

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of TIMBERLE A. CERO and U.S. POSTAL SERVICE,  
POST OFFICE, Carlisle, Pa.

*Docket No. 97-110; Submitted on the Record;  
Issued September 21, 1998*

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DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
WILLIE T.C. THOMAS

The issues are: (1) whether appellant established that she sustained recurrences of disability causally related to the October 24, 1994 ankle sprain she sustained in the performance of duty; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for a hearing.

On October 25, 1994 appellant, then a 32-year-old letter carrier, filed a notice of traumatic injury, claiming that she twisted her left ankle while delivering mail the day before when she stepped in a hole hidden by long grass. The Office accepted the claim for a sprained left ankle, based on the November 1, 1994 report of Dr. Gary L. Blacksmith, Jr., Board-certified in family practice.

On November 13, 1995 appellant filed a notice of recurrence of disability, claiming that the pain in her ankle had persisted and was especially severe on March 30, November 6 and 13, 1995, making it difficult for her to walk and drive a manual-shift vehicle. On December 13, 1995 the Office informed appellant that she needed to submit a factual statement and a narrative medical report from her treating physician.

Appellant responded by describing the unsafe conditions of the delivery site and stated that since the October 1994 ankle sprain she had worked with an ankle brace on the advice of her physician, but that the pain and numbness had intensified and lasted longer during the workday until she knew that "there was something definitely wrong" with her ankle and foot.<sup>1</sup>

In support of her claim, appellant submitted medical reports from Dr. John C. Rodgers, an orthopedic practitioner, Dr. Ted D. Kosenske, Board-certified in anesthesiology,

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<sup>1</sup> Appellant filed a notice of traumatic injury, claiming that she sprained her left ankle on March 30, 1995 and that inadequate treatment caused reflex sympathetic dystrophy (RSD) to develop. This claim, A3-217581, was denied and appellant appealed to the Board, which affirmed the denial. (Docket No. 97-636, issued September 21, 1998).

Dr. Blacksmith, and Dr. Ronald M. Schlansky, Board-certified in internal medicine, as well as a work capabilities evaluation and the results of diagnostic testing.

On March 4, 1996 the Office denied the claim on the grounds that the evidence was insufficient to establish that the claimed recurrences of disability were causally related to the accepted work injury. The Office noted that the medical reports indicated complaints of pain in appellant's left foot, mostly in the toes, and that appellant was diagnosed with reflex sympathetic dystrophy<sup>2</sup> (RSD) but that none of the reports provided an opinion on the issue of causal relationship.

On April 4, 1996 appellant stated that Dr. Kosenske's letter supported the fact that her RSD resulted from her ankle injury. The Office responded that appellant's claim was formally denied on March 4, 1996 and that she should follow the instructions in the attached appeal rights if she disagreed with the decision.

On April 22, 1996 appellant requested reconsideration. On July 15, 1996 the Office denied appellant's request on the grounds that the evidence submitted in support of reconsideration was insufficient to warrant modification of its prior decision. The Office noted that Dr. Kosenske's March 15, 1996 report provided no medical rationale for his conclusion that appellant's RSD was causally related to the October 24, 1994 injury.

The Board finds that appellant has failed to establish that she sustained recurrences of disability causally related to the October 24, 1994 work injury.

Under the Federal Employees Compensation Act,<sup>3</sup> an employee who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable, and probative evidence that the recurrence of the disabling condition for which compensation is sought is causally related to the accepted employment injury.<sup>4</sup> As part of this burden the employee must submit rationalized medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the current disabling condition is causally related to the accepted employment-related condition,<sup>5</sup> and supports that conclusion with sound medical reasoning.<sup>6</sup>

Section 10.121(b) of the Act provides that when an employee has received medical care as a result of the recurrence, he or she should arrange for the attending physician to submit a medical report covering the dates of examination and treatment, the history given by the

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<sup>2</sup> Reflex sympathy dystrophy (RSD) is defined as a disturbance of the craniosacral portion of the autonomic nervous system marked by pallor or rubor (redness), pain, sweating, edema, or skin atrophy following a sprain, fracture, or injury to the nerves or blood vessels. *Dorland's Illustrated Medical Dictionary* (27th ed. 1988).

<sup>3</sup> 5 U.S.C. §§ 8101-8193 (1974).

<sup>4</sup> *Dennis J. Lasanen*, 43 ECAB 549, 550 (1992).

