

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

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N.E., Appellant )

and )

U.S. POSTAL SERVICE, THREE FORKS POST )  
OFFICE, Three Forks, MT, Employer )

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**Docket No. 23-1155  
Issued: February 8, 2024**

*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 September 11, 2023 appellant filed a timely appeal from a July 5, 2023 merit decision and an August 18, 2023 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 her burden of proof to establish a medical condition causally related to the accepted factors of her federal employment; and (2) whether

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

<sup>2</sup> The Board notes that, following the August 18, 2023 decision, OWCP received additional evidence. 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.*

OWCP properly denied appellant's request for a review of the written record as untimely filed, pursuant to 5 U.S.C. § 8124(b).

### **FACTUAL HISTORY**

On April 18, 2023 appellant, then a 58-year-old rural letter carrier, filed an occupational disease claim (Form CA-2) alleging hip and back pain due to factors of her federal employment including mounting and dismounting and driving in her vehicle six days a week to deliver mail. She noted extreme discomfort sitting in her vehicle to deliver mail and indicated that it was getting "increasingly difficult" to get in and out of her vehicle. Appellant noted that she first became aware of her conditions and related them to factors of her federal employment on April 3, 2023. On the reverse side of the claim form, the employing establishment contended that she first reported her condition on April 17, 2023, and that her last date of exposure was also on April 17, 2023.

A computerized tomography (CT) scan report of appellant's left hip dated April 18, 2023 authored by Dr. Jesse Cole, a Board-certified diagnostic radiologist, showed minimal calcification. An x-ray report of the lumbar spine of even date by Dr. Cole revealed mild degenerative change of the lumbar spine.

In a development letter dated May 2, 2023, OWCP informed appellant of the deficiencies of her claim. It requested that she submit additional factual and medical evidence and provided a questionnaire for her completion. OWCP afforded appellant 60 days to respond.

OWCP subsequently received additional medical evidence. On April 18, 2023 appellant was seen by Dr. Gayle Sacry, a family medicine specialist. Dr. Sacry noted that she related pain in her left hip and back due to her workload. He diagnosed chronic hip pain. In a work status note of even date, Dr. Sacry placed appellant off work until May 15, 2023.

On April 20, 2023 appellant was seen for a follow-up with Dr. Sacry. She related left hip and back pain, noting that her left hip would specifically become uncomfortable after sitting for "quite some time" in her car while delivering mail. Dr. Sacry noted that the CT scan of appellant's left hip showed minimal calcification and the back x-ray report showed mild degenerative changes and spondylolisthesis on the lumbar spine. In a work status note of even date, he diagnosed bilateral carpal tunnel syndrome and placed her off work until May 15, 2023.

In a subsequent development letter dated May 30, 2023, OWCP indicated that it had performed an interim review of appellant's case file and found that the evidence remained insufficient to support her claim. It further reminded her that, by letter of May 2, 2023, it had afforded her 60 days to provide a well-rationalized medical explanation from a physician as to how the employment factors caused or contributed to her diagnoses.

On May 31, 2023 appellant was seen for a follow-up with Dr. Sacry. In a work status note of even date, Dr. Sacry noted a diagnosis of left hip pain and back pain and allowed her to return to work.

On June 2, 2023 appellant was seen by Dr. Elba Gerena Maldonado, a Board-certified neuromuscular and physical medicine and rehabilitation physician. She related low back pain

radiating down to the left leg, noting that driving, sitting, standing, and walking caused the pain. Dr. Maldonado noted on physical examination and upon review of x-ray reports of the lumbar spine that there appeared to be a corner fracture on the superior endplate of L4. She diagnosed low back pain, burst fracture of the lumbar vertebra, lumbar spondylosis, neuropathic pain, and lumbar radiculopathy. A work status note dated June 5, 2023 from Dr. Maldonado placed appellant on restricted duty.

By decision dated July 5, 2023, OWCP denied appellant's occupational disease claim, finding that the medical evidence of record was insufficient to establish that a diagnosed medical condition was causally related to the accepted factors of her federal employment.

On August 7, 2023 appellant submitted a subsequent Form CA-2 reiterating her claim. On the reverse side of the claim form, appellant's supervisor indicated that appellant's last date of exposure was July 15, 2023 and that she returned to work on August 1, 2023.

On August 13, 2023 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.

By decision dated August 18, 2023, OWCP's Branch of Hearings and Review 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 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**

An employee seeking benefits under FECA<sup>3</sup> 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, 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.<sup>4</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>5</sup>

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which

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

<sup>4</sup> *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>5</sup> *B.H.*, Docket No. 20-0777 (issued October 21, 2020); *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).

compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the identified employment factors by the claimant.<sup>6</sup>

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.<sup>7</sup> The opinion of the physician must be based on a complete factual and medical background, 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 the specific employment factors.<sup>8</sup> Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.<sup>9</sup>

### **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 factors of her federal employment.

Appellant submitted multiple treatment notes from Dr. Sacry, who treated her on April 18 and 20 and May 31, 2023. On April 18, 2023 Dr. Sacry diagnosed chronic hip pain. A work status note of even date from him placed appellant off work until May 15, 2023. On April 20, 2023 Dr. Sacry noted that the CT scan of her left hip showed minimal calcification and the back x-ray report showed mild degenerative changes and spondylolisthesis on the lumbar spine. On May 31, 2023 appellant was seen for a follow-up with Dr. Sacry. In a work status note of even date, Dr. Sacry noted a diagnosis of left hip pain and back pain and allowed her to return to work. While he provided diagnoses in some of his reports, he did not provide a rationalized opinion as to whether the accepted employment factors caused appellant's diagnosed conditions. As the Board has held, medical evidence which does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.<sup>10</sup> Thus, the Board finds that this evidence is of no probative value and are, therefore, insufficient to establish appellant's claim.

