U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PEGGY P. SIMPSON and DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE, Jacksonville, FL

Docket No. 00-1357; Submitted on the Record;
Issued March 13, 2001

DECISION and ORDER

Before MICHAEL E. GROOM, A. PETER KANJORSKI,
PRISCILLA ANNE SCHWAB

The issues are: (1) whether appellant has met her burden of proof to establish that she sustained a recurrence of disability beginning March 3, 1998 causally related to her July 23, 1990 employment injury; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for a review of the written record untimely filed.

On July 31, 1990 appellant, then a 33-year-old contact representative, filed a traumatic injury claim alleging that on July 23, 1990 she experienced increased pain in her back and right leg and foot when she used the stairs during a fire alert.

By letter dated October 3, 1990, the Office accepted appellant's claim for a lumbar strain.

On November 2, 1998 appellant filed a claim alleging that she sustained a recurrence of disability beginning March 3, 1998.

By decision dated October 18, 1999, the Office found the evidence of record insufficient to establish that appellant sustained a recurrence of disability on or after March 3, 1998. In an undated letter, appellant requested a review of the written record.

In a January 13, 2000 decision, the Office denied appellant's request for a review of the written record on the grounds that it was untimely filed.

The Board has duly reviewed the case record in this appeal and finds that appellant has failed to meet her burden of proof to establish that she sustained a recurrence of disability beginning March 3, 1998, causally related to her July 23, 1990 employment injury.

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. This burden includes the necessity of furnishing medical evidence from a

qualified 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 reasoning.[1]

In this case, appellant has not submitted rationalized medical evidence establishing that her current back, right leg and foot pain was caused by the accepted July 23, 1990 employment injury. Appellant submitted a May 7, 1999 duty status report from Dr. Joel S. Lavina, a Board-certified family practitioner and appellant's treating physician, regarding her vocal condition. Dr. Lavina provided a history of chronic hoarse voice and diagnosed chronic dysphonia. He stated that the cause of appellant's condition was unknown. In further support of her claim, appellant submitted the April 8, 1999 medical treatment notes of Dr. Robert Middlekauff, a Board-certified otolaryngologist. Dr. Middlekauff indicated that appellant had chronic dysphonia due to vocal strain, misuse or abuse. Neither Drs. Lavina nor Middlekauff addressed whether appellant's vocal condition was caused by her July 23, 1990 employment injury.

Inasmuch as appellant has failed to submit a well-reasoned medical opinion explaining how or why her disability for work on or after March 3, 1998 was causally related to her July 23, 1990 employment injury, the Board finds that she has not satisfied her burden of proof.

The Board further finds that the Office properly denied appellant's request for a review of the written record.

Section 8124(b)(1) of the Federal Employees' Compensation 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 the issuance of the decision, to a hearing on his claim before a representative of the Secretary."[2] Section 10.615 of the federal regulations implementing this section of the Act provides that a claimant shall be afforded a choice of an oral hearing or a review of the written record.[3] The regulations provide that a claimant is not entitled to a review of the written record if the request is not made within 30 days of the date of the decision, as determined by the postmark of the request or other carrier's date marking.[4]

Appellant's request for a review of the written record was postmarked December 13, 1999. Since this is more than 30 days after the October 18, 1999 Office decision, appellant is not entitled to a review of the written record as a matter of right.

Although appellant's request for a review of the written record was untimely, the Office has discretionary authority to grant the request and must exercise such discretion.[5] In this case, the Office advised appellant that the issue could be addressed through the reconsideration

[1] *Louise G. Malloy*, 45 ECAB 613 (1994); *Lourdes Davila*, 45 ECAB 139 (1993); *Robert H. St. Onge*, 43 ECAB 1169 (1992).

[2] 5 U.S.C. § 8124(b)(1).

[3] 20 C.F.R. § 10.615.

[4] 20 C.F.R. § 10.616(a).

[5] *See Cora L. Falcon*, 43 ECAB 915 (1992).

process and the submission of new evidence. This is a proper exercise of the Office's discretionary authority.[6] There is no evidence of an abuse of discretion in this case.

The January 13, 2000 and October 18, 1999 decisions of the Office of Workers' Compensations Programs are hereby affirmed.

Dated, Washington, DC
March 13, 2001

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

Priscilla Anne Schwab
Alternate Member

[6] *Id.*