

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of CASIMIR M. BLAKE and U.S. POSTAL SERVICE,  
POST OFFICE, New York, N.Y.

*Docket No. 97-859; Submitted on the Record;  
Issued December 2, 1998*

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DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issues are: (1) whether appellant met her burden of proof in establishing that she sustained an injury in the performance of duty; and (2) whether the Branch of Hearings and Review properly denied appellant's request for an oral hearing as untimely.

The Board has duly reviewed the case on appeal and finds that appellant failed to meet her burden of proof in establishing that she sustained an injury in the performance of duty.

Appellant filed a claim alleging that on February 8, 1996 she injured her right hand and shoulder lifting heavy packages in the performance of duty. By decision dated May 4, 1996, the Office of Workers' Compensation Programs denied appellant's claim finding that she failed to establish fact of injury. Appellant requested an oral hearing on June 20, 1996 and by decision dated July 15, 1996, the Branch of Hearings and Review denied appellant's request as untimely.<sup>1</sup>

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.<sup>2</sup> The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability, claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical

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<sup>1</sup> Following the July 15, 1996 decision, appellant submitted additional new evidence. As the Office did not consider this evidence in reaching a final decision, the Board may not review it for the first time on appeal. 20 C.F.R. § 501.2(c).

<sup>2</sup> *Elaine Pendleton*, 40 ECAB 1143 (1989).

background, supporting such a causal relationship.<sup>3</sup> Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, 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 identified by the claimant. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.<sup>4</sup>

In this case, appellant attributed her hand and shoulder conditions to lifting heavy packages in the performance of duty. In support of her claim, appellant submitted several medical reports from Dr. Eric Senat, a Board-certified orthopedic surgeon. In reports dated February 27 and March 29, 1996, Dr. Senat diagnosed right shoulder impingement syndrome with sub-deltoid bursitis, bicipital tendinitis and rotator cuff injury as well as internal derangement of the cervical spine. These reports are not sufficient to meet appellant's burden of proof as Dr. Senat did not provide an opinion on the causal relationship between appellant's diagnosed condition and her employment.

Appellant did not provide the necessary medical opinion evidence establishing a causal relationship between her diagnosed condition and her employment incident. Therefore, she failed to meet her burden of proof and the Office properly denied her claim.

The Board finds that the Branch of Hearings and Review properly denied appellant's request for an oral hearing as untimely.

Section 8124(b) of the Federal Employees' Compensation Act,<sup>5</sup> concerning a claimant's entitlement to a hearing before an Office representative, states: "Before review under section 8128(a) of this title, a claimant ... not satisfied with a decision of the Secretary ... is entitled, on request made within 30 days after the date of issuance of the decision, to a hearing on his claim before a representative of the Secretary."<sup>6</sup>

The Board has held that section 8124(b)(1) is "unequivocal" in setting forth the time limitation for requesting hearings. A claimant is entitled to a hearing as a matter of right only if the request is filed within the requisite 30 days.<sup>7</sup> Even where the hearing request is not timely filed, the Office may within its discretion, grant a hearing, and must exercise this discretion.<sup>8</sup>

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<sup>3</sup> See 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

<sup>4</sup> *James Mack*, 43 ECAB 321 (1991).

<sup>5</sup> 5 U.S.C. §§ 8101-8193.

<sup>6</sup> 5 U.S.C. § 8124(b)(1).

<sup>7</sup> *Tammy J. Kenow*, 44 ECAB 619 (1993).

<sup>8</sup> *Id.*

In the instant case, the Office properly determined appellant's June 20, 1996 request for a hearing was not timely filed as it was made more than 30 days after the issuance of the Office's May 4, 1996 decision. The Office, therefore, properly denied appellant's hearing as a matter of right.

The Office then proceeded to exercise its discretion, in accordance with Board precedent, to determine whether to grant a hearing in this case. The Office determined that a hearing was not necessary as the issue in the case was medical and could be resolved through the submission of medical evidence in the reconsideration process. Therefore, the Office properly denied appellant's request for a hearing as untimely and properly exercised its discretion in determining to deny appellant's request for a hearing as she had other review options available.

The decisions of the Office of Workers' Compensation Programs dated July 15 and May 4, 1996 are hereby affirmed.

Dated, Washington, D.C.  
December 2, 1998

David S. Gerson  
Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member