On June 2, 2023 appellant was seen by Dr. Maldonado. Dr. Maldonado noted on physical examination and upon review of x-ray reports of the lumbar spine that there appeared to be a corner fracture on the superior endplate of L4. She diagnosed low back pain, burst fracture of the lumbar vertebra, lumbar spondylosis, neuropathic pain, and lumbar radiculopathy. A work status note dated June 5, 2023, from Dr. Maldonado placed appellant on restricted duty. As

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<sup>6</sup> *S.H.*, Docket No. 22-0391 (issued June 29, 2022); *T.W.*, Docket No. 20-0767 (issued January 13, 2021); *L.D.*, Docket No. 19-1301 (issued January 29, 2020); *S.C.*, Docket No. 18-1242 (issued March 13, 2019).

<sup>7</sup> *D.S.*, Docket No. 21-1388 (issued May 12, 2022); *I.J.*, Docket No. 19-1343 (issued February 26, 2020); *T.H.*, 59 ECAB 388 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

<sup>8</sup> *D.S. id.*; *D.J.*, Docket No. 19-1301 (issued January 29, 2020).

<sup>9</sup> *T.M.*, Docket No. 22-0220 (issued July 29, 2022); *S.S.*, Docket No. 18-1488 (issued March 11, 2019); *see also J.L.*, Docket No. 18-1804 (issued April 12, 2019).

<sup>10</sup> *See C.R.*, Docket No. 23-0330 (issued July 28, 2023); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

stated above, medical evidence which does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.<sup>11</sup> The reports from Dr. Maldonado are thus insufficient to establishment appellant's claim.

Further, appellant submitted multiple diagnostic x-rays and CT scan reports. However, the Board has also held that diagnostic studies, standing alone, lack probative value as they do not address whether the employment factors caused the diagnosed condition(s).<sup>12</sup>

As the medical evidence of record is insufficient to establish causal relationship between her diagnosed conditions and her accepted employment factors, the Board finds that appellant 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."<sup>13</sup>

Section 10.615 of Title 20 of the Code of Federal Regulations provides, "A hearing is a review of an adverse decision by a hearing representative. Initially, the claimant can choose between two formats, an oral hearing or a review of the written record."<sup>14</sup> The hearing request must be sent within 30 days (as determined by postmark or other carrier's date marking) of the date of the decision for which a hearing is sought.<sup>15</sup> OWCP has discretion, however, to grant or deny a request that is made after this 30-day period.<sup>16</sup> In such a case, it will determine whether to grant a discretionary hearing and, if not, will so advise the claimant with reasons.<sup>17</sup>

### **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(b).

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<sup>11</sup> *Id.*

<sup>12</sup> *A.O.*, Docket No. 21-0968 (issued March 18, 2022); *see M.S.*, Docket No. 19-0587 (issued July 22, 2019).

<sup>13</sup> 5 U.S.C. § 8124(b).

<sup>14</sup> 20 C.F.R. § 10.615.

<sup>15</sup> *Id.* at § 10.616.

<sup>16</sup> *M.R.*, Docket No. 22-0321 (issued July 7, 2022); *G.W.*, Docket No. 10-0782 (issued April 23, 2010).

<sup>17</sup> *Id.*

OWCP's regulations provide that a request for review of the written record must be made within 30 days of the date of the decision for which a review is sought.<sup>18</sup>

On August 13, 2023 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review. As the request was made more than 30 days after OWCP's July 5, 2023 decision, it was untimely filed, and appellant was not entitled to a review of the written record as a matter of right.

Although appellant was not entitled to a review of the written record as a matter of right, OWCP's Branch of Hearings and Review may exercise its discretion to either grant or deny an oral hearing or review of the written record following reconsideration.<sup>19</sup> 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. In this instance, OWCP denied a discretionary review of the written record because appellant could instead submit new evidence and request reconsideration before OWCP. The Board finds that OWCP properly exercised discretionary authority in denying her request for a review of the written record.

### **CONCLUSION**

The Board finds that appellant has not met her burden of proof to establish a medical condition causally related to the accepted factors of her federal employment. The Board further finds that OWCP properly denied her request for a review of the written record as untimely filed, pursuant to 5 U.S.C. § 8124(b).

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<sup>18</sup> *Supra* note 16.

<sup>19</sup> *T.D.*, Docket No. 21-1063 (issued April 17, 2023); *A.S.*, Docket No. 22-1227 (issued April 6, 2023).

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 18 and July 5, 2023 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: February 8, 2024  
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