

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DONALD A. FREEMAN and U.S. POSTAL SERVICE,
POST OFFICE, Birmingham, AL

*Docket No. 00-1430; Submitted on the Record;
Issued April 3, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
BRADLEY T. KNOTT

The issues are: (1) whether appellant has met his burden of proof in establishing that he sustained an injury in the performance of duty on July 9, 1999 as alleged; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for a hearing under section 8124 of the Federal Employees' Compensation Act.

The Board has duly reviewed the case record in the present appeal and finds that appellant failed to meet his burden of proof in establishing that he sustained an injury in the performance of duty on July 9, 1999, as alleged, and that the Office properly denied appellant's request for a hearing.

An employee seeking benefits under the Act¹ has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an "employee of the United States" within the meaning of the Act, and that the claim was filed within the applicable time limitations of the Act.² An individual seeking disability compensation must also establish that an injury was sustained at the time, place and in the manner alleged,³ that the injury was sustained while in the performance of duty,⁴ and that the disabling condition for which compensation is claimed was caused or aggravated by the individual's employment.⁵ These are the essential

¹ 5 U.S.C. §§ 8101-8193.

² *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ *Robert A. Gregory*, 40 ECAB 478 (1989).

⁴ *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁵ *Steven R. Piper*, 39 ECAB 312 (1987).

elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.⁶

On July 9, 1999 appellant, then a 39-year-old letter carrier, filed a claim alleging that on that day while driving a postal vehicle he was changing lanes when a car behind him hit the rear of his vehicle. He stated that he suffered pain in his head, back and neck. There is no dispute that appellant is a federal employee, that he timely filed his claim for compensation benefits and that the incident occurred as alleged. However, in its September 7, 1999 decision, the Office found that the evidence was insufficient to establish that an injury resulted from the incident.

The Board finds that appellant has not established that the July 9, 1999 employment incident resulted in an injury. To support the claim, appellant submitted a July 9, 1999 authorization for examination and/or treatment, Form CA-16, completed by Dr. Walter V. White, an osteopath. Dr. White gave a history of injury given to him by appellant as a motor vehicle accident, indicated x-rays were taken and diagnosed muscle strain. He checked “yes” to the question on whether he believed that the condition found was caused or aggravated by the employment activity described; and a duty status report, which had not been completed by a physician.

In this case, there is no rationalized medical opinion evidence supporting a causal relationship between appellant’s employment and a clearly identified diagnosed condition. Dr. White, an osteopath, stated that x-rays were taken but failed to identify of what part of the body. He diagnosed muscle strain but failed to identify what muscle and he checked “yes” to a form question of whether he believed the condition found was caused or aggravated by the employment activity described, but failed to provide supporting rationale.⁷ Therefore, Dr. White’s July 9, 1999 report is insufficient to establish appellant’s claim.

By letter dated August 2, 1999, the Office requested additional medical evidence from appellant, and advised him that a physician’s rationalized opinion on how the employment incident caused the claimed injury was crucial to his claim. However, such evidence was not submitted. The Board finds that the evidence of record is insufficient to meet appellant’s burden of proof.

The Board further finds that the Office properly denied appellant’s request for a hearing under section 8124 of the Act.

Section 8124(b)(1) of the Act, concerning a claimant’s entitlement to a hearing before an Office hearing 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

⁶ *David J. Overfield*, 42 ECAB 718 (1991); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁷ *Ruth S. Johnson*, 46 ECAB 237 (1994) (The Board has held that when a physician’s opinion on causal relationship consists only of checking “yes” to a form question, that opinion has little probative value and is insufficient to establish causal relationship. Appellant’s burden included the necessity of furnishing an affirmative opinion from a physician who supports his conclusion with sound medical reasoning.)

hearing on his claim before a representative of the Secretary.”⁸ 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.⁹

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.¹⁰ 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,¹¹ when the request is made after the 30-day period for requesting a hearing¹² and when the request is for a second hearing on the same issue.¹³

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 September 7, 1999 and, thus, appellant was not entitled to a hearing as a matter of right. Appellant requested a hearing in a letter postmarked October 30, 1999. Therefore, the Office was correct in finding in its March 6, 2000 decision that appellant was not entitled to a hearing as a matter of right because his hearing request was not made within 30 days of the Office’s September 7, 1999 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 March 6, 1999 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 case could be resolved by submitting additional evidence to establish that an injury was sustained as alleged. 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.¹⁴ 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.

⁸ 5 U.S.C. § 8124(b)(1).

⁹ *Ella M. Garner*, 36 ECAB 238, 241-42 (1984).

¹⁰ *Henry Moreno*, 39 ECAB 475, 482 (1988).

¹¹ *Rudolph Bermann*, 26 ECAB 354, 360 (1975).

¹² *Herbert C. Holley*, 33 ECAB 140, 142 (1981).

¹³ *Johnny S. Henderson*, 34 ECAB 216, 219 (1982).

¹⁴ *Daniel J. Perea*, 42 ECAB 214, 221 (1990).

The decision of the Office of Workers' Compensation Programs dated March 6, 2000 and September 7, 1999 are affirmed.¹⁵

Dated, Washington, DC
April 3, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

Bradley T. Knott
Alternate Member

¹⁵ The Board notes that subsequent to the issuance of the Office's September 7, 1999 decision, appellant submitted additional evidence. Appellant may submit this evidence to the Office, together with a formal request for reconsideration pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606(b)(2).