

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

D.M., Appellant)	
)	
and)	Docket No. 23-0616
)	Issued: January 8, 2024
U.S. POSTAL SERVICE, WESTSIDE ANNEX)	
POST OFFICE, Greensboro, NC, Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On March 22, 2023 appellant filed a timely appeal from a February 15, 2023 merit decision and November 17, 2022 and March 7, 2023 nonmerit decisions 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 appellant has met his burden of proof to establish an abdominal condition causally related to the accepted April 11, 2022 employment incident; (2) whether OWCP properly denied appellant's request for an oral hearing as untimely filed, pursuant to 5 U.S.C. § 8124(b); and (3) whether OWCP properly denied appellant's December 5, 2022 request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On April 26, 2022 appellant, then a 57-year-old rural carrier associate, filed a traumatic injury claim (Form CA-1) alleging that on April 11, 2022 he strained his abdomen when he lifted a heavy box sustaining gastrointestinal hemorrhage while in the performance of duty. He stopped work on April 11, 2022.

In an April 26, 2022 letter, Ashley Schmidt, a nurse practitioner, indicated that appellant was in off-work status due to a medical condition from April 11 through May 2, 2022. She noted that appellant could return to work with no restrictions on May 3, 2022.

In a letter dated May 4, 2022, Dr. Daniel W. Murphy, a Board-certified orthopedic surgeon, indicated that appellant was hospitalized from February 9 through 14, 2022 with problems of severe anemia. He reported that appellant “injured himself lifting in early April 2022 causing severe abdominal strain.”

In a May 13, 2022 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.

Appellant submitted progress notes dated May 4, 2022, wherein Dr. Murphy diagnosed abdominal wall pain in the left upper quadrant and microcytic anemia.

Appellant also submitted an undated letter, wherein Kyra McClanahan, a nurse practitioner, noted visit dates of May 9 and June 3, 2022 and indicated that appellant was injured on April 11, 2022. Ms. McClanahan opined that due to appellant’s abdominal strain, he should be excused from work. In a work status note dated June 3, 2022, she indicated that appellant should remain off work until July 4, 2022 due to an abdominal strain and pending a workers’ compensation evaluation.

By decision dated June 15, 2022, OWCP accepted that the April 11, 2022 employment incident occurred as alleged, but denied the claim, finding that the medical evidence of record was insufficient to establish causal relationship between appellant’s diagnosed condition and the accepted April 11, 2022 employment incident.

Appellant subsequently resubmitted Ms. McClanahan’s undated letter, now co-signed by Dr. M. Chan Badger, a family medicine specialist. Dr. Badger indicated that appellant was injured on April 11, 2022 and should be excused from work due to his abdominal strain.

Appellant also submitted a progress note dated July 6, 2022 from Tangula L. Simmons, a nurse practitioner, who indicated that he was initially evaluated for a left side abdominal muscle strain that occurred at work on April 11, 2022. Ms. Simmons conducted an examination and diagnosed abdominal wall strain.

In an after-visit summary report dated July 13, 2022, Dr. Mark R. Keller, Board-certified in family medicine, indicated that appellant was treated for an abdominal wall strain that reportedly occurred when he lifted a heavy box on April 11, 2022. He noted that appellant also reported that he had been disabled from work since this injury occurred.

In a report dated July 27, 2022, Breland M. Joines, a physician assistant, recounted appellant's complaints of abdominal pain. He provided examination findings and diagnosed abdominal wall strain.

In an appeal request form dated July 28, 2022, received on August 1, 2022, appellant indicated that he was requesting an oral hearing before a representative of OWCP's Branch of Hearings and Review, a reconsideration request, and a Board appeal.²

Appellant subsequently submitted an August 22, 2022 letter from Dr. Badger who noted that appellant was seen on that date and indicated that appellant had previously sought care on May 9, 2022 for an abdominal wall strain that happened at his place of employment. Dr. Badger noted that appellant had recently returned to work after suffering a gastrointestinal hemorrhage that required hospitalization.

By letter dated October 27, 2022, OWCP noted that appellant had checked all three appeal options on his July 28, 2022 appeal request form. It advised that only one appeal avenue should be pursued at a time, the method of appeal must be clearly indicated, and he must send the request to the appropriate address.

On October 28, 2022 appellant clarified that he was requesting reconsideration.

By decision dated November 17, 2022, OWCP denied appellant's request for an oral hearing as untimely filed as it was submitted on July 28, 2022, more than 30 days after the June 15, 2022 OWCP decision. It further exercised its discretion and determined that the issue in this case could be equally-well addressed through a request for reconsideration before OWCP along with the submission of new evidence.

By decision dated December 2, 2022, OWCP denied modification of the June 15, 2022 OWCP decision.

On December 5, 2022 appellant requested reconsideration.

