

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SHIRLEY GRAWN and DEPARTMENT OF DEFENSE,
LOWRY AIR FORCE BASE, Denver, CO

*Docket No. 01-1481; Submitted on the Record;
Issued February 8, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, ALEC J. KOROMILAS,
A. PETER KANJORSKI

The issues are: (1) whether appellant met her burden of proof to establish she was disabled from August 26, 1995 to May 30, 1996 and continuing due to her accepted employment injury; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for an oral hearing as untimely.

This case has previously been on appeal before the Board.¹ By decision dated October 9, 1998, the Board remanded the case back to the Office for a determination as to the nature, extent and period of any disability resulting from appellant's May 25, 1995 employment injury.

Appellant's claim was accepted for sacroiliac sprain on September 17, 1999 for an injury she sustained at work on May 25, 1995. Appellant filed a claim for compensation (Form CA-7) on May 30, 1996 for the period of August 26, 1995 to May 30, 1996. Appellant stopped work on August 26, 1995 and has not returned to work since.

By decision dated May 18, 2000, appellant's claim for compensation was denied based on a second opinion report from Dr. Richard Talbott, a Board-certified orthopedic surgeon, dated March 6, 2000. Dr. Talbott examined appellant and a statement of accepted facts and the medical evidence of record and responded to the Office's questions, including whether appellant currently has or did she have a medical condition that was aggravated or caused by the May 25, 1995 work injury. He stated that appellant does not have a medical condition from an orthopedic standpoint related to her May 25, 1995 work injury, but rather that her psychiatric problems affect her ability to work. Dr. Talbott also stated that appellant's cessation of work was not related to any orthopedic problems and that the injury did not prevent her from returning to work. He did opine, however, that appellant is totally disabled and may not return to work, but that her disability is not related to orthopedic problems but rather to other psychiatric problems and personal issues.

¹ See Docket No. 97-44 (issued October 9, 1998).

By letter dated May 29, 2000, appellant requested an oral hearing.

By decision dated October 4, 2000, the hearing representative set aside the Office's May 18, 2000 decision finding that the Office should further develop the medical evidence of record by obtaining a clarification opinion from Dr. Talbott.

Dr. Talbott was asked to clarify his opinion on when appellant's sacroiliac strain resolved or when should it have resolved. In an October 31, 2000 report, Dr. Talbott stated:

"In my opinion there is no such entity as sacroiliac strain. The sacroiliac is a joint that may be subject to a sprain, but a strain is an affliction of a musculotendinous unit. [Appellant] may have had a lumbosacral strain at the time of her original injury. In my opinion, that should have resolved easily within four to six weeks."

When asked what objective findings he was basing his opinion on, he responded:

"There are no objective findings on which to base this. It is a matter of experience in having seen other people with a lumbosacral strain. Since the date of injury was almost five years prior to this, there certainly would be no objective findings at all that would have indicated [that] either a lumbosacral strain or a sacroiliac sprain at that late date. Therefore, this question really is not applicable."

By decision dated November 6, 2000, the Office denied appellant's claim for compensation based on Dr. Talbott's October 31, 2000 report.

By letter dated January 16, 2001, appellant requested an oral hearing. Her request was denied on February 13, 2001 as untimely.

The Board finds that appellant has not met her burden of proof to show that her disability from August 26, 1995 to May 30, 1996 and continuing was caused by her federal employment.

An employee seeking benefits under the Federal Employees' Compensation Act² 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, 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.³ These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

² 5 U.S.C. §§ 8101-8193.

³ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁴ *Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

In this case, appellant established that an injury occurred in the performance of duty on May 25, 1995 but failed to establish that her disability period from August 26, 1995 to May 30, 1996 was causally related to her May 25, 1995 injury.

The medical evidence required to establish a causal relationship is rationalized medical opinion evidence. 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.⁵

Only the reports from Dr. Talbott, dated March 6 and October 31, 2000, provide a medical opinion on the issue of causal relationship between appellant's disability for work during the claimed period and the May 25, 1995 work injury.

In his March 6, 2000 report, Dr. Talbott stated that appellant was totally disabled but not due to any orthopedic problems. He stated that her problems mostly related to lack of motivation, which was secondary to psychiatric problems. Dr. Talbott noted that appellant had suffered from anxiety and depression since about 1987 and that her 16-year-old son had committed suicide. He also mentioned the more recent death of her husband in 1999 and how this may have contributed to her current condition. In his second follow-up report dated October 31, 2000, Dr. Talbott stated that, based on his medical knowledge and experience, appellant's lower back condition should have resolved within four to six weeks. He noted that, since appellant's injury happened more than five years earlier, it was impossible to base an opinion on objective findings and that his opinion was based on his medical experience in having seen other people with lumbosacral strain.⁶ The Board finds that since Dr. Talbott's reports are the only medical reports of record, which address the issue of causal relationship between appellant's period of disability and her accepted employment injury, they constitute the weight of the medical evidence of record.

It remains appellant's burden to establish that her accepted disability prevented her from performing the duties of her position during the period for which compensation is claimed. As part of her burden, appellant must submit rationalized medical opinion evidence based on a complete factual and medical background showing causal relationship.⁷

Because appellant has not submitted a well-reasoned medical opinion report stating that her employment-related disability prevented her from performing the duties of her position during the period August 26, 1995 to May 25, 1996, she has not met her burden of proof.

⁵ *Id.*

⁶ Dr. Talbott disagreed with the terminology of appellant's accepted condition of sacroiliac strain and opined that she most likely had a lumbosacral strain at the time of her original injury.

⁷ *Tracey Smith-Cashen*, 38 ECAB 568, 571-73 (1987).

The Board also finds that the Office properly denied appellant's request for an oral hearing as untimely.

Section 8124(b)(1) of the Act provides:

"Before review under section 8128(a) of this title, a claimant for compensation not satisfied with a decision of the Secretary under subsection (a) of this section is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on [her] claim before a representative of the Secretary."⁸

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.⁹ The Office has discretion, however, to grant or deny a request that is made after this 30-day period.¹⁰ In such a case, the Office will determine whether a discretionary hearing should be granted, or, if not, will so advise the claimant with reasons.¹¹

In this case, appellant's request for an oral hearing was dated January 16, 2001 and received by the Office on January 22, 2001 more than 30 days after the Office's November 6, 2000 decision. The postmark also indicates that the letter was mailed on January 17, 2001, also more than 30 days after the Office's decision. As appellant's request for an oral hearing was not made within 30 days of the date of the Office's November 6, 2000 decision, her request was untimely.

Although the Office properly found appellant's hearing request to be untimely filed, the Office considered the matter in relation to the issue involved and correctly advised appellant that she could pursue her claim through the reconsideration process. As appellant had the opportunity to pursue her claim by submitting to the appropriate regional Office new and relevant medical evidence along with a request for reconsideration, the Board finds that the Office did not abuse its discretion in denying appellant's request for a hearing.¹²

⁸ 5 U.S.C. § 8124(b)(1).

⁹ 20 C.F.R. § 10.616.

¹⁰ *Herbert C. Holley*, 33 ECAB 140 (1981).

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

¹² The Board has held that the denial of a hearing on these grounds is a proper exercise of the Office's discretion. *E.g.*, *Jeff Micono*, 39 ECAB 617 (1988).

The February 13, 2001 and November 6, October 4 and May 18, 2000 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
February 8, 2002

Michael J. Walsh
Chairman

Alec J. Koromilas
Member

A. Peter Kanjorski
Alternate Member