<sup>5</sup> *Kevin J. McGrath*, 42 ECAB 109, 116 (1990).

<sup>6</sup> *Lourdes Davila*, 45 ECAB 139, 142 (1993).

employee, the findings, the results of x-ray and laboratory tests, the diagnosis, the course of treatment, the physician's opinion with medical reasons regarding the causal relationship between the employee's condition and the original injury, any work limitations or restrictions, and the prognosis.<sup>7</sup> Thus, the medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated, or aggravated by the accepted injury.<sup>8</sup>

In this case, none of the medical reports contain a rationalized opinion explaining how appellant's current left foot and ankle condition is related to the accepted sprain sustained on October 24, 1994.<sup>9</sup> Dr. Blacksmith stated in a March 30, 1995 treatment note that appellant had a strained left ankle and some intermittent pain but had been working her regular job. He added that the etiology of appellant's foot discomfort was uncertain and that she had no recent history of major trauma. Dr. Blacksmith noted appellant's "falls" in the past but provided no opinion on any causal relationship

Dr. Blacksmith referred appellant to Dr. Rodgers and Dr. Schlansky, who stated in a January 4, 1996 report that appellant had chronic left ankle and foot pain, whose etiology was unclear, although a diagnosis of RSD was supported historically. Dr. Schlansky also did not address the relevant issue of causal relationship.

Dr. Rodgers stated on November 8, 1995 that appellant had a chronic recurring pain in her left foot, that she injured herself about a year ago and reinjured it back in March 1995 when she twisted her ankle on the job, and that she had had a recurrence of her symptoms for the past three weeks.

Dr. Rodgers added that he could not find "any specific etiology" for appellant's pain, that her ankle was "ligamentously intact" with excellent range of motion, and that her x-rays revealed no pathology.<sup>10</sup> He diagnosed a "minor soft tissue injury," which had become symptomatic. On December 14, 1995 Dr. Rodgers diagnosed RSD, noting appellant's complaints of continued pain in her left foot while delivering mail.<sup>11</sup> None of Dr. Rodgers' notes and letters addressed the issue of causal relationship except to note appellant's continuing complaints of pain. Dr. Rodgers' reports are therefore insufficient to meet appellant's burden of proof.

Dr. Rodgers referred appellant to Dr. Kosenske, who also diagnosed RSD, noted a history of two severely sprained ankles in 1995, stated that appellant was "quite incapacitated," and

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<sup>7</sup> 20 C.F.R. § 10.121(b).

<sup>8</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.2 (June 1995).

<sup>9</sup> See *Jose Hernandez*, 47 ECAB \_\_\_\_ (Docket No. 94-1089, issued January 23, 1996) (finding that medical reports that failed to address directly the causal relationship between appellant's recurrence of disability and his employment injuries were insufficient to meet appellant's burden of proof).

<sup>10</sup> X-rays of the left foot and ankle taken on March 30, 1995, the date of the alleged injury, reveal no fracture or soft tissue or bony abnormality and normal joint spaces. The November 6, 1995 x-rays noted no changes from the earlier x-rays.

<sup>11</sup> In a February 5, 1996 letter to the Office, Dr. Rodgers stated that appellant's RSD was affected by cold weather and that she needed to stay off her feet as much as possible if her leg bothered her.

recommended a functional capacity study.<sup>12</sup> On December 18, 1995 Dr. Kosenske related that appellant had developed a throbbing pain within the past two months that started spontaneously and also occasionally experienced numbness in her foot that resolved on its own. He added that appellant's pain might possibly "be sympathetically driven." On March 15, 1996 Dr. Kosenske stated that appellant's RSD was "secondary to the ankle injury that she sustained last year." On June 12, 1996 Dr. Kosenske stated that appellant had "presumed" RSD and discharged her from treatment.

Dr. Kosenske's conclusion that the diagnosed RSD is causally related to last year's ankle injury is unexplained.<sup>13</sup> First, Dr. Kosenske did not specify which ankle injury resulted in RSD. Second, he did not discuss, with medical rationale, how appellant's RSD condition was caused by the initial ankle injury in 1994. Finally, his office notes provided no additional information on the requisite causal relationship. Therefore, the Board finds that Dr. Kosenske's opinion is insufficient to meet appellant's burden of proof.<sup>14</sup>

The Board also finds that the Office did not abuse its discretion in denying appellant's request for an oral hearing.

