

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SUSAN L. RUGLIC and U.S. POSTAL SERVICE,
POST OFFICE, Chicago, IL

*Docket No. 99-1204; Submitted on the Record;
Issued June 22, 2000*

DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issues are: (1) whether appellant sustained a recurrence of disability causally related to her accepted employment injuries; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for a hearing as untimely.

In this case, the Office of Workers' Compensation Programs accepted the conditions of a head contusion and a right shoulder contusion for a January 25, 1997 incident where appellant was injured after being physically assaulted by another employee. She was excused from work from January 25 to 26, 1997. Appellant returned to full duty on January 27, 1997. She was terminated by the employing establishment in April 1997 and returned to work in November 1997.

On May 14, 1998 appellant filed a claim asserting that she sustained a recurrence of disability on November 4, 1997 causally related to her accepted employment injuries. By decision dated September 9, 1998, the Office denied appellant's claim of recurrence finding that the evidence failed to establish a causal relationship between the claimed recurrence and the January 25, 1997 accepted work injury.

In a letter dated October 8, 1998, postmarked October 13, 1998 and received by the Office on October 16, 1998, appellant requested a hearing on her claim. In a decision dated November 17, 1998, the Office denied appellant's request for a hearing as untimely and found that the matter could be further pursued through the reconsideration process.

Appellant subsequently requested reconsideration. By decisions dated April 9 and November 10, 1999, the Office denied appellant's reconsideration requests on the basis that the evidence submitted was insufficient to warrant a merit review.

The Board finds that appellant has failed to establish that she sustained a recurrence of disability causally related to her accepted employment injuries.

Under the Federal Employees' Compensation Act,¹ an employee 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 recurrence of the disabling condition for which compensation is sought is causally related to the accepted employment injury.² As part of this burden the employee must submit rationalized medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the current disabling condition is causally related to the accepted employment-related injury³ and supports that conclusion with sound medical reasoning.⁴ Thus, the medical evidence must demonstrate that the claimed recurrence of disability was caused, precipitated, accelerated or aggravated by the accepted injury.⁵ In this regard, medical evidence of bridging symptoms between the recurrence of disability and the accepted injury must support the physician's conclusion of a causal relationship.⁶

Appellant reported that she had constant pain, stiffness and weakness in her right arm and that following a period of physical therapy a magnetic resonance imaging (MRI) scan revealed a torn rotator cuff which will require surgery to cure.

In a June 30, 1998 letter, the Office advised appellant that further medical evidence was needed to support a relationship between her current right shoulder condition and her previously accepted work injuries. The Office further noted that the physician's report must have a supporting explanation as to the causal relationship between her current disability/condition and the original injury.

The Board finds that none of the medical reports submitted address the issue of whether appellant's claimed recurrence of disability is causally related to the January 25, 1997 accepted work-related injuries of a contusion to head and a contusion to right shoulder.

A March 16, 1998 progress report from Dr. Emelita Co, a Board-certified internist, noted that appellant had persistent right shoulder pain since a few months ago and was also experiencing numbness of the fingers while casing in her job. A right shoulder strain was diagnosed and said to be aggravated by the nature of her job. A disability note was issued advising against repetitive movements of the right hand and right shoulder for the following two weeks. The Board notes, however, that conditions pertaining to the right hand were not accepted by the Office. Moreover, no opinion was provided to support a causal relationship between appellant's current right shoulder condition and her accepted work injury. A March 26, 1998 MRI scan revealed that appellant had a partial tear of the right shoulder rotator cuff at the tendon-muscle junction. In an April 2, 1998 report, Dr. Scott A. Seymour, a Board-certified orthopedist, diagnosed impingement and partial tear of the rotator cuff. He indicated that

¹ 5 U.S.C. §§ 8101-8193.

² *Dennis J. Lasanen*, 43 ECAB 549, 550 (1992).

³ *Kevin J. McGrath*, 42 ECAB 109, 116 (1990).

⁴ *Lourdes Davila*, 45 ECAB 139, 142 (1993).

⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.2 (June 1995).

