U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LINDA K. STRIDER and U.S. POSTAL SERVICE,
POST OFFICE, Compton, CA

Docket No. 00-1871; Submitted on the Record;
Issued May 15, 2001

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issues are: (1) whether appellant's disability beginning September 28, 1999 is causally related to her accepted employment injury; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's January 13, 2000 request for a hearing before an Office hearing representative.

On March 31, 1998 appellant, then a 44-year-old modified clerk, filed an occupational disease claim asserting that her right shoulder impingement was caused by the repetitive motion required of her federal employment since 1991.[1] The postmaster indicated that appellant did not stop work. Dr. William Simpson, an orthopedic surgeon, restricted appellant's work activities.

On July 10, 1998 the Office accepted her claim for right shoulder strain. The Office explained that, until appellant's physician submitted a medical report describing the examination findings and test results that convinced him of the diagnosed impingement condition, the Office could accept nothing more than a soft tissue strain as work related.

On March 11, 1999 Dr. Simpson completed a work restriction form. On August 1, 1999 he reported that appellant was temporarily disabled until approximately December 1, 1999.

On September 28, 1999 appellant filed a Form CA-7, claim for compensation, for disability beginning that date. In an undated form report received by the Office on October 12, 1999, Dr. Simpson noted that appellant had moderate to severe tenderness about the right

[1] In 1991 the pain bothered appellant off and on and then was gone, so she did not take the matter seriously. When she noticed the pain again in 1997 it was not severe. She became more concerned on February 13, 1998 when her shoulder ached with back-and-forth motions and she could not move her arm at night to turn over without experiencing a lot of pain. On March 12, 1998 appellant saw a physician who took x-rays and explained that her impingement was caused by repetitive motion. This was when she first realized that the disease or illness was caused or aggravated by her employment. She believed that stamping mail and lifting heavy trays made her condition worse.

shoulder. He diagnosed impingement syndrome, right shoulder and indicated that this condition was caused or aggravated by appellant's employment activity. Dr. Simpson reported that appellant was temporarily totally disabled beginning September 28, 1998.

On October 25, 1999 the Office requested that appellant submit additional information to support her claim, including her physician's findings to support the diagnosed impingement condition and narrative opinion on the issue of causal relationship. The Office also requested that appellant complete a Form CA-2a, notice of recurrence.[2]

On November 9, 1999 the Office received a February 19, 1998 report by Dr. Simpson, who described appellant's employment duties, the history of her right shoulder injury and her current complaints. He related his findings on examination and noted that the right shoulder impingement and shoulder apprehension tests were positive. Dr. Simpson's impression included impingement of the right shoulder. He reported that appellant injured her right upper extremity over a period of time while performing her usual and customary work duties for over 11 years at her place of employment. Appellant was managed conservatively but had not received adequate relief of her symptoms, which had worsened over the past few years. Dr. Simpson stated: "My evaluation of this patient's present condition, based on the patient's history and clinical examination, suggests that her present symptoms do represent residuals of the above-mentioned repetitive trauma…." Appellant, he reported, should avoid heavy lifting, bending as well as repetitive use of the upper extremities. If such work were not available, she should be placed on temporary total disability until further disposition.

In a decision dated December 2, 1999, the Office denied appellant's claim for compensation.

In a letter postmarked January 13, 2000, appellant requested a hearing before an Office hearing representative.

In a decision dated March 13, 2000, the Office denied appellant's request for a hearing. The Office found that appellant was not entitled to a hearing as a matter of right because she filed her request more than 30 days after the Office's December 2, 1999 decision. The Office denied a discretionary hearing in the matter because appellant could equally well address the issue in her case by requesting reconsideration and submitting evidence not previously considered establishing that the claimed disability was causally related to the original work injury.

The Board finds that the medical opinion evidence is insufficient to establish that appellant's disability beginning September 28, 1999 is causally related to her accepted employment injury.

[2] It appears from the record that the Office paid no compensation for any period of disability following the acceptance of appellant's claim that she sustained an employment injury. Appellant's Form CA-7 therefore appears to be the more appropriate form for claiming an initial period of injury-related disability.

