

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of PATRICIA MIKULSKY and U.S.POSTAL SERVICE,  
POST OFFICE, Green Bay, Wis.

*Docket No. 97-2266; Submitted on the Record;  
Issued May 25, 1999*

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DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

The issues are: (1) whether appellant met her burden of proof in establishing that she sustained an injury causally related to factors of employment; and, (2) whether the Office of Workers' Compensation Programs abused its discretion in denying appellant's request for a hearing.

The facts in this case, indicate that on September 23, 1996 appellant, then a 40-year-old carrier, filed an occupational disease claim, alleging that her shoulder condition was employment related. She did not stop work. In support of her claim, she submitted a September 19, 1996 note, from Dr. Michael W. Pettinelli, a Board-certified family practitioner, who noted limitations to appellant's physical activity. By letter dated October 11, 1996, the Office informed appellant of the type evidence needed, which was to include a comprehensive medical opinion explaining how employment factors contributed to her condition. Appellant submitted nothing further and, by decision dated January 2, 1997, the Office denied the claim, finding fact of injury not established. On March 11, 1997 appellant requested review of the written record. In a May 28, 1997 decision, an Office hearing representative denied appellant's request on the grounds that it was not timely filed. The instant appeal follows.

Initially, the Board finds that appellant did not meet her burden of proof to establish that she sustained a shoulder injury causally related to factors of employment.

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying the factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the factors identified by the claimant. The evidence required to establish

causal relationship is rationalized medical opinion evidence, based upon a complete and accurate factual and medical background, showing a causal relationship between the claimed conditions and the identified factors. The belief of appellant that the condition was caused or aggravated by the identified factors is not sufficient to establish causal relation.<sup>1</sup>

In the present case, there is no dispute that appellant was a federal employee and that she timely filed a claim for compensation benefits. However, the medical evidence is insufficient to establish that she sustained an employment-related injury because it does not contain a rationalized medical opinion explaining how her shoulder condition was caused or aggravated by employment factors. The medical evidence merely contains a report, in which Dr. Pettinelli restricted appellant's physical activity. His opinion is devoid of an opinion regarding the cause of her condition and is, therefore, insufficient to establish appellant's claim.

The Board further finds that the Office did not abuse its discretion in denying appellant's request for a hearing as untimely.

In the present case, the Office denied appellant's request for a hearing on the grounds that it was untimely. In its May 28, 1997 decision, the Office stated that appellant was not, as a matter of right, entitled to a hearing since her request had not been made within 30 days of its January 2, 1997 decision. The Office noted that it had considered the matter in relation to the issue involved and indicated that appellant's request was denied on the basis that the issue of whether she sustained an employment injury could be addressed through a reconsideration application.

The Board has held that the Office, in its broad discretionary authority in the administration of the Federal Employees' Compensation Act, has the power to hold hearings in certain circumstances where no legal provision was made for such hearings and that the Office must exercise this discretionary authority in deciding whether to grant a hearing.<sup>2</sup> In the present case, appellant's request for a hearing on March 11, 1997 was made more than 30 days after the date of issuance of the Office's prior decision dated January 2, 1997 and, thus, appellant was not entitled to a hearing as a matter of right. Hence, the Office was correct in stating in its May 28, 1997 decision, that appellant was not entitled to a hearing as a matter of right because her request was not made within 30 days of the Office's January 2, 1997 decision.

While the Office also has the discretionary power to grant a hearing request when a claimant is not entitled to a hearing as a matter of right, the Office, in its May 28, 1997 decision, properly exercised its discretion by stating that it had considered the matter in relation to the issue involved and had denied appellant's request on the basis that the issue of whether she sustained an injury causally related to factors of employment could be addressed through a reconsideration application. The Board has held that, as the only limitation on the Office's authority is reasonableness, abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both

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<sup>1</sup> *Lourdes Harris*, 45 ECAB 545 (1994).

<sup>2</sup> *Henry Moreno*, 39 ECAB 475, 482 (1988).

logic and probable deduction from established facts.<sup>3</sup> In the present case, the evidence of record does not indicate that the Office committed any act in connection with its denial of appellant's hearing request which could be found to be an abuse of discretion.<sup>4</sup>

The decisions of the Office of Workers' Compensation Programs dated May 28 and January 2, 1997 are hereby affirmed.

Dated, Washington, D.C.  
May 25, 1999

Michael J. Walsh  
Chairman

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>3</sup> See *Daniel J. Perea*, 42 ECAB 214, 221 (1990).

<sup>4</sup> The Board notes that with her request for a hearing appellant submitted additional medical evidence. The Board, however, cannot consider this evidence as its review of the case is limited to the evidence of record which was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c). Appellant retains the right to submit this evidence to the Office with a written request for reconsideration. 20 C.F.R. § 10.138(b)(1)(iii).