



federal employment; and (2) whether the Branch of Hearings and Review properly denied appellant's request for oral hearing as untimely.

### **FACTUAL HISTORY**

On June 17, 2010 appellant, then a 62-year-old general expeditor, filed an occupational disease claim (Form CA-2) alleging that he developed a hernia rupture due to factors of his federal employment. He first became aware of his condition on June 2, 2010 and first attributed it to his employment on June 2, 2010. Specifically, appellant reported that the injury occurred while he moved containers of the mail and he felt pain in the groin area. Also submitted on June 17, 2010 was a job description of the duties and responsibilities of the general expeditor, which detailed the physical requirements of the position.

On June 21, 2010 OWCP advised appellant of the deficiencies in his claim and provided him the opportunity to submit new evidence, in particular a medical report which stated the medical diagnosis of any condition resulting from the June 2, 2010 injury, as well as a rationalized doctor's opinion explaining how the employment factors resulted in the condition. However, no additional evidence was received by OWCP in support of the claim.

By decision dated August 16, 2010, OWCP denied appellant's claim.

On September 28, 2010 appellant filed a request for oral hearing before the Branch of Hearings and Review. By decision dated October 20, 2010, OWCP denied the request for hearing on the grounds that it was untimely filed. This decision also noted that the Branch of Hearings and Review had exercised its discretion and determined that appellant could submit additional evidence and request reconsideration before OWCP.

### **LEGAL PRECEDENT -- ISSUE 1**

An employee seeking benefits under the Act<sup>3</sup> has the burden to establish the essential elements of his 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, that an injury was sustained in the performance of duty as alleged and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.<sup>4</sup>

To establish that an injury was sustained in the performance of duty in a claim for occupational disease, an employee must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.<sup>5</sup>

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<sup>3</sup> 5 U.S.C. §§ 8101-8193.

<sup>4</sup> *Steven S. Saleh*, 55 ECAB 169 (2003); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>5</sup> *See Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

To establish a causal relationship between an employee's condition and the employment, he must submit rationalized medical opinion evidence based on a complete factual and medical background supporting such a causal relationship. Rationalized medical opinion evidence is medical evidence which includes a physician's 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.<sup>6</sup>

### **ANALYSIS -- ISSUE 1**

The Board finds that appellant failed to meet his burden of proof to establish that his right inguinal hernia was caused by factors of his federal employment.

In support of his claim, appellant submitted a CA-2 form wherein he alleged his injury, and a statement which identified the duties of the general expeditor. However, in order to establish that he sustained an employment-related injury, appellant was also required to submit rationalized medical evidence which explained how his hernia rupture was caused or aggravated by the implicated employment factors.

Appellant has the burden to submit a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition, medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed and medical evidence establishing that the diagnosed condition is causally related to the implicated employment factors. He did not submit any medical evidence to the record prior to the denial of his claim by OWCP. The Board finds that appellant failed to submit any medical evidence establishing a firm diagnosis of his condition and a medical report which supports, with medical rationale, causal relationship between his condition and factors of his federal employment. Although OWCP informed him of the deficiencies in the evidence, he did not submit sufficient factual and medical evidence to establish his claim. Appellant did not meet his burden of proof to establish that he sustained an employment-related injury.

### **LEGAL PRECEDENT -- ISSUE 2**

Section 8124(b)(1) of the Act provides that, 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 hearing on his claim before a representative of the Secretary.<sup>7</sup> Section 10.616(a) of the federal regulations implementing this section of the Act provides that a claimant, injured on or after July 4, 1966, who has received a final adverse decision by OWCP may obtain a hearing by writing to the address specified in the decision. The hearing request must be sent within 30 days (as

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<sup>6</sup> Gary J. Watling, 52 ECAB 278 (2001); Shirley A. Temple, 48 ECAB 404 (1997).

<sup>7</sup> 5 U.S.C. § 8124(b)(1).

determined by the postmark or other carrier's date marking) of the date of the decision for which a hearing is sought.<sup>8</sup>

OWCP, 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 OWCP must exercise this discretionary authority in deciding whether to grant a hearing. Its procedures, which require it 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.<sup>9</sup>

### **ANALYSIS -- ISSUE 2**

Appellant had 30-calendar days from OWCP's August 16, 2010 decision, or until September 15, 2010, to request an oral hearing before OWCP's hearing representative. Because his request was postmarked September 28, 2010, his request was untimely. Appellant was not entitled to an oral hearing as a matter of right under section 8124(b)(1) of the Act. Exercising its discretion to grant a discretionary hearing, OWCP denied appellant's request on the grounds that he could equally well address any issues in his case by requesting reconsideration. Because reconsideration exists as an alternative appeal right to address the issues raised by OWCP's August 16, 2010 decision, the Board finds that OWCP did not abuse its discretion in denying appellant's untimely request for an oral hearing.<sup>10</sup>

### **CONCLUSION**

The Board finds that appellant failed to meet his burden of proof to establish that he sustained the hernia rupture condition in the performance of duty causally related to factors of his federal employment, and that OWCP properly denied appellant's request for an oral hearing before OWCP's hearing representative.

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<sup>8</sup> *N.M.*, 59 ECAB 511 (2008).

<sup>9</sup> *Sandra F. Powell*, 45 ECAB 877 (1994).

<sup>10</sup> The Board has held that the denial of a hearing on these grounds is a proper exercise of OWCP's discretion. *E.g.*, *Jeff Micono*, 39 ECAB 617 (1988). Appellant has one year to make a timely request for reconsideration of OWCP's June 23, 2009 merit decision. *See* 20 C.F.R. § 10.607.

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 20 and August 16, 2010 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: August 3, 2011  
Washington, DC

Richard J. Daschbach, Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board