A claimant seeking benefits under the Federal Employees' Compensation Act[3] has the burden of proof to establish the essential elements of her claim by the weight of the evidence,[4] including that she sustained an injury while in the performance of duty and that any specific condition or disability for work for which she claims compensation is causally related to that employment injury.[5]

Because the Office accepted that appellant sustained an occupational disease or illness while in the performance of her duties, it remains for appellant to establish that her disability beginning September 28, 1999, for which she claimed compensation, is causally related to that employment injury.

The evidence generally required to establish causal relationship is rationalized medical opinion evidence. The claimant must submit a rationalized medical opinion that supports a causal connection between the disabling condition and the employment injury. The medical opinion must be based on a complete factual and medical background with an accurate history of the claimant's employment injury and must explain from a medical perspective how the disabling condition is related to the injury.[6]

To support her claim appellant, submitted an undated form report from her attending orthopedic surgeon, Dr. Simpson, who diagnosed impingement syndrome of the right shoulder and indicated with an affirmative mark that this condition was caused or aggravated by appellant's employment activity. He indicated that appellant was temporarily totally disabled beginning September 28, 1998. Appellant submitted several such form reports. The Board has held, however, that when a physician's opinion on causal relationship consists only of checking "yes" to a form question, that opinion has little probative value and is insufficient to establish causal relationship.[7] Appellant's burden includes the necessity of furnishing an affirmative opinion from a physician who supports his conclusion with sound medical reasoning. Dr. Simpson's form reports are therefore of little probative value in establishing appellant's entitlement to compensation for disability beginning September 28, 1999.

Appellant also submitted a narrative report from Dr. Simpson dated a February 19, 1998. Although this report described in some detail appellant's employment duties, the history of her right shoulder injury, her current complaints, findings on examination, the results of special tests, an impression of right shoulder impingement and Dr. Simpson's explanation that appellant injured her right upper extremity over a period of time while performing her usual and customary work duties for over 11 years, the report predates appellant's September 28, 1999 claim for compensation on account of disability. The report is relevant to whether appellant sustained an occupational injury while in the performance of duty, which the Office has accepted. The

[3] 5 U.S.C. §§ 8101-8193.

[4] *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and cases cited therein.

[5] *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[6] *See John A. Ceresoli, Sr.*, 40 ECAB 305 (1988).

[7] *E.g., Lillian M. Jones*, 34 ECAB 379 (1982).

findings on examination and Dr. Simpson's impression of right shoulder impingement are relevant to whether the Office should approve right shoulder impingement versus right shoulder strain as the injury sustained. But because this report fails to address the issue raised by appellant's September 28, 1999 claim for compensation, that is, whether her disability for work beginning that date is causally related to her employment injury, the report is of little or no evidentiary value.

As appellant has failed to submit a narrative medical opinion from a physician who, based on a complete and accurate factual and medical history, concludes that her disability beginning September 28, 1999 is causally related to the accepted employment injury and who supports that conclusion with sound medical reasoning, she has not met her burden of proof.

The Board also finds that the Office acted within its discretion in denying appellant's January 13, 2000 request for a hearing.

Section 8124(b)(1) of the Federal Employees' Compensation Act provides:

> "Before review under section 8128(a) of this title, a claimant for compensation not satisfied with a decision of the Secretary under subsection (a) of this section 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."[8]

The claimant must send the hearing request within 30 days, as determined by postmark or other carrier's date marking, of the date of the decision for which a hearing is sought.[9] The Office has discretion to grant or deny a request that is made after this 30-day period.[10] In such a case, the Office will determine whether a discretionary hearing should be granted or, if not, will so advise the claimant with reasons.[11]

Because appellant made her January 13, 2000 request for a hearing more than 30 days after the Office's December 2, 1999 decision denying her claim for compensation, she is not entitled to a hearing as a matter of right. The Office nonetheless considered the matter and correctly advised appellant that she could equally well address the issue in her case through the reconsideration process. The Board finds that the Office acted within its discretion in so denying appellant's untimely request for a hearing.[12]

[8] 5 U.S.C. § 8124(b)(1).

[9] 20 C.F.R. § 10.616(a).

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

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

[12] The Board has held that the denial of a hearing on these grounds is a proper exercise of the Office's discretion. *E.g., Jeff Micono*, 39 ECAB 617 (1988).

The March 13, 2000 and December 2, 1999 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, DC
May 15, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member