U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of TODD H. McCRACKEN and U.S. POSTAL SERVICE,
POST OFFICE, Tampa, FL

Docket No. 00-1660; Submitted on the Record;
Issued April 4, 2001

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issues are: (1) whether appellant met his burden of proof to establish that he sustained a recurrence of disability on or after August 12, 1999 due to his June 9, 1998 employment injury; (2) whether the Office of Workers' Compensation Programs properly denied authorization for the purchase of an adjustable orthopedic bed; and (3) whether the Office properly denied appellant's request for a hearing under section 8124 of the Federal Employees' Compensation Act.

On June 9, 1998 appellant, then a 34-year-old letter carrier, sustained an employment-related right medial meniscus tear and traumatic synovitis of his left ankle. The Office authorized the performance of a right knee arthroscopy. In January 1999 appellant returned to limited-duty work for the employing establishment and in February 1999 he returned to regular duty. Appellant stopped work on March 19, 1999 and resigned from the employing establishment effective August 12, 1999 in lieu of being terminated for reasons unrelated to his medical condition.[1] He claimed that he sustained a recurrence of disability on August 12, 1999 due to his June 9, 1998 employment injury.[2] By decision dated November 8, 1999, the Office denied appellant's claim that he sustained an employment-related recurrence of disability on or after August 12, 1999 on the grounds that he did not submit sufficient medical evidence in support thereof. The Office also determined that it had properly denied authorization for the purchase of an adjustable orthopedic bed. By decision dated February 8, 2000, the Office denied appellant's request for a hearing on the grounds that it was untimely.

The Board finds that appellant did not meet his burden of proof to establish that he sustained a recurrence of disability on or after August 12, 1999 due to his June 9, 1998 employment injury.

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[1] Appellant was under investigation for theft of mail, sleeping on the job and other alleged offenses.

[2] Appellant also claimed that he was entitled to be reimbursed for the purchase of an adjustable orthopedic bed.

An individual who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which compensation is claimed is causally related to the accepted injury.[3] This burden includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with sound medical rationale.[4] Where no such rationale is present, medical evidence is of diminished probative value.[5]

In support of his recurrence of disability claim, appellant submitted an August 12, 1999 form report in which Dr. Edward Feldman, an attending Board-certified orthopedic surgeon, diagnosed early degenerative osteoarthritis of the right knee due to the June 9, 1998 employment injury and indicated that appellant was totally disabled from all employment.[6] In a report dated August 12, 1999, Dr. Feldman noted appellant's knee complaints and diagnosed medial meniscus tear, treated arthroscopically. He stated that appellant's "objective findings and subjective complaints are causally related to the work-related accident of June 9, 1998 and are permanent.[7]

These reports, however, are of limited probative value on the relevant issue of the present case in that Dr. Feldman did not provide adequate medical rationale in support of his conclusion on causal relationship.[8] In his brief reports, Dr. Feldman did not provide an adequate description of appellant's medical history or a sufficient account of findings on examination.[9] He did not provide any explanation of the medical process through which appellant's employment-related condition would have worsened in August 1999 such that he became totally disabled. Dr. Feldman appeared to partially base his opinion regarding disability on appellant's degenerative joint disease and emotional problems, but the Office has not accepted these conditions as employment related.

Moreover, the record contains evidence which shows that appellant did not sustain a recurrence of disability on or after August 12, 1999. In a report dated August 10, 1999, Dr. Donald E. Pearson, a Board-certified orthopedic surgeon to whom the Office referred appellant, reported appellant's medical history and detailed the findings on examination.

[3] *Charles H. Tomaszewski*, 39 ECAB 461, 467 (1988); *Dominic M. DeScala*, 37 ECAB 369, 372 (1986).

[4] *Mary S. Brock*, 40 ECAB 461, 471-72 (1989); *Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

[5] *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988).

[6] Dr. Feldman also diagnosed medial meniscus tear, treated arthroscopically.

[7] In a similar report dated September 7, 1999, Dr. Feldman indicated that appellant was a candidate for disability retirement due to his "job-related stress disorder, depression and chronic knee problem."

[8] *See Leon Harris Ford*, 31 ECAB 514, 518 (1980) (finding that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).

[9] *See William Nimitz, Jr.*, 30 ECAB 567, 570 (1979) (finding that a medical opinion on causal relationship must be based on a complete and accurate factual and medical history).

