U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOYCE ANDERSON and U.S. POSTAL SERVICE, ST. LOUIS INFORMATION SYSTEMS SERVICE CENTER, St. Louis, Mo.

Docket No. 97-957; Oral Argument Held February 2, 1999;
Issued April 7, 1999

Appearances: *Joyce Anderson, pro se*; *Paul J. Klingenberg, Esq.*,
for the Director, Office of Workers' Compensation Programs.

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
A. PETER KANJORSKI

The issues are: (1) whether appellant has established a back injury on January 22, 1996; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for an oral hearing.

On January 29, 1996 appellant, then a 44-year-old word processing operator, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1) alleging that she injured her back and wrist on January 22, 1996 when the shelving she was stacking gave way. The Office accepted the claim for a right wrist strain on May 7, 1996.

In a treatment note from Family Medicine of St. Louis dated January 12, 1996, it was noted that appellant was having lower back pain for approximately one week.[1]

In a letter dated February 23, 1996, Dr. Rafat Nashed, an attending Board-certified orthopedic surgeon, indicated that appellant was disabled from work for the period January 23, 1996 due to her low back pain and carpal tunnel syndrome.

In an attending physicians Form CA-20 dated March 6, 1996, Dr. Nashed noted that appellant twisted her back and hurt her wrist when a supply compartment gave way.

By decision dated May 7, 1996, the Office denied appellant's claim for a back injury. In the attached memorandum, the Office noted that Dr. Nashid's opinion was insufficient to establish a back injury as the physician did not diagnose a back condition beyond noting that appellant had back pain.

In treatment notes dated January 30, 1996, Dr. Nashed noted that appellant felt pain in her low back and some pain in her wrist after a filing cabinet almost fell and she tried to stop it.

[1] The physician's signature is illegible.

Dr. Nashed diagnosed low back pain and carpal tunnel syndrome of the right wrist and possible wrist sprain.

By letter dated July 5, 1996, appellant, through her counsel enclosed a copy of a report from Dr R.E. Rimmer, an attending chiropractor. In a report dated June 14, 1996, Dr. Rimmer stated that he initially saw appellant on June 7, 1996 and that appellant had been injured at work on January 22, 1996. Dr. Rimmer diagnosed a subluxation by x-ray as well as a lumbar sprain/strain, lumbar segmental dysfunction, lumbar nerve root compression and lumbar myofascitis. He opined that appellant had been disabled from May 22, 1996 to June 10, 1996 due to her January 22, 1996 employment injury.

In letters dated August 12 and August 21, 1996, appellant, through her attorney, requested a hearing before an Office representative

By letter dated September 5, 1996, the Office denied appellant's request for a hearing as being untimely filed and that the case could be resolved by requesting reconsideration.

By letter dated September 20, 1996, appellant requested reconsideration of the denial of her claim.

By letter dated December 3, 1996, appellant submitted medical reports from Dr. Rimmer. In treatment notes for the period June 7, 1996 to September 27, 1996, Dr. Rimmer diagnosed severe low back pain which improved with treatment. In a progress report dated July 29, 1996, Dr. Rimmer noted that appellant had continuing low back pain and the treatment given appellant. In a final report dated October 30, 1996, Dr. Rimmer noted that appellant had improved, but that her "joints will be intolerant of unusual stress or strain."

By decision dated December 16, 1996, the Office denied appellant's request for modification of the prior Office decision.

The Board finds that appellant has not established a back injury causally related to her accepted employment injury on January 22, 1996.

An employee seeking benefits under the Federal Employees' Compensation Act[2] has the burden of establishing 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.[3] These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[4]

There is no dispute that appellant is a federal employee, that she timely filed her claim for compensation benefits, and that the incident occurred as alleged. The Office accepted that

[2] 5 U.S.C. §§ 8101-8193.

[3] *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[4] *See Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

appellant sustained a left wrist strain, but that the evidence was insufficient to establish that appellant's back condition resulted from the injury. Appellant has submitted insufficient medical evidence to establish that the employment incident caused her back condition. Medical evidence must be in the form of a rationalized opinion by a qualified physician based on a complete factual and medical history of the employee, 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.[5]

In the instant case, there is insufficient rationalized medical opinion evidence supporting a causal relationship between appellant's accepted employment injury and her diagnosed condition of low back pain. Appellant has submitted various medical reports in support of her claim. None of these reports, however, contain a rationalized medical opinion based on a complete and accurate history establishing causal relationship. Dr. Nashed's opinion is insufficient as he did not explain how or why the January 22, 1996 injury caused appellant's lower back pain nor did he note that he was aware that appellant had been treated for lower back pain on January 10, 1996.

While Dr. Rimmer can be considered a physician under the Act because he diagnosed subluxation based on x-ray,[6] his opinion is of diminished probative value because he failed to provide medical rationale explaining how and why the employment injury of January 22, 1996 would have caused appellant's current condition. Furthermore, Dr. Rimmer's reports and notes do not indicate that his opinions were based on a complete history of appellant's back condition as he did not note that appellant had complaints of back pain prior to her January 22, 1996 employment injury.

Consequently, appellant has not met her burden of proof as she has not submitted rationalized medical evidence, based on a complete history, explaining how and why the January 22, 1996 work incident caused her claimed back condition.

The Board also finds that the Office did not abuse its discretion by denying appellant's request for a hearing.[7]

On August 12, 1996 appellant requested a hearing before an Office hearing representative. By decision dated September 5, 1996, the Office denied appellant's request for a hearing. The Office's decision noted that a decision had been issued on May 7, 1996, thus appellant's August 12, 1996 request for a hearing were not timely made.

Section 8124(b)(1) of the Act provides that "a claimant for compensation 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."[8] As section 8124(b)(1) is unequivocal in setting forth the time

[5] *See Ern Reynolds*, 45 ECAB 690 (1994); *Donald J. Miletta*, 34 ECAB 1822 (1983).

[6] *See Samuel Theriault*, 45 ECAB 586 (1994); *Kathryn Haggerty*, 45 ECAB 383 (1994); 5 U.S.C. § 8101(2).

[7] Although appellant has not specifically identified the September 5, 1996 decision of the Branch of Hearings and Review, the Board will review that decision in this *pro se* appeal as it was issued within a year of the filing of the appeal.

[8] 5 U.S.C. § 8124(b)(1).

limitation for requesting a hearing, a claimant is not entitled to a hearing as a matter of right unless the request is made within the requisite 30 days.[9] Even when the hearing request is not timely, the Office has the discretion to grant the hearing request, and must exercise that discretion.[10] In the present case, the Office determined that the issue may be resolved by submitting additional medical evidence and requesting reconsideration. The Board finds that the Office did not abuse its discretion under the circumstances of the case.

The decisions of the Office of Workers' Compensation Programs dated December 16 and September 5, 1996 are hereby affirmed.

Dated, Washington, D.C.
April 7, 1999

Michael J. Walsh
Chairman

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

[9] *See Charles J. Prudencio*, 41 ECAB 499 (1990).

[10] *Id.*