U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JANE A. WONG and U.S. POSTAL SERVICE,
POST OFFICE, New York, NY

Docket No. 98-155; Submitted on the Record;
Issued August 10, 1999

DECISION and ORDER

Before MICHAEL J. WALSH, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issues are: (1) whether appellant's diagnosed condition is causally related to her federal employment; and (2) whether the Office of Workers' Compensation Programs properly denied her request for an oral hearing.

On December 16, 1996 appellant, a distribution clerk, filed a claim asserting that continuously removing rubber bands from bundles of mail caused pressure that injured her finger. She stated that she could not straighten out her left middle finger and that she had pain.

On March 3, 1997 Dr. Julian Zweig, a hand surgeon, diagnosed stenosing tenosynovitis, left middle finger. He indicated that appellant could not use her left hand and that she could not work from February 14 to March 10, 1997 because of pain in the left middle finger. He further indicated that appellant could return to light work on March 10, 1997.[1]

In a decision dated June 18, 1997, the Office denied appellant's claim on the grounds that the medical evidence failed to mention a job-related injury or to explain the cause of her current condition.

In a letter postmarked July 19, 1997, appellant submitted additional medical evidence and requested an oral hearing before an Office hearing representative. On August 15, 1997 the Office found that the request was untimely and denied the request on the grounds that appellant could equally well address the issue in the case by requesting reconsideration from the district Office and by submitting evidence not previously considered establishing the element of causal relationship.

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[1] An electromyography and nerve conduction report dated May 22, 1997, indicated that appellant had bilateral carpal tunnel syndrome, right worse than left. The Office noted that it had accepted this condition as a work-related injury in a prior claim under claim number A2-565469 and that appellant was working in a limited-duty position as a result.

The Board finds that the evidence before the Office fails to establish that appellant's diagnosed condition is causally related to her federal employment.

An employee seeking benefits under the Federal Employees' Compensation Act[2] has the burden of proof to establish the essential elements of her claim. When an employee claims that she sustained an injury in the performance of duty, she must submit sufficient evidence to establish that she experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. She must also establish that such event, incident or exposure caused an injury.[3]

The Office does not dispute that appellant, a distribution clerk, removed rubber bands from bundles of mail in the course of her federal employment. It is accepted, therefore, that she experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. The question for determination is whether this factor of employment caused an injury.

Causal relationship is a medical issue,[4] and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion of the physician must be based on a complete factual and medical background of the claimant,[5] must be one of reasonable medical certainty[6] and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.[7]

When the Office issued its June 18, 1997 decision denying appellant's claim, the record contained no medical opinion, much less a well-reasoned medical opinion, explaining how removing rubber bands from bundles of mail at work caused or aggravated appellant's diagnosed condition. For this reason the Board will affirm the Office's June 18, 1997 decision.

Appellant attempted to cure the deficiency in her claim by submitting additional evidence with her request for an oral hearing, but her request was untimely. Section 8124(b)(1) of the Act provides:

> "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

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[2] 5 U.S.C. §§ 8101-8193.

[3] *See generally Abe E. Scott*, 45 ECAB 164 (1993); *John J. Carlone*, 41 ECAB 354 (1989); *see also* 5 U.S.C. § 8101(5) ("injury" defined); 20 C.F.R. §§ 10.5(a)(15)-.5(a)(16) ("traumatic injury" and "occupational disease or illness" defined).

[4] *Mary J. Briggs*, 37 ECAB 578 (1986).

[5] *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

[6] *See Morris Scanlon*, 11 ECAB 384-85 (1960).

[7] *See William E. Enright*, 31 ECAB 426, 430 (1980).

> 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]

A claimant is not entitled to a hearing if the request is not made within 30 days of the date of issuance of the decision as determined by the postmark of the request.[9] The Office has discretion, however, to grant or deny a request that is made after this 30-day period.[10] In such a case the Office will determine whether a discretionary hearing should be granted or, if not, will so advise the claimant with reasons.[11]

Because appellant made her July 19, 1997 request, for a hearing more than 30 days after the Office's June 18, 1997 decision, she is not entitled to a hearing as a matter of right. The Office nonetheless considered the matter and correctly advised appellant that she could equally well address the issue through the reconsideration process. As appellant may address the issue of causal relationship by submitting to the district Office new and relevant medical opinion evidence with a request for reconsideration, the Board finds that the Office did not abuse its discretion in denying her request for an oral hearing.[12]

The Board's jurisdiction is limited to reviewing the evidence that was before the Office at the time of its final decision.[13] The Board may, therefore, review any evidence submitted to the record prior to the Office's merit decision of June 18, 1997, but it has no jurisdiction to review the additional evidence submitted with appellant's untimely request for an oral hearing before an Office hearing representative. The Office denied appellant's request for an oral hearing on essentially procedural grounds and did not consider the merits or substance or evidentiary value of the additional evidence submitted. Because this additional evidence was not before the Office or evaluated on its merits, the Board lacks jurisdiction to determine whether the evidence is of sufficient probative value to cure the deficiency found in appellant's claim and to establish her entitlement to benefits. The Office has properly advised appellant, however, that she may address the issue of causal relationship through the reconsideration process by requesting reconsideration from the district Office that denied her claim on June 18, 1997 and by submitting new and relevant evidence.

[8] 5 U.S.C. § 8124(b)(1).

[9] 20 C.F.R. § 10.131(a)-(b).

[10] *Herbert C. Holley*, 33 ECAB 140 (1981).

[11] *Rudolph Bermann*, 26 ECAB 354 (1975).

[12] The Board has held that the denial of a hearing on these grounds is a proper exercise of the Office's discretion. *E.g., Jeff Micono*, 39 ECAB 617 (1988).

[13] 20 C.F.R. § 501.2(c).

The August 15 and June 18, 1997 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, D.C.
August 10, 1999

Michael J. Walsh
Chairman

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member