U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RICHARD S. MICHALSKI and SMALL BUSINESS ADMINISTRATION, Helena, Mont.

Docket No. 97-1085; Submitted on the Record;
Issued January 14, 1999

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
A. PETER KANJORSKI

The issues are: (1) whether appellant met his burden of proof to establish that his back condition is causally related to the December 16, 1983 employment injury; and (2) whether the Office of Workers' Compensation Programs abused its discretion in denying appellant's request for a hearing.

On December 16, 1983 appellant, then a 44-year-old loan officer, sustained an employment-related thoracic strain. He did not stop work, received medical benefits only and retired on April 1, 1995. By letter dated January 21, 1996, appellant informed the Office that he wished to reopen his claim, advising that he was not seeking wage-loss compensation but merely wanted his medical treatment covered. By letters dated April 11, May 22 and June 3, 1996, the Office informed appellant of the type evidence needed to support his claim. He indicated that the problems with his back had continued since the December 1983 employment injury and that in 1991 the Office had paid for medical treatment obtained in 1990.

By decision dated June 19, 1996, the Office denied the claim, finding that the medical evidence did not establish that appellant's current condition was causally related to the December 16, 1983 employment injury. In a letter dated September 26, 1996, appellant informed the Office that he had not heard anything regarding his claim and, by letter dated October 1, 1996 the Office informed him that his claim had been denied and enclosed a copy of the June 19, 1996 decision. On October 15, 1996 appellant requested a hearing and advised that he wanted the issue date of the June 19, 1996 decision changed to October 1, 1996. By decision dated November 26, 1996, the Office denied appellant's request for a hearing, finding the request untimely. The instant appeal follows.

In support of his claim, appellant submitted additional medical evidence including an October 12, 1995 report from Dr. Brooke Hunter, a Board-certified orthopedic surgeon, who noted findings on examination and stated that appellant had a 12-year-old back injury with "numerous flares" that had been "insidiously getting worse" over the past two years without

recurrent injury or a precipitating event. In a January 10, 1996 report, Dr. Hunter advised that x-ray of the thoracic spine demonstrated significant osteophytic spurring in the mid-thoracic level. In an April 22, 1996 report, Dr. Hunter stated:

> "It appears from reading through notes that [appellant's] thoracic spine problems are a direct result of the injury which occurred, I believe, in December 1983. Current x-rays again show the compression fracture in the mid-thoracic area and early degenerative changes about this.... There appear to be no medical findings that [his] current disability is a new problem, but rather just a continuation of this long-standing one."

By report dated February 16, 1996, Dr. Allen M. Weinert, Jr., a Board-certified physiatrist, noted appellant's history of injury with periodic exacerbations. Dr. Weinert diagnosed chronic thoracic region pain secondary to left rhomboid and thoracic paraspinal pain as well as degenerative arthritis, further exacerbated by thoracic kyphosis and mild old T7 anterior wedge compression fracture. He provided no opinion regarding the cause of appellant's current condition.

The Board finds that appellant failed to establish that his current back condition is causally related to the December 16, 1983 employment injury.

Causal relationship is a medical issue,[1] and the medical evidence required to establish a causal relationship is rationalized medical evidence. Rationalized medical evidence is medical evidence which includes a physician's rationalized medical 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.[2] Medical evidence of bridging symptoms between the current condition and the accepted injury must support a physician's conclusion of a causal relationship.[3]

In this case, appellant submitted medical reports that included a history of the 1983 employment injury and statements that he had sustained exacerbations since that time. The record, however, does not contain definite bridging symptoms between 1990,[4] when he last

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

[2] *Gary L. Fowler*, 45 ECAB 365 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

[3] *See Leslie S. Pope*, 37 ECAB 798 (1986).

[4] The Board notes that, while appellant submitted records indicating that he underwent physical therapy in 1990, it is unclear whether the Office covered this expense. The Office, however, was unsuccessful in attempting to obtain appellant's closed claim file from the Federal Records Center.

received treatment, and October 1995 when he sought treatment from Dr. Hunter.[5] The absence of bridging symptoms diminishes the probative value of appellant's claim. Furthermore, while the medical record contains evidence of an old compression fracture at T7, the accepted condition in this case is thoracic sprain only.

The Board further finds that the Office did not abuse its discretion in denying appellant's request for a hearing.

Section 8124(b)(1) of the Federal Employees' Compensation Act provides that a claimant who is not satisfied with an Office decision is entitled to request a hearing within 30 days after the date of the issuance of the decision.[6] The Board has held that the Office, in its broad discretionary authority in the administration of the Act, has the power to hold hearings in certain circumstances where no legal provision was made for such hearings and that the Office must exercise this discretionary authority in deciding whether to grant a hearing.[7]

Here the Office denied appellant's claim by decision dated June 19, 1996. Approximately three months later, on September 26, 1996, appellant wrote the Office to inquire about the status of his claim. By letter dated October 1, 1996, the Office informed appellant that a decision had been issued on June 19, 1996 and enclosed a copy of the decision. While appellant claimed that he did not receive the decision, the decision contained the proper address and is presumed to have been received, absent any evidence to the contrary.[8] Appellant requested a hearing by letter dated October 15, 1996. In its decision dated November 26, 1996, the Office stated that appellant was not, as a matter of right, entitled to a hearing since his request had not been made within 30 days of its June 19, 1996 decision. The Office noted that it had considered the matter in relation to the issue involved and indicated that appellant's request was denied on the basis that the issue in this case could be addressed through a reconsideration application. As appellant's request for a hearing was made more than 30 days after the date of issuance of the Office's prior decision appellant was not entitled to a hearing as a matter of right.[9] Hence, the Office was correct in stating in its November 26, 1996 decision that appellant was not entitled to a hearing as a matter of right because his request was not made within 30 days of the Office's June 19, 1996 decision.

While the Office also has the discretionary power to grant a hearing request when a claimant is not entitled to a hearing as a matter of right, in its November 26, 1996 decision, the

[5] The record also indicates that appellant underwent physical therapy in October 1995 and January and February 1996.

[6] 5 U.S.C. § 8124(b)(1).

[7] *Henry Moreno*, 39 ECAB 475, 482 (1988).

[8] The mailbox rule presumes that where a notice is properly addressed and duly mailed, in the absence of contrary evidence, the notice was received by the party to which it was sent; *see Michele R. Littlejohn*, 42 ECAB 463 (1991).

[9] On appeal appellant provided a copy of what appears to be an envelope from the Department of Labor with postmarks dated July 24 and 25, 1996. There is nothing in the record, however, to indicate what was contained in the envelope.

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.[10] 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 hearing request which could be found to be an abuse of discretion.

The decisions of the Office of Workers' Compensation Programs dated November 26 and June 19, 1996 are hereby affirmed.

Dated, Washington, D.C.
January 14, 1999

George E. Rivers
Member

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

[10] *See Daniel J. Perea*, 42 ECAB 214, 221 (1990).