U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SIDNEY NELSON, JR. and U.S. POSTAL SERVICE,
POST OFFICE, Seattle, WA

Docket No. 00-1220; Submitted on the Record;
Issued November 9, 2000

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
PRISCILLA ANNE SCHWAB

The issues are: (1) whether appellant has established that he sustained a lower back injury in the performance of duty on June 18, 1999; (2) whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's case for further review on the merits of his claim under 5 U.S.C. § 8128(a); and (3) whether the Office properly denied appellant's request for a hearing under 5 U.S.C. § 8124(b)(1).

On September 29, 1999 appellant, a 50-year-old mailhandler, filed a claim for benefits, alleging that on June 18, 1999, he injured his lower back while lifting and handling mail sacks. He stated that because the pain in his lower back did not subside, he sought medical treatment. In support of his claim, appellant submitted a treatment note from a medical clinic, dated June 18, 1999, which indicated that he was disabled for work on that day and was placed on indefinite medical leave for back pain.

In a letter dated November 10, 1999, the employing establishment controverted appellant's claim. The employing establishment stated that although appellant claimed to have injured his back on June 18, 1999, his last day of work, he did not report an injury on that date and claimed that the original back injury occurred in 1996. The employing establishment also noted that appellant requested indefinite medical leave immediately following the denial of his request for six months, leave without pay to accompany his wife to Washington, D.C., where they were thinking of relocating.

In a letter to appellant dated November 10, 1999, the Office requested that appellant submit additional information in support of his claim, including a medical report and opinion from a physician, supported by medical reasons, describing the history of the alleged work incident and how it caused or aggravated the claimed injury, plus a diagnosis and clinical course of treatment for the injury. The Office also requested a statement from appellant describing exactly how the injury occurred and the immediate effects of the injury and providing names and

addresses of witnesses. The Office informed appellant that he had 30 days to submit the requested information.

By decision dated December 15, 1999, the Office denied appellant's claim on the grounds that the evidence of record failed to establish that appellant sustained the claimed injury in the performance of duty.

By letter dated December 23, 1999, appellant requested reconsideration. Appellant also stated that he had not received the Office's November 10, 1999 letter.

By decision dated January 5, 2000, the Office denied appellant's application for review on the grounds that it neither raised substantive legal questions nor included new and relevant evidence sufficient to require the Office to review its prior decision.

In a letter received by the Office on January 6, 2000, appellant requested a hearing or review of the written record by an Office hearing representative.

In a decision dated January 18, 2000, the Office denied appellant's request for a hearing or request of the record, as he had previously requested reconsideration under section 8128 and the district Office had issued its reconsideration decision on January 5, 2000, therefore, appellant was not entitled to a hearing as a matter of right. The Office advised appellant that he could request reconsideration of his case and submit additional evidence to the district Office.

An employee seeking benefits under the Federal Employees' Compensation Act[1] has the burden of establishing that the essential elements of his or her claim including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.[2] 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.[3]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "fact of injury" has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.[4] Second, the employee must submit sufficient evidence, generally only in the form of medical evidence to

[1] 5 U.S.C. §§ 8101-8193.

[2] *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[3] *Victor J. Woodhams*, 41 ECAB 345 (1989).

[4] *John J. Carlone*, 41 ECAB 354 (1989).

establish that the employment incident caused a personal injury.[5] The medical evidence required to establish causal relationship is usually rationalized medical evidence.

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.[6]

The Board finds that appellant has failed to submit evidence establishing that he sustained an injury on June 18, 1998. An injury does not have to be confirmed by eyewitnesses in order to establish the fact that an employee sustained an injury in the performance of duty, as alleged, but the employee's statements must be consistent with surrounding facts and circumstances and his or her subsequent course of action. Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury and failure to obtain medical treatment may cast doubt on an employee's statements in determining whether he or she has established a *prima facie* case.[7]

The employee has the burden of establishing the occurrence of the alleged injury at the time, place and in the manner alleged, by a preponderance of the reliable, probative and substantial evidence. An employee has not met this burden when there are such inconsistencies in the evidence as to cast doubt upon the validity of the claim; however, his statement alleging that an injury occurred at a given time and manner is of great probative value and will stand unless refuted by substantial evidence.[8]

The only medical evidence received prior to the Office's December 15, 1999 decision is the June 18, 1999 clinic treatment report, which stated that appellant was treated for back pain and placed on indefinite leave. This note did not relate the medical condition to appellant's alleged June 18, 1999 employment injury. Thus, appellant has not submitted evidence establishing that he sustained an injury in the performance of duty on June 18, 1999. The Board, therefore, affirms the decision of the Office dated December 15, 1999.

