

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KENNETH A. LENOIS, JR. and U.S. POSTAL SERVICE,
POST OFFICE, Grand Junction, CO

*Docket No. 98-416; Submitted on the Record;
Issued August 3, 1999*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issues are: (1) whether appellant met his burden of proof in establishing his entitlement to continuing compensation for wage loss; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for a hearing as untimely filed pursuant to section 8124(b)(1) of the Federal Employees' Compensation Act.

On December 16, 1996 appellant, then a 54-year-old mail processing equipment mechanic, filed an occupational disease claim alleging that he sustained a back condition in the performance of duty. The Office accepted the claim for the condition of aggravation of sciatica. Appellant was off work from December 12, 1996 to January 20, 1997, when he was approved for regular duty with restrictions.

In support of his claim, appellant submitted a computerized tomography (CT) scan of the lumbar spine performed on December 17, 1996 which showed a mildly bulging disc at L3-4, new since February 14, 1992, as well as left laminectomy, left facet hypertrophy with hook-line osteophyte projecting into the later recess at L5-S1. A notation was made at the top of the CT scan that there was a clinical history of left sciatica and prior lower back surgery.

In a December 26, 1996 report, Dr. Paul P. Preston, a Board-certified internist, noted that he first examined appellant on December 16, 1996 for complaints of back pain, which appellant related as having experienced for 5 to 6 years. He also noted that appellant reported leg numbness starting on December 13, 1996. According to Dr. Preston, appellant's pain had worsened due to activities at work, but did not identify the nature of those activities. He noted the results of the December 17, 1996 CT scan and diagnosed left-sided sciatica due to osteoarthritis of the lumbar/sacral spine which he opined was aggravated by appellant's employment duties. Dr. Preston prescribed medication and physical therapy.

In a January 16, 1997 note, Dr. Preston advised that appellant could return to work on January 20, 1997 with the restriction of no heavy lifting.

By letter dated February 3, 1997, the Office requested appellant to submit additional evidence in support of his claim, including a comprehensive medical report from his treating physician citing how specific work factors contributed to the diagnosed condition.

In a letter dated February 11, 1997, appellant noted a history of back injuries. He indicated that he first injured his back in 1973 while he was in the Navy. Appellant noted that in approximately 1991 he injured his back at work when he was knocked down by a conveyor. Next, he stated that he injured his back in the parking lot at work when he stepped on a pen and fell on his back. According to appellant, after the parking lot incident, he had an operation on his back which reduced the pain. He also described factors of his job as a mail processing equipment mechanic, such as stretching, bending, stooping, pulling, pushing and standing for long periods of time, which had most recently hurt his back.¹

In a February 25, 1997 report, Dr. Preston noted that when he had initially treated appellant on December 16, 1996, appellant had described how he injured his back at work. He noted that while he did not document the nature of the injury in his report, he did think at the time that the symptoms were consistent with appellant's mechanism of injury. Dr. Preston further noted appellant's symptoms of back pain, left leg pain and left achilles tendon reflex and his history of degenerative joint disease of the lumbar spine with intermittent left sciatica. He diagnosed left sciatica due to degenerative joint disease of the lumbar spine which he opined was exacerbated by "an injury suffered by [appellant] at his place of employment."

By letter dated April 10, 1997, the Office accepted the claim for the condition of aggravation of a preexisting condition identified as sciatica. The Office noted that since the condition diagnosed by appellant's physician had been exacerbated by his work, it was reasonable to presume that the aggravation would cease upon appellant's planned retirement in seven months time.

In a duty status report dated April 25, 1997, Dr. Preston advised that appellant had sustained a bilateral sciatica and was totally disabled from work until further notice.

In an attending physician's report dated April 29, 1997, Dr. Preston advised that he had last examined appellant on April 24, 1997. He diagnosed severe sciatica secondary to disc disease and degenerative joint disease. Dr. Preston check marked a box on the CA-20a form indicating that the diagnosed condition was due to appellant's accepted work condition. He prescribed analgesics and physical therapy. Dr. Preston further opined that appellant was disabled from work.

In an attending physician's report dated May 12, 1997, Dr. Preston diagnosed back pain secondary to disc disease and "DVD." He check marked a box on the CA-20 form indicating that the diagnosed condition was caused or aggravated by appellant's employment. Dr. Preston noted the date of injury as December 21, 1994. He further noted that appellant was totally disabled since April 24, 1997.

¹ Appellant has not indicated that he filed prior claims for work-related back injuries, nor does the record identify any previous claims filed by appellant before December 16, 1996.

Appellant filed a Form CA-7 and three CA-8 forms claiming compensation for continuing disability from May 19, 1992 through July 18, 1997. On the reverse side of each of the three CA-8 forms, which were received by the Office on June 16, 1997, the employing establishment noted that light work was available.

In a June 3, 1997 report, Dr. Preston noted that he was appellant's primary physician since January 1997 when he presented with left-sided sciatica. He noted that appellant had a history of back pain secondary to degenerative joint disease and disc disease. Dr. Preston further related appellant's statement that his back pain started in 1994 after an overhead door fell on him while he was at work and that since that time his back pain had gotten progressively worse. He explained that "[b]ecause of the temporal relationship of the pain to the injury received at work," it was his opinion that appellant had a work-related injury. He further concluded that appellant was unable to work at any job in the foreseeable future.

By letter dated June 5, 1997, the Office informed appellant that in order to claim compensation for continuing disability he was required to submit a rationalized medical report from his treating physician which explained the causal relationship between his disability and factors of his employment.

In a June 20, 1997 letter, appellant stated that there was no light duty or limited-duty jobs that he had been made aware of by the employing establishment. Appellant further discussed the physical requirements of his job.

