U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of VICKI L. LUTHY and U.S. POSTAL SERVICE,
POST OFFICE, Cincinnati, OH

Docket No. 99-350; Submitted on the Record;
Issued May 9, 2000

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
WILLIE T.C. THOMAS

The issues are: (1) whether appellant has met her burden of proof in establishing that she has a condition causally related to her employment; and (2) whether the Branch of Hearings and Review properly denied appellant's request for review of the written record as untimely.

Appellant, a distribution clerk, filed a claim on September 2, 1997 alleging that she experienced that same lower back pain as she had in previous injuries accepted by the Office of Workers' Compensation Programs, specifically a claim for injury on July 26, 1987 and a recurrence of disability on July 16, 1993. The Office denied appellant's claim on December 8, 1997 finding that compensation was denied after November 17, 1993 in her July 16, 1993 recurrence of disability claim and that she failed to submit sufficient bridging evidence to establish her claim. Appellant requested a review of the written record by letter postmarked January 8, 1998. By decision dated March 24, 1998, the Branch of Hearings and Review denied appellant's request finding that it was untimely. Appellant requested reconsideration on April 2, 1998. By decision dated September 18, 1998, the Office denied modification of its December 8, 1997 decision.

An employee seeking benefits under the Federal Employee's Compensation Act[1] 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.[2]

---

[1] 5 U.S.C. §§ 8101-8193.

[2] *Kathryn Haggerty*, 45 ECAB 383, 388 (1994).

In support of her claim, appellant submitted a form report dated September 3, 1997 from Dr. Mark G. Siegel, a Board-certified orthopedic surgeon, who diagnosed low back strain and indicated with a checkmark "yes" that appellant's condition was related to her employment. He stated, "recurrence previous condition." 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.[3] As Dr. Siegel did not provide any explanation of how or why he believes that appellant's current condition is related to her 1987 employment injury, this report is not sufficient to meet appellant's burden of proof.

Dr. Siegel diagnosed persistent low back pain on October 31, 1997. He stated that appellant was totally disabled from August 25 through September 5, 1997. Dr. Siegel completed a form report on January 9, 1998 and diagnosed acute lumbar sprain. He indicated with a checkmark "yes" that appellant condition was due to her employment and stated, "due to repetitive bending [and] stooping, the degenerative low back condition progresses so as to be unable to work." Although Dr. Siegel attributed appellant's condition to factors of her employment, he did not provide any medical rationale in support of his opinion. This is particularly necessary as Dr. Siegel's previous report attributed appellant's current condition to a recurrence of disability due to previous injuries rather than a new occupational disease.

In a report dated October 10, 1997, Dr. Michael J. Kramer, a Board-certified neurosurgeon, noted that appellant injured her back in 1987. He stated that this was a twisting type injury, which resulted in chronic low back pain from that point on. Dr. Kramer stated that appellant had increasing low back pain over the past several months and years. He recommended surgery.

On November 12, 1997 Dr. Kramer noted that appellant continued to experience back pain and diagnosed degenerative disc disease. In a note dated November 26, 1997, Dr. Kramer reviewed diagnostic studies and found degenerated discs at L4-5 and L5-S1. He again recommended surgery. On January 19, 1998 Dr. Kramer diagnosed degenerative disc disease and stated that appellant was to undergo surgery on January 26, 1998. He completed a form report on January 19, 1998 and diagnosed degenerative disc disease. Dr. Kramer did not offer any opinion on the causal relationship between this condition and appellant's employment. He has not provided his opinion as to whether appellant's current condition is due to either her accepted employment injuries or to duties of her current position. Without this opinion regarding causal relationship, Dr. Kramer's reports are insufficient to meet appellant's burden of proof.

The Board further finds that the Branch of Hearings and Review did not abuse its discretion by denying appellant's request for a review of the written record.

---

[3] *Lucrecia M. Nielson,* 41 ECAB 583, 594 (1991).

Section 8124(b) of the Act,[4] 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."[5]

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.[6] Even where the hearing request is not timely filed, the Office may within its discretion, grant a hearing and must exercise this discretion.[7]

In the instant case, the Office properly determined appellant's January 8, 1998 request for review of the written record was not timely filed as it was made more than 30 days after the issuance of the Office's December 8, 1997 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 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.

[4] 5 U.S.C. §§ 8101-8193.

[5] 5 U.S.C. § 8124(b)(1).

[6] *Tammy J. Kenow*, 44 ECAB 619 (1993).

[7] *Id.*

The September 18 and March 24, 1998 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, D.C.
May 9, 2000

Michael J. Walsh
Chairman

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member