

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of REBECCA A. JEFFERSON and DEPARTMENT OF DEFENSE,
DEFENSE FINANCE & ACCOUNTING SERVICE, Denver, Colo.

*Docket No. 96-1768; Submitted on the Record;
Issued May 20, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
WILLIE T.C. THOMAS

The issues are: (1) whether the Office of Workers' Compensation Programs properly denied appellant's request for hearing; and (2) whether appellant has established that she sustained an occupational injury in the performance of her federal duties on or after October 3, 1994.

In the present case, the Office had accepted that appellant sustained sprains of her cervical and lumbar spine, right hip and right ankle on September 20, 1991 when she fell off a curb in the performance of her federal employment. The Office has also accepted that on August 12, 1992 appellant was crushed between sliding filing cabinets and sustained sprains to the cervical and lumbar spine, and right shoulder. As a result of these injuries, appellant was paid intermittent wage-loss benefits through September 1994. On March 24, 1995 appellant filed an occupational disease claim alleging that she had aggravated her previous injuries while working as of October 1994. Appellant stated that in October she was performing stapling and filing in excess of her normal work load, and also she was requested to perform activities requiring a lot of bending, twisting, lifting and walking. She stated that on October 3, 1994 she felt a sharp pain in her neck and right shoulder proceeding down to her right hand, headache and pain in her right hip. Appellant also stated that during October she was frightened by a mouse underneath her desk and she jumped out of fright and in the process she twisted her body and felt sharp intense pain in her back, neck and hips. The Office denied appellant's occupational disease claim by decision dated January 25, 1996, on the grounds that appellant had not established fact of injury. Appellant requested a hearing before an Office hearing representative on March 8, 1996. The Office denied appellant's request for hearing by decision dated May 1, 1996 on the grounds that the request for hearing was not timely filed.

The Board finds that the Office properly denied appellant's request for a hearing.

Section 8124(b)(1) of the Federal Employees' Compensation Act,¹ provides as follows:

“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. ***”

As appellant did not request a hearing within 30 days of the January 25, 1996, decision appellant is not entitled to a hearing as a matter of right. The Office, however, 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 the Office must exercise this discretionary authority in deciding whether to grant a hearing. The Office's procedures, which require the Office 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.²

The Office in exercising its discretion noted that appellant's request for hearing was untimely filed, and that considering the issue involved, appellant could request reconsideration before the Office and submit additional medical evidence to establish fact of injury. The Office properly exercised its discretion and denied appellant's request for hearing.

The Board has duly reviewed the case record and finds that this case is not in posture for decision as to whether appellant sustained an occupational disease in the performance of her federal employment.

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

Appellant's treating physician, Dr. Daniel R. Ignacio, Board-certified in physical medicine and rehabilitation reported on June 13, 1995 that appellant was required to perform a lot of typing, photocopying, filing, twisting, bending, and walking while at work; that with regard to the carpal tunnel syndrome, this was a repetitive stress disorder which was directly related to the type of work appellant performed which required repetitive wrist movements and hand movement causing significant swelling along the wrist resulting in carpal tunnel syndrome bilaterally, more severe along the right side. Dr. Ignacio stated that with regard to appellant's

¹ 5 U.S.C. § 8124(b)(1).

² *Arthur Sims*, 46 ECAB 880 (1995).

³ *Ruby I. Fish*, 46 ECAB 276 (1994).

cervical and lumbar ruptured disc syndrome, it was brought about by the twisting and bending that she performed while she was at work. He noted that appellant had previous injury to the lumbar spine and the cervical spine for which she had been treated, but had not fully recovered. He stated that appellant reinjured the neck and back while she was twisting, bending, and lifting performing her job. Finally, Dr. Ignacio stated that appellant had stretch type injuries to the muscles and ligaments of her right hip and right shoulder which were brought about by her work for which she did a lot of twisting, pulling and pushing.

The Office requested that second opinion physicians, Dr. Victor N. Guerrero and Dr. Major P. Gladden, Board-certified orthopedic surgeons, examine appellant and review the case record. Both Drs. Guerrero and Gladden concurred that appellant had sustained cervical and lumbosacral strains as a result of her September 20, 1991 and August 1992 injuries. These physicians concluded that appellant currently had no objective evidence of these conditions. Neither Dr. Guerrero nor Dr. Gladden, however, addressed whether the alleged factors of appellant's employment caused appellant to sustain occupational disease on or after October 1994, causing the carpal tunnel syndrome, cervical and lumbar disc syndrome, and the myofascial pain syndromes of the right scapula and hip, diagnosed by Dr. Ignacio.

While the reports from Dr. Ignacio were not sufficiently rationalized to support a finding of causal relationship, they indicated that appellant did sustain a number of conditions due to her alleged work factors. As Drs. Guerrero and Gladden did not address whether the alleged factors of employment in fact caused any of appellant's alleged conditions, Dr. Ignacio's opinion stands uncontradicted by other medical evidence. Thus while Dr. Ignacio's reports were not sufficient to meet appellant's burden of proof, they continued to raise an uncontroverted inference between the claimed conditions and work factors, and required the Office to further develop the evidence.⁴ Proceedings under the Act⁵ are not adversarial in nature nor is the Office a disinterested arbiter. The Office has an obligation to see that justice is done.⁶

On remand, after such further development of the medical evidence as necessary, the Office shall issue a *de novo* decision.

⁴ *Mark A. Cacchione*, 46 ECAB 148 (1994).

⁵ 5 U.S.C. §§ 8101-8193.

⁶ *Jerry A. Miller*, 46 ECAB 243 (1994).

The decision of the Office of Workers' Compensation Programs dated May 1, 1996 is hereby affirmed; the decision of the Office dated January 25, 1996 is hereby set aside and this case is remanded to the Office for further proceedings consistent with this opinion.

Dated, Washington, D.C.
May 20, 1998

Michael J. Walsh
Chairman

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member