

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

E.H., Appellant)	
)	
and)	Docket No. 23-0503
)	Issued: July 20, 2023
DEPARTMENT OF THE ARMY, WALTER)	
REED ARMY MEDICAL CENTER,)	
Washington, DC, 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
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On February 28, 2023 appellant filed a timely appeal from a September 14, 2022 merit decision and a February 6, 2023 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.

ISSUES

The issues are: (1) whether OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective September 14, 2022 as she no longer had disability or residuals causally related to her accepted February 15, 1996 employment injury; and (2) whether OWCP properly denied appellant's request for an oral hearing or 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 February 23, 1996 appellant, then a 53-year-old cook, filed a traumatic injury claim (Form CA-1) alleging that on February 15, 1996 she injured her left ankle and right knee when she slipped and fell while in the performance of duty. OWCP accepted the claim for a right lateral meniscus tear, left ankle strain, and a sprain of the right knee and leg. Appellant stopped work on February 15, 1996. On July 18, 1996 she underwent a right knee arthroscopic debridement. Appellant returned to modified work on October 1, 1996, stopped work on November 6, 1996, and returned to modified work on December 21, 1996. She stopped work again on February 26, 1997 and did not return. Appellant underwent left Achilles tendon surgery on June 17, 1997 and a right knee arthroscopic debridement in 2001. OWCP paid her wage-loss compensation for disability on the periodic rolls.

In a progress report dated February 17, 2020, Dr. Daniel D. Lahr, a Board-certified orthopedic surgeon, evaluated appellant for left posterior tibial tendinitis and arthritis of the right knee which he attributed to her accepted employment injury. He noted that she was unable to stand or walk for a significant amount of time and had “difficulty performing her job duties.” Dr. Lahr attributed appellant’s arthritis to her injury and recommended a total knee replacement.

On December 3, 2021 OWCP requested that appellant submit a report from her attending physician addressing her current condition and work limitations.

In a December 29, 2021 work restriction evaluation (Form OWCP-5c), Dr. Lahr found that appellant was totally disabled from employment.

On February 17, 2022 OWCP referred appellant to Dr. Rafael Lopez, a Board-certified orthopedic surgeon, for a second opinion examination.

In a report dated March 19, 2022, Dr. Lopez discussed appellant’s history of injury and advised that he had reviewed the medical evidence of record. On examination he found negative anterior and posterior drawer tests, a negative McMurray’s test, and no joint line tenderness. Dr. Lopez further found no evidence of “significant swelling, crepitation, instability, spasm, or atrophy” of the bilateral knees or left ankle and foot and a mild valgus deformity of the right knee. He diagnosed a right lateral meniscus tear, a sprain of the right knee and right leg, and left ankle strain. Dr. Lopez opined that appellant had no residuals or disability due to her accepted employment injury and could resume her usual employment. He further recommended no further medical treatment as she had reached maximum medical improvement.

On April 22, 2022 OWCP requested that Dr. Lahr review Dr. Lopez’ March 19, 2022 report and explain whether he agreed that appellant had no further disability or residuals due to her accepted employment injury. It afforded him 30 days to submit his response.

In a Form OWCP-5c dated May 14, 2022, Dr. Lahr found that appellant could perform sedentary work for eight hours per day, with no standing, bending, or stooping.

On July 13, 2022 OWCP notified appellant of its proposed termination of her wage-loss compensation as the weight of the evidence established that she no longer had any employment-related residuals or disability due to her accepted February 15, 1996 employment injury. It

afforded her 30 days to submit additional evidence or argument if she disagreed with the proposed termination.

By decision dated September 14, 2022, OWCP terminated appellant's wage-loss compensation and medical benefits effective that date. It found that the March 19, 2022 report from Dr. Lopez constituted the weight of the evidence and established that she had no disability or residuals causally related to her accepted February 15, 1996 employment injury. The decision was sent to appellant's address of record.

On October 5, 2022 appellant advised that she had not received the termination decision. OWCP sent her another copy of the decision.

