

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of IRENE AULTMAN and DEPARTMENT OF THE TREASURY,
OFFICE OF INSPECTOR GENERAL, Washington, D.C.

*Docket No. 97-109; Submitted on the Record;
Issued September 16, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issues are: (1) whether appellant met her burden of proof to establish that she sustained a sinus condition and a back condition in the performance of duty; (2) whether the Office of Workers' Compensation properly denied appellant's request for a hearing on the basis of untimeliness.

On March 20, 1996 appellant, a 46-year-old auditor, filed a Form CA-2 claim for benefits based on an occupational disease, stating that she began to experience severe sinus headaches in October 1995 and back pain in January 1996. Appellant alleged that these conditions were caused or aggravated by factors of employment.

In support of her claim, appellant submitted a February 23, 1996 report from Dr. Peter Basch, Board-certified in internal medicine. Dr. Basch stated that he had examined appellant on February 13 and February 23, 1996 for sinus headaches and back pain. Dr. Basch noted appellant's history that she had not sustained either of these conditions while working at her previous work site, but following her transfer to an old building, she experienced problems with dust fumes. He stated that, in order to alleviate this problem, appellant had her office and the air vents cleaned and opened the window to bring in fresh air. Appellant informed Dr. Basch that, although the fresh air improved her sinus condition, the open window brought in cold air during the winter months, which, together with sitting in a chair that provided poor back support, allegedly resulted in her developing a back condition. Dr. Basch stated his belief that appellant's sinus headaches and back pain were attributable to the workplace.

By letter dated April 11, 1996, the Office advised appellant that the evidence she submitted was not sufficient to determine whether she was eligible for compensation benefits, and that she needed to submit a detailed description of the specific employment-related conditions or incidents she believed contributed to her skin condition. The Office also asked appellant to submit a comprehensive medical report from her treating physician describing her symptoms and the medical reasons for her condition, and an opinion as to whether factors or

incidents, *i.e.*, specific employment factors, at her employing establishment contributed to her condition. The Office did not receive any response from appellant within 30 days of its letter.

In a decision finalized May 15, 1996, the Office denied appellant's claim on the grounds that the claimed medical conditions were not causally related to factors or incidents of employment. In a May 13, 1996 memorandum accompanying the decision, the Office found that although Dr. Basch diagnosed sinus headaches and a history of occupational exposure, he failed to provide a rationalized medical opinion in support of his diagnosis. The Office further stated that Dr. Basch failed to provide a diagnosis for appellant's back problem, and merely indicated that she had "back pain."

By letter postmarked June 15, 1996, appellant requested a hearing before an Office hearing representative.

By decision dated August 26, 1996, the Office denied appellant's hearing request as it was untimely. The Office exercised its discretion and advised appellant that she could submit additional evidence to the Office with a request for reconsideration.

The Board finds that appellant did not meet her burden of proof to establish that she sustained sinus and back conditions in the performance of duty.

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing that the essential elements of his or her 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 within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged, and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.² These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.³

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. The medical evidence required to establish causal relationship is usually rationalized medical evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between

¹ 5 U.S.C. § 8101 *et seq.*

² *Joe Cameron*, 42 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

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

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.⁴

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that her condition was caused, precipitated or aggravated by her employment is sufficient to establish causal relationship.⁵

In the present case, the only medical evidence bearing on causal relationship appellant submitted was the February 23, 1996 medical report of Dr. Basch, who failed to submit a rationalized medical opinion indicating the claimed conditions were caused or aggravated by factors or incidents of employment. Dr. Basch's report consisted solely of appellant's account of how she allegedly sustained the claimed conditions, followed by Dr. Basch's summary statement that "I think [appellant's] problems with her sinus headaches and her back pain are attributable to the workplace...." The Board finds that Dr. Basch's medical opinion is speculative and is not sufficient to meet appellant's burden of submitting probative, rationalized medical opinion evidence to establish that her claimed conditions were caused or aggravated by factors or incidents of employment.

Accordingly, as the only medical opinion of record submitted by appellant was that of Dr. Basch, whose report failed to provide a probative, rationalized medical opinion that appellant's claimed conditions were caused or aggravated by employment factors, the Office properly denied appellant's claim for compensation.

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

In a letter to the Office dated May 28, 1996, appellant requested that the Office "rescind" its May 15, 1996 decision. Appellant also stated that she was not requesting reconsideration of the Office's previous decision, and indicated her desire to request a hearing in the event the Office did not rescind its May 15, 1996 decision.

⁴ *Id.*

⁵ *See Id.*

In response the Office submitted a letter to appellant dated June 7, 1996 wherein it informed her that she had until June 15, 1996 to request a hearing.

In a letter dated June 14, 1996, which was postmarked June 15, 1996, appellant submitted a letter to the Office's Branch of Hearings and Review requesting a hearing.

In a letter dated August 26, 1996, the Office's Branch of Hearings and Review denied appellant's request for a hearing, finding that it was untimely under section 8124⁶ because she failed to submit it within 30 days of the issuance of the Office's May 15, 1996 decision.⁷ The letter noted that appellant retained the right to submit additional medical evidence to the Office with a request for reconsideration.

In her September 16, 1996 letter of appeal to the Board, appellant contends that the Office's June 7, 1996 letter informed her that she had until June 15, 1996 to request a hearing. Appellant contends that because she detrimentally relied on this erroneous information and mailed her hearing request on June 15, 1996, she is entitled to an oral hearing before an Office hearing representative.

Section 8124(b) provides that a claimant has 30 days after the Office's issuance of a decision to request a hearing. Appellant was initially notified of her appeal rights under the Act⁸ in the form letter accompanying the Office's May 15, 1996 decision, wherein it is stated:

“HEARING: If your injury occurred on or after July 4, 1966 and you have not requested reconsideration, as described below, you may request an oral hearing before an OWCP representative. Such a request must be made in writing, within 30 days after the date of this decision, as determined by the postmark of your letter.”

Through this form letter, the Office provided adequate notice and information to appellant regarding the proper procedure and time frame for requesting a hearing attached to the May 15, 1996 decision. Thus, while the Office may have misinformed appellant in its June 7, 1996 letter as to the final day on which she could request a hearing, she was accorded the requisite notice for the time frame within which to request an oral hearing as provided by the Act. For this reason, the Office is not estopped from applying the statutory time limitation of section 8124 in finding appellant's hearing request.⁹

The Board notes, however, that appellant may submit additional medical evidence in support of her claim with a request for review to the Office pursuant to 5 U.S.C. § 8128.

⁶ 5 U.S.C. § 8124(b).

⁷ The letter noted that appellant's letter requesting reconsideration was postmarked on June 15, 1996, which was more than 30 days after the Office's previous decision of May 15, 1996.

⁸ 5 U.S.C. §§ 8101-8193.

⁹ See *John L. Wolf*, 48 ECAB _____ (Docket No. 95-1932 issued October 23, 1996).

The decision of the Office of Workers' Compensation Programs dated August 26 and May 23, 1996 are hereby affirmed.

Dated, Washington, D.C.
September 16, 1998

George E. Rivers
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member