

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of BEVERLY A. WARD and U.S. POSTAL SERVICE,  
POST OFFICE, Nashville, Tenn.

*Docket No. 97-2572; Submitted on the Record;  
Issued April 22, 1999*

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DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,  
A. PETER KANJORSKI

The issues are: (1) whether appellant met her burden of proof in establishing that she sustained a recurrence of disability after February 1, 1996 that was causally related to her accepted August 8, 1993 injuries of cervical strain and left trapezius strain; and (2) whether the Office of Workers' Compensation Programs' denial of appellant's request for a hearing pursuant to section 8124 of the Federal Employees' Compensation Act constituted an abuse of discretion.

On August 10, 1993 appellant, then a 45-year-old temporary casual clerk, filed a notice of traumatic injury and claim, alleging that on August 8, 1993 she injured her left shoulder due to repeated lifting of boxes. Appellant stopped work on August 23, 1993 and her employment was terminated on September 10, 1993.<sup>1</sup> The Office accepted appellant's claim for cervical and left trapezius strains and paid appropriate compensation for temporary total disability through September 28, 1993. On May 29, 1996 appellant filed a claim for recurrence of disability beginning February 1, 1996 in which she indicated that she was never able to return to work. In a decision dated September 6, 1996, the Office denied appellant's claim for recurrence of disability on the grounds that the record did not contain any medical evidence in support of her claim. By decision dated April 1, 1997, the Office denied appellant's request for a hearing as untimely filed.

The Board has duly reviewed the case record on appeal and finds that appellant has not established that she sustained a recurrence of disability after February 1, 1996.

Where appellant claims recurrence of disability due to an accepted employment-related injury, she has the burden of establishing by the weight of the substantial, reliable and probative evidence that the subsequent disability for which she claims compensation is causally related to

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<sup>1</sup> Appellant's initial claim was filed using her maiden name of Smith. She was married on November 11, 1995 and notified the Office of the name change by letter dated February 23, 1996.

the accepted injury.<sup>2</sup> This burden includes the necessity of furnishing evidence from a qualified physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.<sup>3</sup>

In the present case, appellant did not submit any medical evidence to establish that she sustained a recurrence of disability that was causally related to her accepted employment injuries of cervical strain and left trapezius strain. By letter dated June 24, 1996, the Office advised appellant that a detailed narrative report from her attending physician was needed and must include a complete history of injury, physical and objective findings, and a medical opinion regarding causal relationship between the diagnosed condition and the accepted employment injuries. Appellant did not respond to this request. As the record is devoid of medical evidence which related appellant's claimed condition to her accepted employment injuries, appellant did not meet her burden of proof in establishing that she sustained a recurrence of disability after February 1, 1996.

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

Section 8124(b)(1) of the Act provides that a "claimant for compensation not satisfied with the decision of the Secretary ... is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on [her] claim before a representative of the Secretary."<sup>4</sup> As section 8124(b)(1) is unequivocal in setting forth the time limitations 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.<sup>5</sup>

The Office issued its decision denying appellant's claim for recurrence of disability on September 6, 1996. Appellant requested an oral hearing in this claim by letter dated October 22, 1996 and received November 6, 1996. Since appellant's request for a hearing was not within 30 days of the Office's decision, her request is untimely pursuant to section 8124(b)(1) of the Act, and she was not entitled to a hearing as a matter of right.

Nonetheless, even when the hearing request is not timely, the Office has discretion to grant the hearing request and must exercise that discretion. In this case, the Office advised appellant that it considered her request in relation to the issue involved and the hearing was denied on the basis that she could address this issue by submitting evidence which showed that her claimed recurrence was causally related to her accepted injuries. Appellant was advised that she may request reconsideration with additional evidence. The Board has held that an abuse of discretion is generally shown through proof of manifest error, a clearly unreasonable exercise of

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<sup>2</sup> *John E. Blount*, 30 ECAB 1374 (1979).

<sup>3</sup> *Frances B. Evans*, 32 ECAB 60 (1980).

<sup>4</sup> 5 U.S.C. § 8124(b)(1).

<sup>5</sup> *Charles J. Prudencio*, 41 ECAB 499 (1990); *Ella M. Garner*, 36 ECAB 238 (1984).

judgment, or actions taken which are contrary to both logic and probable deductions from established facts.<sup>6</sup> There is no evidence of an abuse of discretion in the denial of a hearing in this case.

The decisions of the Office of Workers' Compensation Programs dated April 1, 1997 and September 6, 1996 are hereby affirmed.

Dated, Washington, D.C.  
April 22, 1999

Michael J. Walsh  
Chairman

George E. Rivers  
Member

A. Peter Kanjorski  
Alternate Member

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<sup>6</sup> *Daniel J. Perea*, 42 ECAB 214 (1990).