In an October 17, 2022 Form OWCP-5c, Dr. Lahr found that appellant was disabled from employment.

In a memorandum of telephone call (Form CA-110) dated December 29, 2022, appellant related that she provided her doctor with her appeal request. She asked for another copy of OWCP's decision, which OWCP mailed to her on that date.

In correspondence dated January 6, 2023 and postmarked January 12, 2023, appellant requested a review of the written record and an oral hearing before a representative of OWCP's Branch of Hearings and Review.

By decision dated February 6, 2023, OWCP denied appellant's request for an oral hearing or 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 a request for reconsideration before OWCP along with the submission of new evidence.

LEGAL PRECEDENT -- ISSUE 1

Once OWCP accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits.² After it has determined that an employee has disability causally related to his or her federal employment, OWCP may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.³ Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁴

² See *T.C.*, Docket No. 20-1163 (issued July 13, 2021); *R.H.*, Docket No. 19-1064 (issued October 9, 2020); *Paul L. Stewart*, 54 ECAB 824 (2003).

³ *P.T.*, Docket No. 21-0328 (issued May 2, 2022); *A.T.*, Docket No. 20-0334 (issued October 8, 2020); *E.B.*, Docket No. 18-1060 (issued November 1, 2018).

⁴ *T.C.*, *supra* note 2; *C.R.*, Docket No. 19-1132 (issued October 1, 2020); *G.H.*, Docket No. 18-0414 (issued November 14, 2018).

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.⁵ To terminate authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition, which would require further medical treatment.⁶

ANALYSIS -- ISSUE 1

The Board finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective September 14, 2022 as she no longer had disability or residuals causally related to her accepted February 15, 1996 employment injury.

In order to determine the extent and degree of any employment disability or residuals, OWCP referred appellant to Dr. Lopez. Dr. Lopez discussed appellant's history of injury and provided examination findings showing no evidence of swelling, crepitus, instability, spasm, or atrophy of the bilateral knees and ankle and a mild valgus deformity of the right knee. He further found a negative McMurray's test, negative drawer tests, and no joint line tenderness. Dr. Lopez diagnosed a right lateral meniscus tear, a sprain of the right knee and right leg, and left ankle strain. He opined that appellant had no further disability or residuals of her accepted employment injury and could return to her regular work duties. Dr. Lopez determined that she required no further medical treatment.

Dr. Lopez based his opinion on a proper factual and medical history and findings on physical examination. On examination he found no objective findings supporting continued residuals or disability due to the accepted conditions.⁷ The Board therefore finds that OWCP properly relied upon the reports of Dr. Lopez in terminating appellant's wage-loss compensation and medical benefits.⁸

The remaining evidence submitted prior to OWCP's termination of appellant's wage-loss compensation and medical benefits is insufficient to show that she had continued employment-related residuals or disability due to her accepted employment injury. In a report dated February 17, 2020, Dr. Lahr opined that appellant had arthritis of the right knee due to her accepted employment injury and left posterior tibial tendinitis. He indicated that she was unable to stand or walk for a significant period and had difficulty performing work duties. Dr. Lahr attributed appellant's right knee arthritis to her accepted employment injury. However, OWCP has not accepted right knee arthritis as employment related. Dr. Lahr did not specifically address how any

⁵ *E.J.*, Docket No. 20-0013 (issued November 19, 2020); *L.W.*, Docket No. 18-1372 (issued February 27, 2019); *Furman G. Peake*, 41 ECAB 361 (1990).

⁶ *A.J.*, Docket No. 18-1230 (issued June 8, 2020); *R.P.*, Docket No. 18-0900 (issued February 5, 2019).

⁷ *See E.J.*, Docket No. 20-0013 (issued November 19, 2020).

