

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JOANN K. STRZESYNSKI and U.S. POSTAL SERVICE,  
POST OFFICE, Toledo, Ohio

*Docket No. 97-169; Submitted on the Record;  
Issued January 15, 1999*

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DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,  
A. PETER KANJORSKI

The issues are: (1) whether appellant has met her burden of proof in establishing that her condition or disability arose out of employment as claimed, and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for a hearing as untimely.

On March 22, 1996 appellant, then a 47-year-old letter carrier, filed an occupational disease claim for compensation (Form CA-2) alleging that on March 13, 1996 she was advised that she had herniated/ruptured discs. Appellant explained that her back pain began in October 1995. She was unable to walk up steps to deliver mail and needed to pull herself up by holding onto porch rails. Appellant advised that she worked 10-hour days, sometimes 6 days a week, working the overtime list.

By letter dated April 24, 1996, the Office requested that appellant provide complete factual and medical evidence to support the claim of an occupationally-induced disability.

In a May 24, 1996 medical report, Dr. A. David B. James, an internist, related that appellant had progressively worsening problems with low back pain and worsening leg pain for over a considerable period of time, but that she had gotten through it as best she could over the previous 6 to 12 months. Dr. James stated that he treated appellant with conservative therapies. Dr. James obtained plane x-ray films of the lumbar spine and sacrum which demonstrated a spondylolysis bilateral at the L5 vertebra with a grade-1 anterior spondylolisthesis of the L5-S1 vertebrae. Rheumatologic studies, which were obtained to look for underlying connective tissue disease, were negative. Further studies such as a magnetic resonance imaging (MRI) of the lumbosacral as well as cervical and thoracic spine demonstrated substantial intervertebral disc disease. Dr. James opined that the contributors to appellant's current back problems were likely multifactorial. He stated that the duties involved in being a mail carrier "could" have been a substantial contributor to the development of the problems with appellant's cervical, thoracic and lumbosacral spine. Dr. James further stated that appellant could no longer continue with her employment as a mail carrier.

By decision dated July 8, 1996, the Office denied appellant's claim finding that the evidence did not establish that the claimed disability was causally related to appellant's employment.

In a letter dated August 9, 1996, and postmarked the same date, appellant's attorney, Alan J. Shapiro, requested a hearing before a hearing representative. In a decision dated August 28, 1996, the Office denied appellant's request for a hearing as untimely and found that the matter could be further pursued through the reconsideration process.

The Board finds that appellant failed to meet her burden of proof in establishing that her condition or disability arose out of employment as claimed.

An employee seeking benefits under the Federal Employees' Compensation Act<sup>1</sup> has the burden of establishing the essential elements of her claim, including the fact that she 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 or specific condition for which compensation is claimed is causally related to the employment injury.<sup>2</sup>

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,<sup>3</sup> (2) a factual statement identifying the employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition,<sup>4</sup> 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.<sup>5</sup> The medical evidence required to establish causal relationship, generally, is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's 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,<sup>6</sup> must be one of reasonable medical certainty,<sup>7</sup> and must be supported by medical rationale explaining the

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>3</sup> *See Ronald K. White*, 37 ECAB 176, 178 (1985).

<sup>4</sup> *See Walter D. Morehead*, 31 ECAB 188, 194 (1979).

<sup>5</sup> *See generally Lloyd C. Wiggs*, 32 ECAB 1023, 1029 (1981); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>6</sup> *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

<sup>7</sup> *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>8</sup>

In the instant case, appellant has established that she is an employee of the United States, that her claim was timely filed. However, she has not established that the claimed condition or disability is caused by occupational factors.

Although the May 24, 1996 report of Dr. James states that appellant's duties involved in being a mail carrier "could" have been a substantial contributor to the development of appellant's conditions, he failed to provide a rationale as to how appellant's duties "could be" a contributor factor to her current condition.<sup>9</sup> Moreover, he opined that the contributors to appellant's current back problems were likely multifactorial. In light of the fact that appellant has been employed by the employing establishment for only one and one half years and there appears to be multifactorial contributors to appellant's back problems, appellant has failed to submit probative medical evidence establishing the required connection. Thus, the Office properly denied appellant's claim for compensation.

The Board further finds that the Office's Branch of Hearings and Review properly denied appellant's request for a hearing.

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."<sup>10</sup> As section 8124(b)(1) is unequivocal in setting forth the time 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.<sup>11</sup>

In the present case, the Office issued its decision on July 8, 1996. As noted above, the Act is unequivocal in setting forth the time limitation for a hearing request. Appellant's request for a hearing was postmarked August 9, 1996, and thus it is outside the 30-day statutory limitation for the decision. Since appellant did not request a hearing within 30 days, she was not entitled to a hearing under section 8124 as a matter of right.

Even when the hearing request is not timely, the Office has discretion to grant the hearing request, and must exercise that discretion.<sup>12</sup> In the present case, the Office exercised its discretion and denied the request for a hearing on the grounds that appellant could pursue the issues in question by requesting reconsideration and submitting additional medical evidence.

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<sup>8</sup> See *William E. Enright*, 31 ECAB 426, 430 (1980).

<sup>9</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>10</sup> 5 U.S.C. § 8124(b)(1).

<sup>11</sup> *Charles J. Prudencio*, 41 ECAB 499 (1990); *Ella M. Garner*, 36 ECAB 238 (1984).

<sup>12</sup> *Herbert C. Holley*, 33 ECAB 140 (1981).

Accordingly, the Board finds that the Office properly exercised its discretion in denying appellant's untimely request for a hearing.

The decisions of the Office of Workers' Compensation Programs dated August 28 and July 8, 1996 are affirmed.

Dated, Washington, D.C.  
January 15, 1999

Willie T.C. Thomas  
Alternate Member

Bradley T. Knott  
Alternate Member

A. Peter Kanjorski  
Alternate Member