Dr. Pearson stated that appellant had full range of motion of his knees and otherwise exhibited essentially normal findings on examination. He indicated that appellant had early degenerative joint disease of his right knee and was able to perform his regular job without restrictions. Dr. Pearson indicated that appellant's findings were minimal and did not require treatment. In a report dated September 23, 1999, Dr. Pearson provided a similar opinion.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's claimed condition became apparent during a period of employment nor his belief that his condition was aggravated by his employment is sufficient to establish causal relationship.[10] Appellant failed to submit rationalized medical evidence establishing that his claimed recurrence of disability is causally related to the accepted employment injury and, therefore, the Office properly denied his claim for compensation.

The Board further finds that the Office properly denied authorization for the purchase of an adjustable orthopedic bed.

Section 8103(a) of the Act states in pertinent part: "The United States shall furnish to an employee who is injured while in the performance of duty, the services, appliances, and supplies prescribed or recommended by a qualified physician, which the Secretary of Labor considers likely to cure, give relief, reduce the degree or the period of disability, or aid in lessening the amount of the monthly compensation."[11] In order to be entitled to reimbursement of medical expenses, appellant has the burden of establishing that the expenditures were incurred for treatment of the effects of an employment-related injury or condition.[12] Proof of causal relationship in a case such as this must include supporting rationalized medical evidence.[13]

On February 23, 1999 Dr. Feldman wrote appellant a prescription for an adjustable orthopedic bed. Dr. Feldman did not provide a clear opinion that the bed was needed for the effects of appellant's June 9, 1998 employment injury; he did not otherwise provide a rationalized medical opinion explaining why the bed was needed "to cure, give relief, reduce the degree or the period of disability, or aid in lessening the amount of the monthly compensation." The Office provided Dr. Feldman with an opportunity to clarify his opinion on this matter, but he did not respond to the Office's request. For these reasons, the Office properly denied authorization for the purchase of an adjustable orthopedic bed.

The Board further finds that the Office properly denied appellant's request for a hearing under section 8124 of the Act.

Section 8124(b)(1) of the Act, concerning a claimant's entitlement to a hearing before an Office representative, provides in pertinent part: "Before review under section 8128(a) of this title, a claimant for compensation not satisfied with a decision of the Secretary ... is entitled, on

[10] *See Walter D. Morehead*, 31 ECAB 188, 194-95 (1986).

[11] 5 U.S.C. § 8103.

[12] *Bertha L. Arnold*, 38 ECAB 282, 284 (1986).

[13] *Zane H. Cassell*, 32 ECAB 1537, 1540-41 (1981); *John E. Benton*, 15 ECAB 48, 49 (1963).

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."[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 Board has held that 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 that the Office must exercise this discretionary authority in deciding whether to grant a hearing.[16] Specifically, the Board has held that the Office has the discretion to grant or deny a hearing request on a claim involving an injury sustained prior to the enactment of the 1966 amendments to the Act which provided the right to a hearing,[17] when the request is made after the 30-day period for requesting a hearing,[18] and when the request is for a second hearing on the same issue.[19]

In the present case, appellant's hearing request was made more than 30 days after the date of issuance of the Office's prior decision dated November 8, 1999 and, thus, appellant was not entitled to a hearing as a matter of right. Appellant requested a hearing before an Office representative in a letter postmarked December 14, 1999. Hence, the Office was correct in stating in its February 8, 2000 decision that appellant was not entitled to a hearing as a matter of right because his hearing request was not made within 30 days of the Office's November 8, 1999 decision.

While the Office also has the discretionary power to grant a hearing when a claimant is not entitled to a hearing as a matter of right, the Office, in its February 8, 2000 decision, properly exercised its discretion by stating that it had considered the matter in relation to the issue involved and had denied appellant's hearing request on the basis that appellant could equally well address the issue in the present case by submitting additional medical evidence and requesting reconsideration. 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 logic and probable deduction from established facts.[20] 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.

[14] 5 U.S.C. § 8124(b)(1).

[15] *Ella M. Garner*, 36 ECAB 238, 241-42 (1984).

[16] *Henry Moreno*, 39 ECAB 475, 482 (1988).

[17] *Rudolph Bermann*, 26 ECAB 354, 360 (1975).

[18] *Herbert C. Holley*, 33 ECAB 140, 142 (1981).

[19] *Johnny S. Henderson*, 34 ECAB 216, 219 (1982).

[20] *Daniel J. Perea*, 42 ECAB 214, 221 (1990).

For these reasons, the Office properly denied appellant's request for a hearing under section 8124 of the Act.

The decisions of the Office of Workers' Compensation Programs dated February 8, 2000 and November 8, 1999 are affirmed.

Dated, Washington, DC
April 4, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member