The Act is unequivocal that a claimant not satisfied with a decision of the Office has a right, upon timely request, to a hearing before a representative of the Office.<sup>15</sup> The statutory right to a hearing pursuant to section 8124(b)(1) follows an initial decision of the Office.<sup>16</sup> Because subsection (b)(1) is unequivocal on the time limitation for requesting a hearing, a claimant is not entitled to such hearing as a matter of right unless his or her request is made within the requisite 30 days.<sup>17</sup>

The Office's procedures implementing this section of the Act are found in Chapter 2.1601 of the Federal (FECA) Procedure Manual. The manual provides for a preliminary review of a case by an Office hearing representative to determine whether the hearing request is timely and, if not, whether a discretionary hearing should be granted; if the Office declines to grant a discretionary hearing, the claimant will be advised of the reasons.<sup>18</sup> The Board has held that the

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<sup>12</sup> In a May 5, 1996 office note, Dr. Kosenske stated that appellant had "sympathetically mediated pain in her left ankle" and wanted him to "complete disability papers" for her.

<sup>13</sup> See *Margarette B. Rogler*, 43 ECAB 1034, 1039 (1992) (finding that a physician's opinion that provides no medical rationale for its conclusion on causation is of diminished probative value).

<sup>14</sup> See *Alberta S. Williamson*, 47 ECAB \_\_\_\_ (Docket No. 94-1762, issued May 7, 1996) (finding that appellant failed to submit a rationalized medical report based on a complete factual and medical background explaining why her condition was contracted in the performance of duty).

<sup>15</sup> 5 U.S.C. § 8124(b); *Joe Brewer*, 48 ECAB \_\_\_\_ (Docket No. 95-603, issued March 21, 1997); *Coral Falcon*, 43 ECAB 915, 917 (1992)

<sup>16</sup> *Eileen A. Nelson*, 46 ECAB 377, 379 (1994); see Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.10(b) (July 1993).

<sup>17</sup> *William F. Osborne*, 46 ECAB 198, 202 (1994).

<sup>18</sup> *Belinda J. Lewis*, 43 ECAB 552, 558 (1992); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings*

only limitation on the Office's authority is reasonableness,<sup>19</sup> and that abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deductions from known facts.<sup>20</sup>

In this case, appellant first requested a hearing on August 6, 1996, more than five months after the March 4, 1996 Office decision. The record shows that with that decision the Office included a copy of appellant's appeal rights, which clearly states that if appellant has "not requested reconsideration as described below," she may request a hearing within 30 days. The Office's instruction is unequivocal: the request for a hearing must be made in writing within 30 days of the date of the decision. Appellant's August 6, 1996 request was therefore untimely filed, and appellant was not entitled to a hearing as a matter of right.

Nonetheless, even when the hearing request is not timely, the Office has the discretion to grant a hearing, and must exercise that discretion.<sup>21</sup> Here, the Office informed appellant in its August 16, 1996 decision that it had considered the timeliness matter in relation to the issue involved and denied appellant's hearing request on the basis that additional evidence on whether she had sustained a recurrence of disability could be fully considered by requesting another reconsideration and submitting factual and medical evidence in support of her alleged disability.

In this case, nothing in the record indicates that the Office committed any act in denying appellant's hearing request, which could be found to be an abuse of discretion. Further, appellant was advised that she could request reconsideration and submit evidence in support of her claim. Finally, appellant has offered no explanation for the untimely request or any argument to justify further discretionary review by the Office.<sup>22</sup> Thus, the Board finds that the Office properly denied appellant's request for a hearing.

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*and Reviews of the Written Record*, Chapter 2.1601.4(b)(3) (October 1992).

<sup>19</sup> *Wanda L. Campbell*, 44 ECAB 633, 640 (1993).

<sup>20</sup> *Wilson L. Clow, Jr.*, 44 ECAB 157, 175 (1992).

<sup>21</sup> *Frederick D. Richardson*, 45 ECAB 454, 465 (1994).

<sup>22</sup> *Cf. Brian R. Leonard*, 43 ECAB 255, 258 (1992) (finding that the Office abused its discretion by failing to consider appellant's explanation regarding the untimely filing of his hearing request).

The August 16, July 15 and March 4, 1996 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, D.C.  
September 21, 1998

Michael J. Walsh  
Chairman

David S. Gerson  
Member

Willie T.C. Thomas  
Alternate Member