

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DIANE J. HALLE and DEPARTMENT OF VETERANS AFFAIRS,
LAKESIDE HOSPITAL, Chicago, Ill.

*Docket No. 96-2424; Submitted on the Record;
Issued August 4, 1998*

DECISION and ORDER

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

The issues are: (1) whether appellant has met her burden of proof in establishing that she sustained a low back injury due to her April 19, 1995 employment injury; (2) whether appellant was totally disabled on or after April 19, 1995 due to her employment injury; and (3) whether the Branch of Hearings and Review abused its discretion by denying appellant's request for an oral hearing as untimely.

The Board has duly reviewed the case on appeal and finds that appellant has not met her burden of proof in establishing that she sustained a low back injury due to her April 19, 1995 employment injury.

Appellant filed a claim on April 19, 1995 alleging that she sustained left foot sprain on that date when an x-ray tray fell on her foot. The Office of Workers' Compensation Programs accepted appellant's claim for sprain left foot on June 19, 1995. Appellant continued to submit medical evidence supporting that she sustained a low back injury. By decision dated April 15, 1996, the Office found that the evidence did not support that appellant sustained a low back condition due to her April 19, 1995 work injury.

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components, which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.¹ The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability, claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical

¹ Elaine Pendleton, 40 ECAB 1143 (1989).

background, supporting such a causal relationship.² 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. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.³

In this case, appellant initially sought treatment from the employing establishment on April 19, 1995 and Dr. Elizabeth Apolonia, a Board-certified internist, diagnosed a sprained or bruised left foot.

In response to a request from the Office, appellant submitted an additional narrative statement on July 26, 1995 and stated that as she removed the tray it began to fall and she attempted to catch it, but that it hit her foot anyway. Appellant stated that the next day she experienced back pain.

Appellant sought further treatment from Dr. Mark K. Gerber, a family practitioner. In a report dated May 3, 1995, Dr. Gerber diagnosed severe lumbosacral sprain and severe sprain left foot. He indicated with a checkmark "yes" that appellant's condition was due to the injury, for which compensation was claimed. Dr. Gerber completed a form report on June 6, 1995 and noted that appellant dropped a tray on her foot and then twisted her back. He indicated with a checkmark "yes" that appellant's disability was related to her history of injury. These reports are not sufficient to meet appellant's burden of proof. The Board has held that an opinion on causal relationship, which consists only of a physician checking "yes" to a medical form report question on whether the claimant's condition was related to the history given is of little probative value. Without any explanation or rationale for the conclusion reached, such report is insufficient to establish causal relationship.⁴

On May 9, 1995 Dr. Gerber completed a work restriction evaluation and concluded that appellant was totally disabled due to severe lumbar sprain and sprain left foot. In reports dated July 7 and August 3, 1995, Dr. Gerber stated appellant sustained injuries in the course of her employment on April 19, 1995. He noted appellant's complaints of severe back pain and pain in the left foot. Dr. Gerber stated that appellant denied any history of similar symptoms prior to the date of the accident.⁵ Dr. Gerber responded to a request for additional information and indicated that appellant sustained her injury when she attempted to lift a tray weighing 50 pounds. In a

² See 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

³ *James Mack*, 43 ECAB 321 (1991).

⁴ *Lucrecia M. Nielson*, 41 ECAB 583, 594 (1991).

⁵ The record indicated that an automobile struck appellant on March 20, 1995, resulting in acute cervical, thoracic and lumbar sprain and strains, left knee strain and sprain, right patella tendinitis and left ankle sprain. Appellant's attending physician released her to return to full duty on March 31, 1995.

report dated October 3, 1995, Dr. Gerber noted that appellant sustained injuries “after a heavy metal bucket carrying an x-ray film fell on her foot while at work on April 12, 1995.”

These reports are not sufficient to meet appellant’s burden of proof as Dr. Gerber did not provide a consistent history of injury. Furthermore, Dr. Gerber did not provide any medical rationale in support of his opinion that appellant’s back condition was causally related to her accepted employment injury.

The Board further finds that appellant does not have any continuing disability or after April 19, 1995 causally related to her accepted employment injury.

As noted previously, appellant initially sought medical treatment from Dr. Apolonia, an employment establishment physician, who diagnosed foot sprain. She indicated that appellant could return to desk work on that date. The employing establishment offered appellant a light-duty position on April 19, 1995. Appellant filed a claim for compensation on May 30, 1995, requesting wage-loss compensation from April 19, 1995. In its April 15, 1996 decision, the Office found that the claimed disability after April 19, 1995 was not causally related to appellant’s accepted employment injury.

