U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PHILIP GIROUARD and U.S. POSTAL SERVICE,
POST OFFICE, North Reading, Mass.

Docket No. 96-2165; Submitted on the Record;
Issued August 12, 1998

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's claim for consideration of the merits on the grounds that his request was not timely filed and did not demonstrate clear evidence of error.

The Board has duly reviewed the case on appeal and finds that the Office did not abuse its discretion by refusing to reopen appellant's claim for consideration of the merits on the grounds that his request was not timely filed and did not demonstrate clear evidence of error.

Appellant filed a claim for recurrence on May 6, 1993 alleging that on April 30, 1993 he sustained a recurrence of disability causally related to his August 30, 1988 employment injury. By decision dated August 17, 1993, the Office denied his claim. Appellant requested an oral hearing and by decision dated July 6, 1994 and finalized July 7, 1994, the hearing representative denied appellant's claim finding that there was no rationalized medical opinion evidence supporting a causal relationship between appellant's accepted employment injury and his recurrence of disability on or after April 30, 1993. Appellant requested reconsideration on March 5, 1996 and by decision dated May 8, 1996, the Office denied his claim finding his request was untimely and did not contain clear evidence of error.

The Office, through regulations, has imposed limitations on the exercise of its discretionary authority under section 8128(a).[1] The Office will not review a decision denying or terminating a benefit unless the application for review is filed within one year of the date of that decision.[2] When an application for review is untimely, the Office undertakes a limited review to

[1] 5 U.S.C. § 8128(a).

[2] 20 C.F.R. § 10.138(b)(2). *Gregory Griffin*, 41 ECAB 186 (1989) *pet. for recon. denied*, 41 ECAB 458 (1990).

determine whether the application presents clear evidence that the Office's final merit decision was in error.[3]

Since more than one year elapsed from the July 7, 1994 decision to appellant's March 5, 1996 application for review, the request for reconsideration is untimely. The evidence submitted by appellant does not raise a substantial question as to the correctness of the Office's last merit decision and is of insufficient probative value to *prima facie* shift the weight of the evidence in favor of appellant's claim. Appellant failed to submit any rationalized medical opinion addressing the causal relationship between his accepted condition and disability on or after April 30, 1993. Appellant resubmitted a report dated July 30, 1993 from Dr. Paul L. Hart, a family practitioner, which had been considered by the hearing representative. Appellant also submitted additional reports from Dr. Hart dated February 26, 1996, July 21 and July 11, 1995. While these reports indicate a causal relationship between appellant's accepted condition and his recurrence of disability, the reports do not contain the necessary medical rationale to establish such a relationship. Appellant submitted a report and notes from Dr. William M. Maykel, a chiropractor. However, as Dr. Maykel does not diagnose a subluxation of the spine as demonstrated by x-ray, he is not a physician for the purposes of the Federal Employees' Compensation Act[4] and his reports do not constitute medical evidence.[5] The record also contains a report dated July 21, 1995 from Dr. Norman Pollock, a Board-certified orthopedic surgeon, which does not support a causal relationship between appellant's current condition and his accepted employment injury. Therefore, this evidence cannot establish error on the part of the Office. Furthermore, appellant's reconsideration did not contain any argument which would support his claim for error on the part of the Office.

[3] *Thankamma Mathews*, 44 ECAB 765 (1993); *Jesus D. Sanchez*, 41 ECAB 964 (1990).

[4] 5 U.S.C. §§ 8101-8193.

[5] Section 8101(2) of the Act provides that the term "physician" includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation demonstrated by x-ray to exist. 5 U.S.C. § 8101(2).

The decision of the Office of Workers' Compensation Programs dated May 8, 1996 is hereby affirmed.

Dated, Washington, D.C.
August 12, 1998

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member