⁶ *Leslie S. Pope*, 37 ECAB 798, 802 (1986); cf. *Richard McBride*, 37 ECAB 748, 753 (1986).

appellant had a one-month history of pain in the right shoulder and that there was no history of trauma. An acromioplasty and rotator cuff repair was suggested if appellant's symptoms did not improve. Again, although both the MRI scan and Dr. Seymour's report diagnosed a partial tear of the right shoulder rotator cuff, no opinion was provided to support a causal relationship to appellant's accepted work injury and Dr. Seymour specifically notes that there was no history of trauma to cause the injury, which is contrary to the incident of January 25, 1997 and only a one-month history of pain, which developed more than a year following the January 25, 1997 incident. The other medical evidence submitted, which includes physical therapy notes and progress reports, fails to provide a well-rationalized opinion on how the November 4, 1997 recurrence was causally related to the January 25, 1997 work incident.

Appellant has attributed her current right shoulder problems to the January 25, 1997 work injury and was informed by the Office that she was responsible for obtaining a rationalized medical report in support of her claimed recurrence of disability. However, appellant failed to submit medical evidence which discusses her current conditions and the accepted condition of a right shoulder contusion and then explains with medical rationale how the claimed recurrence of disability was a progression of or related to the employment-related injury in 1997. Inasmuch as appellant has failed to submit probative medical evidence establishing the required connection, the Office properly denied her claim for compensation.

The Board further finds that the Office properly denied appellant's request for a hearing under 5 U.S.C. § 8124(b).

Section 8124(b)(1) of the Act provides that a "claimant for compensation not satisfied with the 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."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 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 the Office must exercise this discretionary authority in deciding whether to grant or deny a hearing. 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, when the request is made after the 30-day period established for requesting a hearing or when the request is for a second hearing on the same issue. The Office's procedures, which require the Office to exercise its discretion to grant or deny a hearing when a hearing request is untimely or made after reconsideration under section 8128(a), are a proper interpretation of the Act and Board precedent.⁹

⁷ 5 U.S.C. § 8124(b)(1).

⁸ *Charles J. Prudencio*, 41 ECAB 499 (1990); *Ella M. Garner*, 36 ECAB 238 (1984).

⁹ *Henry Moreno*, 39 ECAB 475 (1988).

In this case, the Office issued its decision finding that appellant had failed to establish that she sustained a recurrence of disability on or after November 4, 1997 on September 9, 1998. Subsequently, appellant requested an oral hearing in a letter postmarked October 13, 1998. A claimant is not entitled to a hearing if the request is not made within 30 days of the date of issuance of the decision as determined by the postmark of the request.¹⁰ Inasmuch as appellant did not request a hearing within 30 days of the Office's September 9, 1998 decision, she is not entitled to a hearing under section 8124 as a matter of right. The Office also exercised its discretion but decided not to grant appellant a discretionary hearing on the grounds that she could have her case further considered on reconsideration by submitting relevant evidence. Consequently, the Office properly denied appellant's hearing request.

The November 17 and September 9, 1998 decisions of the Office of Workers' Compensation Programs are hereby affirmed.¹¹

Dated, Washington, D.C.
June 22, 2000

David S. Gerson
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

¹⁰ 20 C.F.R. § 10.131(a)(b).

¹¹ The record further reflects that appellant sought reconsideration before the Office on January 18 and August 2, 1999. Appellant filed her appeal before the Board on January 30, 1999. It is well established that the Board and the Office may not simultaneously have jurisdiction over the same issue in the same case; *see* 20 C.F.R. § 501.2(c); *Arlonia B. Taylor*, 44 ECAB 591 (1993). Consequently, the Office did not have jurisdiction over appellant's requests for reconsideration during the pendency of this appeal. As such, the Office's decisions dated April 9 and November 10, 1999 are null and void. *Russell E. Lerman*, 43 ECAB 770, 772 (1992); *Jimmy W. Galetka*, 43 ECAB 432 (1992); *Douglas E. Billings*, 41 ECAB 880 (1990).