⁸ *See L.B.*, Docket No. 19-1380 (issued February 11, 2020); *L.S.*, Docket No. 19-0959 (issued September 24, 2019).

current disability or need for medical treatment was causally related to the accepted employment-related conditions and thus his report is of little probative value.⁹

In a Form OWCP-5c dated December 29, 2021, Dr. Lahr found appellant disabled from employment. On April 22, 2022 OWCP provided Dr. Lahr with the March 19, 2022 report of Dr. Lopez to review and discuss. In a May 14, 2022 Form OWCP-5c, Dr. Lopez indicated that appellant could work full time in a sedentary capacity performing no standing, bending, or stooping. His form reports, however, are of limited probative value as they fail to provide medical rationale explaining how she had continuing disability or residuals causally related to the accepted employment injury.¹⁰

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.”¹¹ 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.¹² 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.¹³ 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.¹⁴

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied appellant’s request for either an oral hearing or review of the written record as untimely filed, pursuant to 5 U.S.C. § 8124(b).

⁹ See *P.B.*, Docket No. 21-0894 (issued February 8, 2023); *M.L.*, Docket No. 20-1682 (issued June 24, 2021); *K.E.*, Docket No. 17-1216 (issued February 22, 2018).

¹⁰ See *L.S.*, Docket No. 19-0959 (issued September 24, 2019); *J.F.*, Docket No. 17-1716 (issued March 1, 2018).

¹¹ 5 U.S.C. § 8124(b).

¹² 20 C.F.R. §§ 10.616, 10.617.

¹³ *Id.* at § 10.616(a).

¹⁴ *M.F.*, Docket No. 21-0878 (issued January 6, 2022); *W.H.*, Docket No. 20-0562 (issued August 6, 2020); *P.C.*, Docket No. 19-1003 (issued December 4, 2019); *Eddie Franklin*, 51 ECAB 223 (1999); *Delmont L. Thompson*, 51 ECAB 155 (1999).

In correspondence dated July 6, 2023 and postmarked July 12, 2023, appellant requested either an oral hearing or a review of the written record before a representative of OWCP's Branch of Hearings and Review; however, this request was made more than 30 days after OWCP's September 14, 2022 decision. The September 14, 2022 decision was properly addressed and mailed in the ordinary course of business and thus presumed to have been received under the mailbox rule.¹⁵ Section 8124(b)(1) is unequivocal on the time limitation for filing a request for a hearing.¹⁶ As such, the request was untimely filed, and appellant was not entitled to an oral hearing or review of the written record as a matter of right.¹⁷

The Board further finds that OWCP, in its February 6, 2023 decision, properly exercised its discretionary authority, explaining that it had considered the matter and denied appellant's request for an oral hearing or review of the written record as her claim could be equally well addressed through a reconsideration request.

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.¹⁸ In this case, the evidence of record does not indicate that OWCP abused its discretion by denying appellant's request for an oral hearing. Accordingly, the Board finds that OWCP properly denied her request for an oral hearing, pursuant to 5 U.S.C. § 8124(b), as untimely filed.

CONCLUSION

The Board finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective September 14, 2022 as she no longer had disability or residuals causally related to her accepted employment injury. The Board further finds that OWCP properly denied appellant's request for an oral hearing as untimely filed, pursuant to 5 U.S.C. § 8124(b).

¹⁵ See *C.W.*, Docket No. 21-0943 (issued February 17, 2023); *James A. Gray*, 54 ECAB 277 (2002).

¹⁶ See *supra* note 3; *K.N.*, Docket No. 22-0647; *G.H.*, Docket No. 22-0122 (issued May 20, 2022).

¹⁷ See *D.R.*, Docket No. 22-0361 (issued July 8, 2022); *D.S.*, Docket No. 21-1296 (issued March 23, 2022); *P.C.*, *supra* note 14.

¹⁸ See *S.I.*, Docket No. 22-0538 (issued October 3, 2022); *T.G.*, Docket No. 19-0904 (issued November 25, 2019); *Daniel J. Perea*, 42 ECAB 214 (1990).

ORDER

IT IS HEREBY ORDERED THAT the September 14, 2022 and February 6, 2023 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: July 20, 2023
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