

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of FRANCINE S. FERRELL and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Brecksville, OH

*Docket No. 02-1071; Submitted on the Record;
Issued September 18, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issues are: (1) whether appellant met her burden of proof to establish that she sustained a left knee condition in the performance of duty; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's hearing request as untimely.

In September 2001 appellant, then a 47-year-old radiology technician, filed an occupational disease claim alleging that she sustained a left knee injury due to standing and walking on concrete floors at work. She indicated that she first became aware of her injury in July 2001.¹ By decision dated October 29, 2001, the Office denied appellant's claim on the grounds that she did not submit sufficient medical evidence to establish that she sustained a left knee condition in the performance of duty. By decision dated January 8, 2002, the Office denied appellant's hearing request as untimely.

The Board finds that appellant did not meet her burden of proof to establish that she sustained a left knee condition in the performance of duty.

An employee seeking benefits under the Federal Employees' Compensation Act² has the burden of establishing the essential elements of 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.³ These are the essential

¹ She indicated that she had left meniscus surgery in June 1999 due to the claimed condition.

² 5 U.S.C. §§ 8101-8193.

³ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish a causal relationship is rationalized medical opinion 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.⁵

The Board finds that appellant did not submit sufficient medical evidence to establish that she sustained a left knee condition in the performance of duty. In support of her claim, appellant submitted a September 6, 2001 report in which a physician with an illegible signature diagnosed left knee medial meniscus injury, status post surgical repair, with probable osteoarthritis. Although the report indicates that appellant related her problems to work factors, it does not contain any medical opinion that appellant's left knee condition was in fact due to work factors. Therefore, this report is of no probative value on the relevant issue of the present case in that it does not contain an opinion on causal relationship.⁶ Appellant submitted other nonmedical evidence, but this evidence would not provide support for her claim. She was provided with an opportunity to provide probative medical evidence in support of her claim but did not do so within the allotted time.

The Board further finds that the Office properly denied appellant's hearing request as untimely.

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 request made within 30 days after the date of the issuance of the decision, to a hearing on his

⁴ See *Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

⁵ *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

⁶ See *Charles H. Tomaszewski*, 39 ECAB 461, 467-68 (1988) (finding that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

claim before a representative of the Secretary.”⁷ 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.⁸

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.⁹ 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,¹⁰ when the request is made after the 30-day period for requesting a hearing¹¹ and when the request is for a second hearing on the same issue.¹²

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 October 29, 2001 and, thus, appellant was not entitled to a hearing as a matter of right. She requested a hearing before an Office representative in a letter dated and postmarked November 30, 2001. Hence, the Office was correct in stating in its decision that appellant was not entitled to a hearing as a matter of right because her hearing request was not made within 30 days of the Office’s October 29, 2001 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 January 8, 2002 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 the issue in the case was medical and could be resolved by submitting additional medical evidence. 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.¹³ 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.

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

⁷ 5 U.S.C. § 8124(b)(1).

⁸ *Ella M. Garner*, 36 ECAB 238, 241-42 (1984).

⁹ *Henry Moreno*, 39 ECAB 475, 482 (1988).

¹⁰ *Rudolph Bermann*, 26 ECAB 354, 360 (1975).

¹¹ *Herbert C. Holley*, 33 ECAB 140, 142 (1981).

¹² *Johnny S. Henderson*, 34 ECAB 216, 219 (1982).

¹³ *Daniel J. Perea*, 42 ECAB 214, 221 (1990).

The decisions of the Office of Workers' Compensation Programs dated January 8, 2002 and October 29, 2001 are affirmed.

Dated, Washington, DC
September 18, 2002

Alec J. Koromilas
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member