An employee seeking benefits under the Federal Employees’ Compensation Act⁶ has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence, including the fact that the individual is an “employee of the United States” within the meaning of the Act and 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 or specific condition, for which compensation is claimed is causally related to the employment injury.⁷

In this case, the Office found that appellant had sustained a left foot strain due to her April 19, 1995 employment injury and had not lost time from work due to this injury. Appellant claimed disability due to this condition and her nonaccepted condition of back strain.

Appellant submitted a series of reports from Dr. Gerber indicating that appellant was totally disabled until September 18, 1995. In a duty status report dated May 8, 1995, Dr. Gerber stated that appellant was totally disabled, but provided restrictions indicating that she could sit for four hours, stand and walk for two hours and perform fine manipulation for eight hours a day. These restrictions do not support Dr. Gerber’s conclusion that appellant was totally disabled.

In a form report dated June 6, 1995, Dr. Gerber found that appellant was totally disabled from April 19 through June 6, 1995. He noted the conditions of contusion left foot and severe lumbar sprain. Dr. Gerber did not provide any explanation of his determination that appellant was totally disabled nor did he discuss whether this disability was due to appellant’s accepted condition. Dr. Gerber’s July 7, 1995 report did not address the degree of disability.

⁶ 5 U.S.C. §§ 8101-8193.

⁷ *Kathryn Haggerty*, 45 ECAB 383, 388 (1994).

In a report dated August 3, 1995, Dr. Gerber stated that appellant was unable to lift, bend or stand for any length of time and attributed these restrictions to a severe sprain of the left foot and low back. He concluded that appellant was unable to work and remained disabled. This report does not distinguish any disability due to appellant's accepted and nonaccepted conditions and is insufficient to meet appellant's burden of proof.

On September 12, 1995 Dr. Gerber released appellant to return to work eight hours a day with restrictions. He indicated that appellant could return to such duty on September 18, 1995. Dr. Gerber indicated that appellant had severe pain in her low back and left foot. Dr. Gerber released appellant to full duty on October 21, 1995. He indicated that her previous restrictions were due to sprains of her back and left foot.

Appellant has not submitted any rationalized medical opinion evidence establishing that she was totally disabled on or after April 19, 1995 causally related to her accepted employment injury. Therefore, she is not entitled to compensation benefits for that period.

The Board further finds that the Branch of Hearings and Review did not abuse its discretion by denying appellant's request for an oral hearing.

Following the Office's April 15, 1996 decision, appellant requested an oral hearing. This requested was received by the Office on May 24, 1996.

Section 8124(b) of the Act,⁸ concerning a claimant's entitlement to a hearing before an Office representative, states: "Before review under section 8128(a) of this title, a claimant ... not satisfied with a decision of the Secretary ... is entitled, on request made within 30 days after the date of issuance of the decision, to a hearing on his claim before a representative of the Secretary."⁹

The Board has held that section 8124(b)(1) is "unequivocal" in setting forth the time limitation for requesting hearings. A claimant is entitled to a hearing as a matter of right only if the request is filed within the requisite 30 days.¹⁰ Even where the hearing request is not timely filed, the Office may within its discretion, grant a hearing and must exercise this discretion.¹¹

In the instant case, the Office properly determined appellant's May 24, 1996 request for a hearing was not timely filed as it was made more than 30 days after the issuance of the Office's April 15, 1996 decision. The Office, therefore, properly denied appellant's hearing as a matter of right.

The Office then proceeded to exercise its discretion, in accordance with Board precedent, to determine whether to grant a hearing in this case. The Office determined that a hearing was

⁸ 5 U.S.C. §§ 8101-8193.

⁹ 5 U.S.C. § 8124(b)(1).

¹⁰ *Tammy J. Kenow*, 44 ECAB 619 (1993).

¹¹ *Id.*

not necessary as the issue in the case was medical and could be resolved through the submission of medical evidence in the reconsideration process. Therefore, the Office properly denied appellant's request for a hearing as untimely and properly exercised its discretion in determining to deny appellant's request for a hearing as she had other review options available.

The decisions of the Office of Workers' Compensation Programs dated July 19 and April 15, 1996 are hereby affirmed.

Dated, Washington, D.C.
August 4, 1998

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member