

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GLENDA E. BOOTH and DEPARTMENT OF VETERANS AFFAIRS,
MEDICAL CENTER, Houston, Tex.

*Docket No. 95-2636; Submitted on the Record;
Issued April 13, 1998*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issues are: (1) whether the Office of Workers' Compensation Programs properly denied appellant's request for a hearing; (2) whether the Office properly denied appellant's request for a physical restoration, endurance and pain management program; and (3) whether appellant is entitled to a schedule award.

The Board finds that appellant is entitled to a hearing on the issue of whether she sustained a recurrence of disability beginning June 15, 1994, causally related to her December 3, 1992 employment injury.

Section 8124(b)(1) of the Federal Employees' Compensation Act,¹ concerning a claimant's entitlement to a hearing before an Office hearing representative, states: "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 his claim before a representative of the Secretary." 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.²

In a decision dated March 22, 1995, the Office denied appellant's request for a hearing on the basis that her request was not made within 30 days of the Office's May 9 and August 23, 1994 decisions. The Office was correct in finding that appellant is not entitled to a hearing regarding these decisions, which addressed, respectively, appellant's loss of wage-earning capacity beginning February 28, 1994 and her entitlement to a schedule award. Appellant requested a hearing by letter dated January 27, 1995, which is more than 30 days after the

¹ 5 U.S.C. § 8124(b)(1).

² *Tammy J. Kenow*, 44 ECAB 619 (1993); *Ella M. Garner*, 36 ECAB 238 (1984).

issuance of the Office's May 9 and August 23, 1994 decisions.³ The Office, however, also issued a decision on January 4, 1995, finding that appellant had not submitted medical evidence sufficient to establish that she could not perform the duties of the position she had performed since February 28, 1994 and therefore had not established that she had sustained a recurrence of disability beginning June 15, 1994. Since appellant's January 27, 1995 request for a hearing was made within 30 days of the January 4, 1995 decision and specifically referenced that decision, appellant is entitled to a hearing as a matter of right on the issue addressed by the January 4, 1995 decision: her claim for a recurrence of disability beginning June 15, 1994.

The Board further finds that the case, is not in posture for a decision on the issues of whether the Office properly denied appellant's request for a physical restoration, endurance and pain management program; and whether appellant is entitled to a schedule award.

There is a conflict of medical opinion on the question of whether appellant's December 3, 1992 employment injury, accepted by the Office for a sprain of the right hip and thigh, also resulted in sacroiliac joint dysfunction or syndrome. In a report dated August 18, 1994, Dr. Linda J. Roos, a physiatrist and one of appellant's attending physicians, concluded that appellant had sacroiliac joint dysfunction, that was "directly related to the fall she sustained from her work related injury." In a report dated January 20, 1995, Dr. Roos stated that appellant sustained a "work-related injury resulting in instability of the sacroiliac joints. This has been confirmed with diagnostic and therapeutic injections." On the other hand, Dr. Richard DeYoung, a Board-certified orthopedic surgeon, to whom the Office referred appellant for a second opinion, stated in a June 22, 1993 report that his examination of appellant was "negative for any neurological abnormalities. There are no objective orthopedic abnormalities."

Until the Office, through referral to an impartial medical specialist pursuant to section 8123(a) of the Act,⁴ resolves this conflict of medical opinion, the Board cannot ascertain whether the Office properly denied appellant's request for a physical restoration, endurance and pain management program; and whether appellant is entitled to a schedule award. Appellant's attending physicians have indicated that the basis for the rehabilitation program and the schedule award is the sacroiliac joint dysfunction or syndrome.

In her January 20, 1995 report, Dr. Roos, after describing appellant's condition as "a work-related injury resulting in instability of the sacroiliac joints," stated that she had recommended "a physical restoration and pain management program." Dr. Roos further described this program in a February 23, 1995 request to the Office for authorization of such a program. The Office denied this request by a March 22, 1995 decision, finding that appellant's "claim was accepted for somewhat minor conditions of right hip, right thigh and lumbar strains."

³ In its March 22, 1995 decision, the Office advised appellant that she could further address the issues contained in these decisions in a request for reconsideration.

⁴ 5 U.S.C. § 8123(a) states in pertinent part "If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination."

In a report dated February 23, 1994, Dr. Howard B. Cotler, a Board-certified orthopedic surgeon and one of appellant's attending physicians, diagnosed right sacroiliac joint dysfunction and syndrome and indicated that appellant had a "0.5 [percent] impairment of her right lower extremity," based on decreased sensation "of the right L5 and S1 dermatomes of the plantar surface of her right foot." The remainder of this report addressed a permanent impairment of the lumbar spine, for which appellant cannot receive a schedule award, as the anatomical members and functions for which the Act provides for payment of schedule awards do not include impairments of the back or the body as a whole.⁵ A claimant may be entitled to a schedule award for permanent impairment to a lower extremity even though the cause of the impairment originated in the spine.⁶

The decisions of the Office of Workers' Compensation Programs dated March 22, 1995 and August 23, 1994 are set aside and the case remanded to the Office for further action consistent with this decision of the Board.

Dated, Washington, D.C.
April 13, 1998

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

⁵ *Rozella L. Skinner*, 37 ECAB 398 (1986).

⁶ *George E. Williams*, 44 ECAB 530 (1993).