The Board finds that the Office did not abuse its discretion by refusing to reopen appellant's case for further review on the merits of his claim under 5 U.S.C. § 8128(a).

Under 20 C.F.R. § 10.607, a claimant may obtain review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a specific point of law; by

[5] *Id.* For a definition of the term "injury," *see* 20 C.F.R. § 10.5(a)(14).

[6] *Id.*

[7] *Morton J. Sills*, 39 ECAB 572 (1988).

[8] *Carmen Dickerson*, 36 ECAB 409 (1985).

advancing a relevant legal argument not previously considered by the Office; or by submitting relevant and pertinent evidence not previously considered by the Office.[9] Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.[10]

In this case, appellant has not shown that the Office erroneously applied or interpreted a point of law; he has not advanced a point of law or fact not previously considered by the Office; and he has not submitted relevant and pertinent evidence not previously considered by the Office. All of the medical evidence submitted by appellant was previously of record and considered by the Office in reaching its prior decision. Thus, his request did not contain any new and relevant medical evidence for the Office to review. Additionally, appellant's letter failed to show the Office erroneously applied or interpreted a point of law or advanced a point of law or fact not previously considered by the Office.

Although, appellant stated that he never received the Office's November 10, 1999 letter notifying him that he had 30 days in which to submit additional evidence, this assertion is not sufficient to constitute reversible error. It is presumed, in the absence of evidence to the contrary, that a notice mailed to an individual in the ordinary course of business was received by that individual.[11] This presumption arises when it appears from the record that the notice was properly addressed and duly mailed.[12] The appearance of a properly addressed copy in the case record, together with the mailing custom or practice of the Office itself, will raise the presumption that the original was received by the addressee.[13]

The Office's November 10, 1999 notice was addressed to appellant at 10203 64th Avenue South, Seattle, Washington, 1675, with copies sent to the employing establishment. As this was the address appellant provided on his Form CA-1 and the only one he submitted to the Office prior to his December 23, 1999 letter requesting reconsideration, it must be presumed to be a proper mailing address for appellant. Although, appellant listed his address on his request for reconsideration as P.O. Box 22353, Seattle, Washington, 98122, this does rebut the presumption that the address used by the Office -- 10203 64th Avenue South, Seattle, Washington, -- was a proper mailing address. Therefore, the Office did not abuse its discretion in refusing to reopen appellant's claim for a review on the merits.

The Board further finds that the Office properly denied appellant's request for a hearing under 5 U.S.C. § 8124(b)(1).

Section 8124(b)(1) of the Act 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

[9] 20 C.F.R. § 10.607(b)(1). *See generally* 5 U.S.C. § 8128(a).

[10] *Howard A. Williams,* 45 ECAB 853 (1994).

[11] *George F. Gidicsin,* 36 ECAB 175 (1984).

[12] *Michelle R. Littlejohn,* 42 ECAB 463, 465 (1991).

[13] *Clara T. Norga,* 46 ECAB 473 (1995).

the issuance of the decision, to a hearing on his claim before a representative of the Secretary."[14] As section 8124(b)(1) is unequivocal in setting forth the time limitation 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.[15]

The Office, in its broad discretionary authority in the administration of the Act, has the power to hold hearings in certain circumstances where no legal provision was made for such hearings and the Office must exercise this discretionary authority in deciding whether to grant a hearing. The Office's procedures, which require the Office to exercise its discretion to grant or deny a hearing when a hearing request is untimely filed or made after reconsideration under section 8128(a), are a proper interpretation of the Act and Board precedent.[16]

In this case, the Office, in its January 18, 2000 decision, properly determined that appellant was not entitled to a hearing as a matter of right since he had already requested reconsideration and the district Office issued its reconsideration decision on January 5, 2000. The Office correctly informed appellant of his rights to a hearing, reconsideration and an appeal in an enclosure to its December 15, 1999 decision. The Office also exercised its discretion and further considered the hearing request but concluded that the issue in the case could be equally well addressed by requesting reconsideration from the district office and submitting evidence not previously considered.

[14] 5 U.S.C. § 8124(b)(1).

[15] *William F. Osborne*, 46 ECAB 198 (1994).

[16] *Joseph K. Johnson*, 41 ECAB 328 (1989); *Henry Moreno*, 39 ECAB 475 (1988).

The decisions of the Office of Workers' Compensation Programs dated January 18 and 5, 2000 and December 15, 1999 are hereby affirmed.

Dated, Washington, DC
November 9, 2000

David S. Gerson
Member

Willie T.C. Thomas
Member

Priscilla Anne Schwab
Alternate Member