 2021, OWCP accepted that the December 18, 2020 incident occurred, as alleged. However, it denied appellant's traumatic injury claim, finding that the medical evidence of record was insufficient to establish a medical diagnosis in connection with the accepted December 18, 2020 employment incident. Consequently, OWCP found that the requirements had not been met to establish an injury as defined by FECA.

On May 21, 2021 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.

By decision dated June 15, 2021, OWCP denied appellant's request for a review of the written record, finding that it was untimely filed. It further exercised its discretion and determined that the issue in this case could equally well be addressed by requesting reconsideration before OWCP, along with the submission of new evidence.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA[2] 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 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 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. First, 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.[6]

The medical evidence required to establish causal relationship is rationalized medical opinion 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 not met his burden of proof to establish a diagnosed medical condition in connection with the accepted December 18, 2020 employment incident.

On the date of injury, appellant sought emergency medical treatment with Dr. Chastain who only assessed appellant as having been involved in a work-related MVA/MVC, which is a

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[2] *Id*.

[3] *K.C.*, Docket No. 23-0062 (issued March 27, 2023); *F.H.*, Docket No. 18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

[4] *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[5] *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

[6] *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).

[7] *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).

[8] *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).

description of the incident, not a diagnosis.[9] Further, she reported that there was no evidence of trauma or injury. The Board has held that medical reports which do not provide a firm diagnosis and render an opinion on causal relationship are of no probative value and are insufficient to establish the claim.[10] Thus, Dr. Chastain's reports are insufficient to establish appellant's claim.

Appellant also submitted a December 18, 2020 x-ray of the chest. The Board has held that diagnostic studies, standing alone, lack probative value as they do not address whether the employment injury caused any of the diagnosed conditions.[11] As such, this evidence is also insufficient to establish appellant's claim.

As the record lacks rationalized medical evidence establishing a diagnosed medical condition in connection with the accepted December 18, 2021 employment incident, the Board finds that appellant has not met his burden of proof to establish his claim.

Appellant may submit additional evidence, together 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."[12] 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.[13] 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.[14] 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.[15]

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[9] *See K.R.*, Docket No. 20-0995 (issued January 29, 2021); *K.V.*, Docket No. 18-0723 (issued November 9, 2018).

[10] *R.L.*, Docket No. 20-0284 (issued June 30, 2020); *S.H.*, Docket No. 19-1897 (issued April 21, 2020).

[11] *See E.M.*, Docket No. 21-0512 (issued September 7, 2021); *V.H.*, Docket No. 18-1282 (issued April 2, 2019).

[12] *Supra* note 1 at § 8124(b)(1).

[13] 20 C.F.R. §§ 10.616, 10.617.

[14] *Id.* at § 10.616(a).

[15] *M.A.*, Docket No. 22-0850 (issued November 8, 2022); *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).

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.

As noted above, a request for a review of the written record must be made within 30 days after the date of the issuance of an OWCP final decision. Appellant, on May 21, 2021, requested a review of the written record. As the request was submitted more than 30 days following issuance of OWCP's March 12, 2021 decision, the Board finds that it was untimely filed. Appellant was, therefore, not entitled to a review of the written record as a matter of right.[16] Section 8124(b)(1) is unequivocal on the time limitation for requesting a review of the written record.[17]

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.[18] The Board finds that, in the June 15, 2021 decision, OWCP 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.[19] 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.[20] In this case, the evidence of record does not indicate 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 as untimely filed, pursuant to 5 U.S.C. § 8124(b).

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a diagnosed medical condition in connection with the accepted December 18, 2020 employment incident. The Board further finds that OWCP properly denied appellant's request for a review of the written record by an OWCP hearing representative as untimely filed, pursuant to 5 U.S.C. § 8124(b).[21]

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[16] *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).

[17] *Supra* note 13. *See also L.S.*, Docket No. 18-0264 (issued January 28, 2020).

[18] *Supra* note 16.

[19] *A.M.*, Docket No. 20-1575 (issued May 24, 2021); *R.M.*, Docket No. 19-1088 (issued November 17, 2020). *See also E.S.*, Docket No. 18-1750 (issued March 11, 2019).

[20] *A.M.*, *id.*

[21] The Board notes that the employing establishment issued a Form CA-16. A completed Form CA-16 authorization may constitute a contract for payment of medical expenses to a medical facility or physician, when properly executed. The form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. *See* 20 C.F.R. § 10.300(c); *J.J.*, Docket No. 22-0957 (issued March 29, 2023); *J.G.*, Docket No. 17-1062 (issued February 13, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).

ORDER

IT IS HEREBY ORDERED THAT the March 12 and June 15, 2021 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: July 14, 2023
Washington, DC

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

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

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