United States Department of Labor
Employees' Compensation Appeals Board

GEORGE TREJO, JR., Appellant	)	
and	)	**Docket No. 05-779**
	)	**Issued: June 17, 2005**
DEPARTMENT OF THE AIR FORCE, ROBINS AIR FORCE BASE, GA, Employer	)	

Appearances:
George Trejo, Jr., pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chairman
DAVID S. GERSON, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On February 15, 2005 appellant filed a timely appeal of a January 27, 2005 decision of the Office of Workers' Compensation Programs, denying his request for a hearing, and an August 4, 2004 merit decision denying his claim of a right leg injury. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits in this case.

ISSUES

The issues are: (1) whether appellant has established an injury to his right leg causally related to his federal employment; and (2) whether the Office properly denied appellant's request for a hearing.

FACTUAL HISTORY

On August 13, 2003 appellant, then a 52-year-old sheet metal worker, filed an occupational disease claim (Form CA-2).[1] He stated on the claim form that he had prior injuries

[1] The claim form in the record was marked as received by the Office on May 4, 2004.

in 1995 and 1999 and, since his last injury, had experienced pain in his right ankle. Appellant described the injury as pain in the right ankle, lower leg, toes and heel. The record contains treatment notes from the employing establishment health unit with respect to a shoulder injury, and an August 4, 2003 form report signed by an employing establishment medical officer diagnosing right ankle pain.[2] Appellant also submitted an unsigned medical report dated June 7, 2004 that reported right shoulder and right ankle pain.

In a letter dated June 18, 2004, the Office requested that appellant submit additional factual and medical evidence with respect to his claim. In a statement dated July 9, 2004, appellant noted that his job included standing, walking, crawling, kneeling, climbing and crouching. He reported that he had to carry heavy tools. Appellant indicated that he had twisted his ankle in 1999 and his pain was aggravated by standing and walking. He submitted a report dated June 24, 2003 from Dr. Rafael Aguila, a general practitioner, who indicated that appellant was seen in April 2000 complaining of difficulty with mental focusing as well as fatigue.

By decision dated August 4, 2004, the Office denied appellant's claim on the grounds that the medical evidence did not establish a work-related injury. By letter postmarked October 6, 2004, appellant requested a hearing before an Office hearing representative. Appellant indicated that he had been involved in a motor vehicle accident and was unable to mail his hearing request within 30 days.

By decision dated January 27, 2005, the Office denied appellant's request for a hearing as untimely. The Office further stated that it had considered appellant's request, and determined that the issue could equally well be addressed by requesting reconsideration and submitting new evidence.

LEGAL PRECEDENT -- ISSUE 1

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.[3] The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon a complete and accurate factual and medical background, showing a causal relationship between the claimed conditions and his federal employment.[4] Neither the fact that the condition became

[2] There is no indication that the officer is a physician.

[3] *Victor J. Woodhams*, 41 ECAB 345 (1989).

[4] *See Walter D. Morehead*, 31 ECAB 188 (1979).

manifest during a period of federal employment, nor the belief of appellant that the condition was caused or aggravated by his federal employment, is sufficient to establish causal relation.[5]

ANALYSIS -- ISSUE 1

In the present case, appellant appears to be claiming that his federal employment aggravated a prior right ankle injury. It is appellant's burden of proof to submit probative medical evidence on the issue of causal relationship. To be of probative value, medical evidence must be from a physician under the Federal Employees' Compensation Act,[6] the report must be signed by the physician[7] and it must provide a reasoned medical opinion on causal relationship between a diagnosed condition and the employment.[8]

Appellant did not submit probative medical evidence with respect to a right ankle, foot or leg condition. The only narrative report from a physician is the June 24, 2003 report from Dr. Aguila, which does not discuss the relevant issue.[9] The Board finds that the medical evidence of record is not sufficient to meet appellant's burden of proof in this case.

LEGAL PRECEDENT -- ISSUE 2

Section 8124(b)(1) of the Act 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 under subsection (a) of this title 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."[10]

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.[11]

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[5] *Manuel Garcia*, 37 ECAB 767 (1986).

[6] 5 U.S.C. 8101 (2).

[7] It is well established that medical evidence lacking proper identification is of no probative medical value. *Thomas L. Agee*, 56 ECAB ___ (Docket No. 05-335, issued April 19, 1985); *Richard F. Williams*, 55 ECAB ___ (Docket No. 03-1176, issued February 23, 2004); *Merton J. Sills*, 39 ECAB 572 (1988).

[8] *See Patricia J. Glenn*, 53 ECAB 159 (2001).

[9] The Board's jurisdiction is limited to evidence that was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c).

[10] 5 U.S.C. § 8124(b)(1).

[11] *See William F. Osborne*, 46 ECAB 198 (1994).

ANALYSIS -- ISSUE 2

The merit decision in this case was dated August 4, 2004. Appellant's letter requesting a hearing was postmarked October 6, 2004, which is more than 30 days after the Office decision. According to appellant he had been involved in a motor vehicle accident and could not timely mail the hearing request. As noted above, section 8124(b)(1) is unequivocal in requiring that the request be made within 30 days and, since appellant's request was not postmarked within 30 days, it is untimely and appellant is not entitled to a hearing as a matter of right.

The Board has held that the Office, in its broad discretionary authority to administer the Act, has power to hold hearings in circumstances where no legal provision is made for such hearings, and the Office must exercise its discretion in such circumstances.[12] In this case, the Office advised appellant that he could submit additional relevant evidence on the issue through the reconsideration process. This is considered a proper exercise of the Office's discretionary authority.[13]

CONCLUSION

The Board finds that appellant did not submit sufficient evidence to establish a right ankle, foot or leg condition causally related to his federal employment. The Board further finds that the Office properly denied appellant's request for a hearing before an Office hearing representative.

[12] *Mary B. Moss*, 40 ECAB 640 (1989); *Rudolph Bermann*, 26 ECAB 354 (1975).

[13] *See Mary E. Hite*, 42 ECAB 641, 647 (1991).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated January 27, 2005 and August 4, 2004 are affirmed.

Issued: June 17, 2005
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member