

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERT D. BILBREY and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Denver, CO

*Docket No. 98-2083; Submitted on the Record;
Issued January 6, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
MICHAEL E. GROOM

The issues are: (1) whether appellant has met his burden of proof in establishing that he sustained an injury as alleged; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for a hearing pursuant to section 8124 of the Federal Employees' Compensation Act.

On March 22, 1997 appellant, then a 49-year-old security officer, filed an occupational disease claim, alleging that he sustained stress and post-traumatic stress disorder due to factors of his federal employment. Appellant stopped work March 16, 1997. In a decision dated June 16, 1997, the Office denied appellant's claim on the grounds that the evidence was not sufficient to establish that he sustained an injury as alleged. By decision dated April 13, 1998, the Office denied appellant's request for a hearing.

The Board has duly reviewed the entire case record on appeal and finds that appellant did not meet his burden of proof in establishing that he sustained an emotional condition as alleged.

A person who claims benefits under the Act¹ has the burden of establishing the essential elements of his claim, including that he sustained an injury while in the performance of duty and that he had disability as a result.² In accordance with the Federal (FECA) Procedure Manual, in order to determine whether an employee actually sustained an injury in the performance of his duty, the Office begins with the analysis of whether "fact of injury" has been established. Generally, "fact of injury" consists of two components which must be considered one in conjunction with the other. The first component to be established is that the employee actually experienced the employment incident or exposure which is alleged to have occurred.³ In order to

¹ 5 U.S.C. §§ 8101-8193.

² *Daniel R. Hickman*, 34 ECAB 1220 (1983); see 20 C.F.R. § 10.110(a)

³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.(2)(a) (June 1995).

meet his burden of proof to establish the fact that he sustained an injury in the performance of duty, an employee must submit sufficient evidence to establish that he actually experienced the employment injury or exposure at the time, place and in the manner alleged. The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.⁴ The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon complete factual and medical background, showing a causal relationship between the claimed condition and the identified factors.⁵ The belief of claimant that a condition was caused or aggravated by the employment is not sufficient to establish a causal relationship.⁶

In the present case, appellant indicated that he sustained headaches and sleeping problems due to a “painful onslaught of fear” which he believed was causally related to factors of his federal employment. In a letter dated May 1, 1997, the Office advised appellant that it required additional information to adjudicate his claim, including a detailed description of the employment-related conditions or incidents he believed contributed to his illness, all sources of stress outside his federal employment, the development of the claimed condition, any prior emotional conditions and a rationalized medical report addressing the causal relationship between the claimed condition and the identified factors of employment. In response, appellant provided a statement that he had a 10 percent disability due to post-traumatic stress disorder. As appellant did not submit any of the information requested by the Office and therefore did not identify any causative factors of employment or provide medical documentation for his claimed conditions, he has not discharged his burden of proof in relation to the fact-of-injury test.

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

Section 8124(b)(1) of the Act provides that a “claimant for compensation not satisfied with the 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 claim before a representative of the Secretary.”⁷ As section 8124(b)(1) is unequivocal in setting forth the time limitations for requesting a hearing, a claimant is not entitled to a hearing as a matter of right unless the request is made within the requisite 30 days.⁸

The Office issued the last merit decision, *i.e.*, decision granting or denying benefits, in this case on June 16, 1997. In a letter postmarked October 15, 1997, appellant requested an oral hearing. While, in a note dated February 21, 1998, appellant indicated that he had requested a hearing four times, the record contains only the request postmarked October 15, 1997 and the

⁴ *John J. Carlone*, 41 ECAB 354 (1989); see 5 U.S.C. § 8101(5) (“injury” defined); 20 C.F.R. §§ 10.5(a)(15), 10.5(a)(16) (“traumatic injury” and “occupational disease” defined).

⁵ *Lourdes Harris*, 45 ECAB 545 (1994); see *Walter D. Morehead*, 31 ECAB 188 (1979).

⁶ *Manuel Garcia*, 37 ECAB 767 (1986).

⁷ 5 U.S.C. § 8124(b)(1).

⁸ *Charles J. Prudencio*, 41 ECAB 499 (1990); *Ella M. Garner*, 36 ECAB 238 (1984).

note dated February 21, 1998. Thus, as appellant requested a hearing beyond the 30-day time limitation, he is not entitled to a hearing as a matter of right.

Even when the hearing request is not timely, the Office has discretion to grant the hearing request and must exercise that discretion. In this case, the Office advised appellant that it considered his request in relation to the issue involved, and the hearing was denied on the basis that he could address this issue by submitting evidence which showed that he had sustained an injury as alleged. Appellant was advised that he may request reconsideration with additional evidence. The Board has held that an abuse of discretion is generally shown through proof of manifest error, a clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deductions from established facts.⁹ There is no evidence of an abuse of discretion in the denial of a hearing in this case.

The decisions of the Office of Workers' Compensation Programs dated April 12, 1998 and June 16, 1997 are affirmed.

Dated, Washington, D.C.

January 6, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

Michael E. Groom
Alternate Member

⁹ *Daniel J. Perea*, 42 ECAB 214 (1990).