United States Department of Labor
Employees' Compensation Appeals Board

CRAIG G. NELSON, Appellant	)	
and	)	**Docket No. 04-1498**
	)	**Issued: October 7, 2004**
U.S. POSTAL SERVICE, POST OFFICE, Jamestown, NY, Employer	)	

Appearances:
Craig G. Nelson, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chairman
COLLEEN DUFFY KIKO, Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On May 19, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated January 13, 2004 which denied his claim that he sustained a left knee injury in the performance of duty on July 15, 2003. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this case. Pursuant to the same regulations, the Board also has jurisdiction over the nonmerit decision of the Office dated April 1, 2004 which denied his request for an oral hearing.

ISSUES

The issues are: (1) whether appellant met his burden of proof to establish that he sustained a left knee injury in the performance of duty on July 15, 2003; and (2) whether the Office properly denied appellant's request for a hearing under section 8124 of the Federal Employees' Compensation Act.

FACTUAL HISTORY

On July 31, 2003 appellant, then a 50-year-old mail carrier, filed a traumatic injury claim alleging that he sustained a left knee injury when he slipped on mud and twisted his knee at work on July 15, 2003. Appellant did not stop work.[1]

Appellant submitted several reports, dated between September and December 2003, from Dr. Paul R. Danahy, an attending Board-certified orthopedic surgeon. Dr. Danahy indicated that appellant had pain with rotation and mild joint effusion of his left knee, patellofemoral and tibiofemoral crepitus and some loss of extension and flexion motion. He stated that appellant could perform limited-duty work with minimal standing. Dr. Danahy listed the reported date of injury as July 15, 2003. In his September 9 and 24, 2003 reports, he noted that appellant reported injuring his left knee at work on July 15, 2003 by twisting his left knee while walking in mud.[2] A report of left knee x-rays obtained on October 3, 2003 shows that appellant had a normal left knee with maintained knee joint spaces and no significant bony abnormality.

By decision dated January 13, 2004, the Office denied appellant's claim on the grounds that he did not submit sufficient medical evidence to establish that he sustained a left knee injury in the performance of duty on July 15, 2003. Through a form postmarked February 13, 2004, appellant requested a hearing before an Office hearing representative. By decision dated April 1, 1994, the Office denied appellant's hearing request as untimely. The Office further noted that it considered the matter in relation to the issue involved and denied appellant's hearing request for the further reason that the case could be resolved by requesting reconsideration and submitting additional medical evidence showing that his claimed condition was causally related to employment factors.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Act[3] has the burden of establishing the essential elements of his 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.[4] These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[5]

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[1] The record suggests that appellant also filed a claim alleging that his left knee condition beginning in July 2003 constituted a consequential recurrence of disability due to a prior employment injury to his right knee. There is no decision of the Office in the case file regarding this matter and it is not currently before the Board.

[2] In an October 8, 2003, report, Dr. Danahy stated that appellant reported having left knee symptoms since July 15, 2003.

[3] 5 U.S.C. § 8101 *et seq.*

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

[5] *Delores C. Ellyett*, 41 ECAB 992, 998-99 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-27 (1990).

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the "fact of injury" has been established. There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident at the time, place and in the manner alleged.[6] Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.[7] The term "injury" as defined by the Act, refers to some physical or mental condition caused by either trauma or by continued or repeated exposure to, or contact with, certain factors, elements or conditions.[8]

ANALYSIS -- ISSUE 1

The record does not contain a rationalized medical opinion, based on a complete and accurate factual medical history, that relates appellant's left knee condition to the accepted employment incident of July 15, 2003, *i.e.*, the twisting of his knee while walking in mud on that date.

In the present case, appellant did not submit sufficient medical evidence to establish that he sustained a left knee injury in the performance of duty on July 15, 2003. In support of his claim, appellant submitted several reports, dated between September and December 2003, in which Dr. Danahy, an attending Board-certified orthopedic surgeon, indicated that he had left knee problems such as pain with rotation, mild joint effusion, patellofemoral and tibiofemoral crepitus and loss of knee motion. Although Dr. Danahy listed the reported date of injury as July 15, 2003, in these reports and noted in two reports that appellant reported twisting his left knee at work on July 15, 2003 these reports are of limited probative value on the relevant issue of the present case in that they do not contain an opinion on causal relationship.[9] Dr. Danahy did not provide a clear opinion that he felt appellant's left knee problems were due to the reported July 15, 2003 employment incident.

LEGAL PRECEDENT -- ISSUE 2

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 claim before

[6] *Julie B. Hawkins*, 38 ECAB 393, 396 (1987); *see* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.2a (June 1995).

[7] *John J. Carlone*, 41 ECAB 354, 356-57 (1989); *see* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.2a (June 1995).

[8] *Elaine Pendleton*, *supra* note 4; 20 C.F.R. § 10.5(a)(14).

[9] *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).

a representative of the Secretary."[10] 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 with in the requisite 30 days.[11]

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.[12] 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,[13] when the request is made after the 30-day period for requesting a hearing[14] and when the request is for a second hearing on the same issue.[15]

ANALYSIS -- ISSUE 2

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 January 13, 2004 and, thus, appellant was not entitled to a hearing as a matter of right. Appellant requested a hearing before an Office representative in a form postmarked February 13, 2004, *i.e.*, 31 days after January 13, 2004.[16] Hence, the Office was correct in stating in its April 1, 2004 decision that appellant was not entitled to a hearing as a matter of right because his February 13, 2004 hearing request was not made within 30 days of the Office's January 13, 2004 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 April 1, 2004 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 for the further reason that the case could be resolved by requesting reconsideration and submitting additional medical evidence showing his claimed condition was causally related to employment factors. 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.[17] In the present case, the

[10] 5 U.S.C. § 8124(b)(1).

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

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

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

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

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

[16] The date of a hearing request is determined by the postmark or other carrier's date marking. 20 C.F.R. § 10.616(a).

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

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.[18]

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he sustained a left knee injury in the performance of duty on July 15, 2003. The Board further finds that the Office properly denied appellant's request for a hearing under section 8124 of the Act.

ORDER

IT IS HEREBY ORDERED THAT the April 1 and January 13, 2004 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: October 7, 2004
Washington, DC

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member

[18] After the Office's January 13, 2004 decision, appellant submitted additional medical evidence, including several reports of Dr. Danahy. However, it does not appear that appellant made a request for reconsideration in connection with the submission of this evidence.