In a decision dated July 15, 1997, the Office denied appellant's claim for continuing compensation on the grounds that the medical evidence was insufficient to establish a causal relationship between his disability and factors of his employment.

By facsimile transmission dated September 9, 1997, appellant requested a hearing.

In a decision dated October 1, 1997, the Office found appellant's request for a hearing to be untimely filed but further noted that the issue in the case could be resolved through the reconsideration process.

The Board finds that appellant failed to meet his burden of proof in establishing his claim for continuing compensation for wage loss.²

If the Office accepts that an employee has sustained an employment-related injury and advises the employee that she must file a Form CA-8 with supporting medical evidence to establish a period of disability, the employee retains the burden of proof to establish continuing

² Appellant submitted additional evidence to the Office after the issuance of the July 15, 1999 decision denying compensation. He also submitted new evidence to the Board with respect to the denial of his hearing request. The Board has no jurisdiction to review evidence submitted by appellant subsequent to the Office's July 15, 1999 decision or for the first time on appeal; *see* 20 C.F.R. § 501.2(c).

disability until the employee is advised by the Office that the claim has been placed on the periodic rolls and Forms CA-8 with supporting evidence no longer need to be submitted.³

In this regard, the implementing regulations⁴ of the Federal Employees' Compensation Act⁵ provide as follows:

“Form CA-8 is provided to claim compensation for additional periods of time after Form CA-7 is submitted to the Office. It is the responsibility of the employee to submit Form CA-8. Without receipt of such claim, the Office has no knowledge of continuing wage loss.... The employee is responsible for submitting, or arranging for this submission of, medical evidence in support of the claim. Form CA-20a is attached to Form CA-8 for this purpose....”

In the instant case, the Office accepted that factors of appellant's employment caused a temporary aggravation of the preexisting condition of sciatica. He left work on December 16, 1997 but was approved by his treating physician, Dr. Preston, for restricted duty on January 20, 1997. Although it is somewhat unclear from the record, it appears that appellant did not return to work as he submitted a statement to the Office alleging that there was no light duty available for him. The employing establishment, however, indicated on the back of appellant's CA-8 forms that light work was available.

In support of his claim for continuing compensation for wage loss, appellant submitted several reports from Dr. Preston which found him to be totally disabled effective April 24, 1997. The Board finds that the Office properly denied appellant's claim for continuing compensation, subsequent to April 24, 1997 as there is no rationalized medical evidence of record addressing the circumstances surrounding appellant's claimed disability and its relation to appellant's federal employment.

In attending physician reports dated April 29 and May 12, 1997, Dr. Preston diagnosed severe sciatica secondary to disc disease and degenerative joint disease, but he offered no rational explanation as to how the diagnosis related to factors of appellant's employment.⁶ Since Dr. Preston considered appellant's sciatica to be sufficiently resolved such that appellant was approved for restricted duty on January 20, 1997, it was necessary for him to adequately explain appellant's return to disability status, including a discussion of the mechanism of injury. Furthermore, Dr. Preston's reference to the temporal relationship between appellant's pain and his work injury does not meet his burden of proof since Dr. Preston did not cite specific work

³ See *Donald L. Ballard*, 43 ECAB 876 (1992).

⁴ 20 C.F.R. § 10.122.

⁵ 5 U.S.C. §§ 8101-8193.

⁶ Dr. Preston check marked on the CA-20 form that there was a causal relationship between appellant's disability beginning April 24, 1997 and his federal employment. The Board, however, has held that when a physician's opinion on causal relationship consists only of checking “yes” to a form question, without supporting rationale, that opinion has little probative value and is insufficient to establish causal relationship; see *Ruth S. Johnson*, 46 ECAB 237 (1994).

factors alleged to have caused appellant's disability. Because appellant failed to provide a rationalized medical report from his treating physician which causally related his current disability to factors of his employment, the Office properly denied his request for continuing compensation for wage loss.

The Board also finds that the Office properly denied appellant's request for a hearing.

Section 8124(b)(1) of the Act provides:

“Before review under section 8128(a) of this title, a claimant for compensation not satisfied with a decision of the Secretary under subsection (a) of this section is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on his claim before a representative of the Secretary.”⁷

A claimant is not entitled to a hearing if the request is not made within 30 days of the date of issuance of the decision as determined by the postmark of the request.⁸ The Office has discretion, however, to grant or deny a request that is made after this 30-day period.⁹ In such a case, the Office will determine whether a discretionary hearing should be granted or, if not, will so advise the claimant with reasons.¹⁰

Appellant's request for an oral hearing was sent by facsimile transmission dated September 8, 1997 and was received by the Office on that same date, more than 30 days after the Office's July 15, 1997 decision. For this reason, appellant is not entitled to a hearing as a matter of right. The Office properly found appellant's request to be untimely, but nonetheless considered the matter in relation to the issue involved and correctly advised appellant that he could pursue the issues involved through the reconsideration process. As appellant may in fact pursue his claim by submitting to the appropriate regional Office new and relevant medical evidence with a request for reconsideration, the Board finds that the Office did not abuse its discretion in denying appellant's request for a hearing.¹¹

⁷ 5 U.S.C. § 8124(b)(1).

⁸ 20 C.F.R. § 10.131(a)-(b).

⁹ *Herbert C. Holley*, 33 ECAB 140 (1981).

¹⁰ *Rudolph Bermann*, 26 ECAB 354 (1975).

¹¹ The Board has held that the denial of a hearing on these grounds is a proper exercise of the Office's discretion. E.g., *Jeff Micono*, 39 ECAB 617 (1988).

The decisions of the Office of Workers' Compensation Programs dated October 1 and July 15, 1997 are affirmed.

Dated, Washington, D.C.
August 3, 1999

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member