

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOHN J. STRAMIELLO and U.S. POSTAL SERVICE,
POST OFFICE, Hudson, FL

*Docket No. 98-902; Submitted on the Record;
Issued December 10, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
DAVID S. GERSON

The issues are: (1) whether appellant has met his burden of proof in establishing that he sustained carpal tunnel syndrome in the performance of duty causally related to factors of his federal employment; and (2) whether the Office of Workers' Compensation Programs properly determined that appellant's request for review of the written record was untimely.

On April 9, 1997 appellant, then a 37-year-old city letter carrier, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that he sustained carpal tunnel syndrome of the left hand causally related to his employment factors. On his CA-2 form appellant alleged that he first became aware of his condition in June 1996 and realized that it was caused or aggravated by his employment on April 8, 1997. On the reverse of the CA-2 form appellant indicated that he notified his supervisor of his condition on March 24, 1997 and first received medical care on March 25, 1997 from Dr. Mohan Kutty, a Board-certified internist. In describing the employment activities to which appellant attributed his condition, he submitted a letter dated April 8, 1997 in which he stated that beginning April 2, 1994 he was on a nine-ton truck dispatch run assignment making three to four deliveries daily loading, unloading, pushing and pulling heavy equipment filled with mail and parcels. He stated that in June 1996 he began to experience pain in his left hand and wrist and started wearing a wrist brace which gave some relief; however, the condition worsened and in August 1996 he accepted a delivery route assignment. Appellant stated that his condition continued to worsen and he began experiencing continual pain and digit numbness in his left hand and now his right wrist. He alleged that "constant holding, grasping and moving of parcels and letters ... aggravated my condition."

By letter dated June 20, 1997, the Office advised appellant that additional information was required in reference to his claim for carpal tunnel syndrome under the Federal Employees' Compensation Act¹ and provided a list of questions of a medical nature and factual nature. The

¹ 5 U.S.C. §§ 8101-8193.

Office allotted appellant 30 days in which to submit the requested evidence. No response was received within the allotted time.

By decision dated July 23, 1997, the Office denied appellant's claim finding that he failed to establish that he sustained an injury.

In a letter dated July 9, 1997, received by the Office on July 25, 1997, appellant reiterated his job duties and attached a nerve conduction study report from Dr. Siddharth Shah, a Board-certified internist, which was performed on May 20, 1997 on referral by Dr. Kutty. The studies revealed carpal tunnel syndrome of the left hand and borderline in the right hand.

By letter dated August 25, 1997, postmarked September 8, 1997, received by the Office on September 10, 1997, appellant submitted a request for review of the written record by an Office hearing representative. Attached was a September 5, 1997 report from Dr. Haresh Sawlani, an internist. Dr. Sawlani diagnosed left carpal tunnel syndrome, borderline in the right hand and attributed it to factors of appellant's employment, involving pushing, lifting and sorting all forms of mail.

By decision dated November 13, 1997, the Office denied appellant's request for a review of the written record on the grounds that such request was untimely filed. The Office further denied the request finding that the issue could equally well be addressed through the reconsideration process.

The Board finds that appellant has not established that he sustained an injury in the performance of duty causally related to factors of his federal employment.

An employee seeking benefits under the Act 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.² These are the essential elements of each compensation claim regardless of whether the claim is predicted 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 a causal relationship is rationalized medical opinion

² *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

³ *See Delores C. Ellyett*, 41 ECAB 992, 994 (1990).

evidence. Rationalized opinion on the issue of whether there is a causal relationship between 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

In the present case, appellant did submit a statement to the Office wherein he described the factors of employment he believed caused his carpal tunnel condition. On June 20, 1997 the Office advised appellant that he was to submit medical evidence explaining causal relationship between his claimed condition and his alleged factors of employment.

Appellant did not submit medical evidence to establish that his carpal tunnel syndrome was sustained in the performance of duty causally related to factors of his federal employment. At the time the Office issued its July 23, 1997 decision denying appellant's claim, the Office had not received any medical evidence. The Office, therefore, properly denied appellant's claim.⁵

The Board further finds that the Office properly determined that appellant's request for a review of the written record was untimely.

Section 8124(b)(1) of the Act provides that "a claimant for compensation not satisfied with a 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 his claim before a representative of the Secretary."⁶ Section 10.131 of the federal regulations implementing this section of the Act provides that a claimant shall be afforded a choice of an oral hearing or a review of the written record by a representative of the Secretary.⁷

In the present case, appellant requested a review of the written record by an Office representative in a letter dated August 25, 1997 and postmarked September 8, 1997. Section 10.131(b) of the federal regulations provides:

"A claimant is not entitled to a review of the written record if the request is not made within 30 days of the date of the issuance of the decision *as determined by the postmark of the request...*" (Emphasis added)

⁴ *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

⁵ The Board notes that appellant submitted medical evidence two days after the July 23, 1997 Office decision was issued and at no time requested reconsideration before the Office to have such evidence reviewed. The Board also notes that appellant appealed both decisions to this Board thereby giving the Board no jurisdiction to review the new evidence as the Board cannot review any new or additional evidence not before the Office at the time the Office rendered its final decision; *see* 20 C.F.R. § 501.2(c). Appellant may resubmit this evidence to the Jacksonville, Florida, district office with a formal written request for reconsideration.

⁶ 5 U.S.C. § 8124(b)(1).

⁷ 20 C.F.R. § 10.131.

As the postmark date of the request was more than 30 days after issuance of the July 23, 1997 Office decision, appellant's request for a review of the written record was untimely filed.

While the Office also has the discretionary power to grant a review request when a claimant is not entitled to a review as a matter of right, in its November 13, 1997 decision, the Office properly exercised its discretion by stating that it had considered the matter in relation to the issue involved and had denied appellant's request on the basis that appellant's claim could be addressed through a reconsideration application. The Board has held that, as the only limitation on the Office's authority is reasonableness, 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 deduction from established facts.⁸ In the present case, the evidence of record does not indicate that the Office committed any act in connection with its denial of appellant's request for a review of the written record which could be found to be an abuse of discretion.

The decisions of the Office of Workers' Compensation Programs dated November 13 and July 23, 1997 are hereby affirmed.

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

Michael J. Walsh
Chairman

George E. Rivers
Member

David S. Gerson
Member

⁸ See *Daniel J. Perea*, 42 ECAB 214, 221 (1990).