Appellant submitted a July 13, 2022 progress note, wherein Dr. Keller noted appellant was evaluated during a second visit after an initial April 11, 2022 injury. Dr. Keller explained that appellant was treated for an abdominal wall strain that reportedly occurred when he lifted a heavy box on April 11, 2022. He noted that appellant also reported that he had been unable to work since this injury occurred.

By decision dated February 15, 2023, OWCP denied modification of the December 2, 2022 OWCP decision.

On February 22, 2023 appellant requested reconsideration. He asserted that he had made a final attempt to obtain sufficient medical evidence, but his treating physician did not know how to write a report sufficient to establish his claim. No additional evidence was received.

² No postmark date was found in the case record.

By decision dated March 7, 2023, OWCP denied appellant's request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA³ 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,⁴ 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.⁵ 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.⁶

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, OWCP must first determine whether fact of injury has been established.⁷ 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. Second, the employee must submit evidence to establish that the employment incident caused a personal injury.⁸

To establish causal relationship between the condition and the employment event or incident, the employee must submit rationalized medical opinion evidence.⁹ 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 the specific employment factor(s) identified by the employee.¹⁰

³ *Id.*

⁴ *F.H.*, Docket No. 18-0869 (issued January 29, 2020); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ *P.A.*, Docket No. 18-0559 (issued January 29, 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).

⁷ *D.B.*, Docket No. 18-1348 (issued January 4, 2019); *S.P.*, 59 ECAB 184 (2007).

⁸ *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *B.M.*, Docket No. 17-0796 (issued July 5, 2018); *David Apgar*, 57 ECAB 137 (2005); *John J. Carlone*, 41 ECAB 354 (1989).

⁹ *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *S.A.*, Docket No. 18-0399 (issued October 16, 2018); *see also Robert G. Morris*, 48 ECAB 238 (1996).

¹⁰ *C.F.*, Docket No. 18-0791 (issued February 26, 2019); *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met his burden of proof to establish an abdominal condition causally related to the accepted April 11, 2022 employment incident.

In a May 4, 2022 report, Dr. Murphy noted that appellant sustained a severe abdominal strain while lifting in early April 2022; however, he did not provide medical rationale explaining how appellant's abdominal strain was causally related to the accepted lifting incident. The Board has held that medical evidence that states a conclusion, but does not offer a rationalized medical explanation regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.¹¹ Dr. Murphy's report is therefore of limited probative value and insufficient to establish appellant's claim.

In an undated report, Dr. Badger noted that appellant was injured on April 11, 2022 and should be excused from work due to his abdominal strain. In an August 22, 2022 letter, he indicated that appellant had sought care on May 9, 2022 for an abdominal wall strain that happened at his place of employment. As Dr. Badger provided a conclusory opinion without rationale explaining causal relationship between appellant's diagnosed condition and the accepted April 11, 2022 employment incident, his reports are also of limited probative value and insufficient to establish the claim.¹²

Appellant also submitted progress notes dated May 4, 2022, wherein Dr. Murphy noted that appellant had a video visit and was diagnosed with abdominal wall pain in the left upper quadrant and microcytic anemia. In progress notes and an after-visit summary report dated July 13, 2022, Dr. Keller indicated that appellant was treated for an abdominal wall strain that he reported had occurred when he lifted a heavy box on April 11, 2022. He noted that appellant also reported that he had been unable to work since this injury occurred. However, neither physician provided an opinion on causal relationship. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition or disability is of no probative value on the issue of causal relationship.¹³ Therefore, this evidence is insufficient to establish appellant's claim.

Appellant also submitted reports from nurse practitioners and a physician assistant. The Board, however, has held that medical reports signed by nurse practitioners and physician assistants are of no probative value as such healthcare providers are not considered physicians as

¹¹ See *J.W.*, Docket No. 18-0678 (issued March 3, 2020); *D.H.*, Docket No. 17-1913 (issued December 13, 2018); *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *A.D.*, 58 ECAB 149 (2006). See also *R.N.*, Docket No. 21-0884 (issued March 30, 2023); *S.K.*, Docket No. 20-0102 (issued June 12, 2020).

¹² *Id.*

¹³ See *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

defined under FECA.¹⁴ Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.

As appellant has not submitted rationalized medical evidence establishing an abdominal condition causally related to the accepted April 11, 2022 employment incident, the Board finds that he has not met his 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.”¹⁵ 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.¹⁶ A claimant is entitled to a review of the written record or an oral hearing 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.¹⁷ 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.¹⁸

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).

¹⁴ 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); *B.D.*, Docket No. 22-0503 (issued September 27, 2022) (nurse practitioners are not considered physicians as defined under FECA).

¹⁵ 5 U.S.C. § 8124(b)(1).

¹⁶ 20 C.F.R. §§ 10.616, 10.617.

¹⁷ *Id.* at § 10.616(a).

