

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of CYNTHIA D. HILL and DEPARTMENT OF VETERANS AFFAIRS,  
DORN VETERANS HOSPITAL, Columbia, S.C.

*Docket No. 97-2647; Submitted on the Record;  
Issued July 8, 1999*

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DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,  
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs abused its discretion in denying appellant's request for an oral hearing.

On January 31, 1994 appellant, then a 36-year-old pharmacy technician, filed a claim for a traumatic injury, Form CA-1, alleging that on that day she bumped her hand on a counter in the course of her federal employment duties. Appellant did not stop work until Thursday, February 10, 1994 and returned to light duty on Monday, February 14, 1994.

In support of her claim, appellant submitted medical evidence from her treating physicians. In a treatment note dated February 10, 1994, Dr. Gerald Blanchard, a specialist in occupational medicine, noted that appellant had been having signs of carpal tunnel syndrome for which she had seen a neurologist and that she had recently bumped her hand against a counter. Dr. Blanchard diagnosed possible carpal tunnel syndrome and released appellant to light duty beginning the following day.

Appellant submitted several progress notes from Dr. Julian C. Adams, a Board-certified neurologist and treating physician. In a note dated March 15, 1994, Dr. Adams stated that appellant was now complaining of pain in both forearms and in both wrists, radiating into her shoulder and upper dorsal spine. He noted that this was more consistent with carpal tunnel syndrome than with anything else and ordered diagnostic testing. Dr. Adams did not mention the January 31, 1994 employment injury. In a progress note dated March 22, 1994, Dr. Adams noted that the results of the electrodiagnostic testing were normal and stated that he did not feel that appellant's symptoms indicated any serious neurological problem. He did not mention the January 31, 1994 employment injury. In a progress note dated March 30, 1994, Dr. Adams noted appellant's continuing complaints of pain despite normal diagnostic test results and stated that he did not feel further neurodiagnostic testing was warranted as he did not feel appellant was suffering from neurological disease. