

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

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<b>R.S., Appellant</b>	)	
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<b>and</b>	)	<b>Docket No. 22-0381</b>
	)	<b>Issued: March 9, 2023</b>
<b>U.S. CAPITOL POLICE, Washington, DC,</b>	)	
<b>Employer</b>	)	

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*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 January 15, 2022 appellant filed a timely appeal from an August 5, 2021 merit decision and an October 20, 2021 nonmerit decision of the Office of Workers’ Compensation Programs (OWCP). Pursuant to the Federal Employees’ Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

**ISSUES**

The issues are: (1) whether appellant has met his burden of proof to establish a diagnosed medical condition in connection with the accepted June 16, 2021 employment incident; and

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that, following the October 20, 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.*

(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 June 21, 2021 appellant, then a 40-year-old police officer, filed a traumatic injury claim (Form CA-1) alleging that on June 16, 2021 his right knee became swollen and painful when he jumped off his motorcycle to prevent falling during training and landed awkwardly on his right knee while in the performance of duty. He stopped work on that date.

On June 24, 2021 the employing establishment executed an authorization for examination and/or treatment (Form CA-16).

In a July 2, 2021 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence necessary to establish his claim and provided a questionnaire for completion. OWCP afforded appellant 30 days to respond. No response was received.

By decision dated August 5, 2021, OWCP accepted that the June 16, 2021 incident occurred as alleged, but denied the claim finding that the medical evidence of record did not include a diagnosis in connection with the accepted June 16, 2021 employment incident. Thus, it found that appellant had not established an injury under FECA.

On September 30, 2021 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

By decision dated October 20, 2021, OWCP denied appellant's request for an oral hearing as untimely filed, finding that his request was not made within 30 days of the August 5, 2021 OWCP decision as it was submitted on September 30, 2021. It further exercised discretion and determined that the issue in this case could be equally well addressed by a request for reconsideration before OWCP along with the submission of new evidence.

### **LEGAL PRECEDENT -- ISSUE 1**

An employee seeking benefits under FECA<sup>3</sup> has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence<sup>4</sup> 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,<sup>5</sup> that an injury was sustained in the performance of duty as alleged, and that any specific condition or disability from work for which compensation is claimed is causally related to that employment

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<sup>3</sup> *Supra* note 1.

<sup>4</sup> *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

<sup>5</sup> *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).

injury.<sup>6</sup> 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.<sup>7</sup>

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.<sup>8</sup> There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that he or she experienced the employment incident at the time, place, and in the manner alleged.<sup>9</sup> Second, the employee must submit evidence, generally only in the form of probative medical evidence, to establish that the employment incident caused a personal injury.<sup>10</sup>

### **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 June 16, 2021 employment incident.

In support of his claim, appellant submitted only a Form CA-16 authorization for medical treatment dated June 24, 2021. He did not submit any medical evidence containing a firm diagnosis of a medical condition prior to the August 5, 2021 decision.<sup>11</sup>

As the medical evidence of record is insufficient to establish a diagnosed medical condition in connection with the accepted June 16, 2021 employment incident, the Board finds that appellant has not met his burden of proof.

### **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.”<sup>12</sup> 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.<sup>13</sup> 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

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<sup>6</sup> *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>7</sup> *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).

<sup>8</sup> *S.P.*, 59 ECAB 184 (2007); *Alvin V. Gadd*, 57 ECAB 172 (2005).

<sup>9</sup> *Bonnie A. Contreras*, 57 ECAB 364 (2006); *Edward C. Lawrence*, 19 ECAB 442 (1968).

<sup>10</sup> *David Apgar*, 57 ECAB 137 (2005); *John J. Carlone*, 41 ECAB 354 (1989).

<sup>11</sup> *J.V.*, Docket No. 21-1353 (issued March 21, 2022).

<sup>12</sup> 5 U.S.C. § 8124(b)(1).

<sup>13</sup> 20 C.F.R. §§ 10.616, 10.617.

postmark or other carrier's date marking and before the claimant has requested reconsideration.<sup>14</sup> 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.<sup>15</sup>

### 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 request for an oral hearing must be made within 30 days of the date of the decision for which review is sought.<sup>16</sup> 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 the postmark is not legible, the request will be deemed timely unless OWCP has kept evidence of date of delivery on the record reflecting that the request is untimely.<sup>17</sup> Otherwise, the date of the letter itself should be used.<sup>18</sup> Because appellant's hearing request was dated and received by OWCP on September 30, 2021 it postdated OWCP's August 5, 2021 decision by more than 30 days and, therefore, is untimely. Consequently, he was not entitled to an oral hearing as a matter of right.<sup>19</sup>

OWCP, however, has the discretionary authority to grant the request and it must exercise such discretion.<sup>20</sup> The Board finds that, in the October 20, 2021 decision, OWCP 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 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.<sup>21</sup> In this case, the evidence of record does not indicate that OWCP abused

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<sup>14</sup> *Id.* at § 10.616(a).

<sup>15</sup> *J.T.*, Docket No. 18-0664 (issued August 12, 2019); *Eddie Franklin*, 51 ECAB 223 (1999); *Delmont L. Thompson*, 51 ECAB 155 (1999).

<sup>16</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Review of the Written Record*, Chapter 2.1601.4(a) (September 2020).

<sup>17</sup> *Id.* at Chapter 2.1601.4(a) (September 2020). *See T.B.*, Docket No. 20-0158 (issued March 18, 2022).

<sup>18</sup> *K.B.*, Docket No. 21-1038 (issued February 28, 2022); *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).

<sup>19</sup> *See D.S.*, Docket No. 21-1296 (issued March 23, 2022).

<sup>20</sup> *See P.C.*, Docket No. 19-1003 (issued December 4, 2019).

<sup>21</sup> *T.B.*, Docket No. 20-0158 (issued March 18, 2022).

its discretion by denying appellant's request for an oral hearing. Accordingly, the Board finds that OWCP properly denied his request for a hearing pursuant to 5 U.S.C. § 8124(b) as untimely filed.

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.

### **CONCLUSION**

The Board finds that appellant has not met his burden of proof to establish a diagnosed medical condition in connection with the accepted June 16, 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 20 and August 5, 2021 decisions of the Office of Workers' Compensation Programs are affirmed.<sup>22</sup>

Issued: March 9, 2023  
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

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<sup>22</sup> The Board also notes that the employing establishment issued a Form CA-16 authorization for examination or treatment of appellant's alleged injury. 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.G.*, Docket No. 17-1062 (issued February 13, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).