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

OWCP's regulations provide that the request for a review of the written record or an oral hearing must be made within 30 days of the date of the decision for which review is sought.¹⁹ Under OWCP's regulations and procedures, the timeliness of a request for a review of the written record 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.²⁰ Otherwise, the date of the letter itself should be used.²¹ Because appellant's request was dated July 28, 2022 and did not contain a postmark, it postdated OWCP's June 15, 2022 decision by more than 30 days and, therefore, is untimely. Consequently, he was not entitled to an oral hearing as a matter of right.²²

OWCP, however, has the discretionary authority to grant the request and it must exercise such discretion.²³ The Board finds that, in the November 17, 2022 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.²⁴ 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 his request for an oral hearing pursuant to 5 U.S.C. § 8124(b) as untimely filed.

LEGAL PRECEDENT -- ISSUE 3

Section 8128(a) of FECA vests OWCP with discretionary authority to determine whether to review an award for or against compensation. The Secretary of Labor may review an award for or against compensation at any time on his own motion or on application.²⁵

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or an argument which: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by

¹⁹ See *supra* note 16. See also Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.4(a) (September 2020).

²⁰ *Id.*; see also *T.B.*, Docket No. 20-0158 (issued March 18, 2022).

²¹ *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).

²² See *D.S.*, Docket No. 21-1296 (issued March 23, 2022).

²³ See *P.C.*, Docket No. 19-1003 (issued December 4, 2019).

²⁴ *T.B.*, Docket No. 20-0158 (issued March 18, 2022).

²⁵ 5 U.S.C. § 8128(a); see *A.N.*, Docket No. 20-1487 (issued March 19, 2021); *L.D.*, Docket No. 18-1468 (issued February 11, 2019); see also *D.L.*, Docket No. 09-1549 (issued February 23, 2010); *W.C.*, 59 ECAB 372 (2008).

OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.²⁶

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.²⁷ If it chooses to grant reconsideration, it reopens and reviews the case on its merits.²⁸ If the request is timely, but fails to meet at least one of the requirements for reconsideration, OWCP will deny the request for reconsideration without reopening the case for review on the merits.²⁹

ANAYSIS -- ISSUE 3

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

Appellant has not alleged or demonstrated that OWCP erroneously applied or interpreted a specific point of law. Moreover, he did not advance a relevant legal argument not previously considered by OWCP. In a February 22, 2023 letter, appellant explained that his doctor was unable to write a report sufficient to establish his claim. The Board finds that this is not a legal argument. Accordingly, appellant's reconsideration request was insufficient to warrant reopening the claim for merit review.³⁰ Consequently, he is not entitled to a review of the merits of his claim based on the first and second above-noted requirements under 20 C.F.R. § 10.606(b)(3).³¹

Appellant did not submit any new evidence with his December 5, 2022 request for reconsideration. Accordingly, he was not entitled to a review of the merits based on the third above-noted requirement under 20 C.F.R. § 10.606(b)(3).³²

²⁶ 20 C.F.R. § 10.606(b)(3); *see S.K.*, Docket No. 22-0248 (issued June 27, 2022); *see also L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

²⁷ *Id.* at § 10.607(a). The one-year period begins on the next day after the date of the original contested decision. For merit decisions issued on or after August 29, 2011, a request for reconsideration must be received by OWCP within one year of OWCP's decision for which review is sought. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (September 2020). Timeliness is determined by the document receipt date of the request for reconsideration as indicated by the received date in the Integrated Federal Employees' Compensation System (iFECS). *Id.* at Chapter 2.1602.4b.

²⁸ *Id.* at § 10.608(a); *see also M.S.*, 59 ECAB 231 (2007).

²⁹ *Id.* at § 10.608(b); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

³⁰ *J.V.*, Docket No. 19-1554 (issued October 9, 2020); *see T.B.*, Docket No. 16-1130 (issued September 11, 2017).

³¹ *See supra* note 28; *G.K.*, Docket No. 20-1026 (issued December 11, 2020); *D.T.*, Docket No. 20-0456 (issued September 1, 2020).

³² *See supra* note 28; *P.W.*, Docket No. 20-0380 (issued November 23, 2020); *M.O.*, Docket No. 19-1677 (issued February 25, 2020); *C.B.*, Docket No. 18-1108 (issued January 22, 2019).

The Board, accordingly, finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(3). Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.³³

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish an abdominal condition causally related to the accepted April 11, 2022 employment incident. The Board also finds that OWCP properly denied his request for an oral hearing as untimely filed, pursuant to 5 U.S.C. § 8124(b). The Board further finds that OWCP properly denied appellant's December 5, 2022 request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the November 17, 2022 and February 15 and March 7, 2023 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: January 8, 2024
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

³³ See *D.R.*, Docket No. 18-0357 (issued July 2, 2018); *A.K.*, Docket No. 09-2032 (issued August 3, 2010); *M.E.*, 58 ECAB 694 (2007); *Susan A. Filkins*, 57 ECAB 630 (2006).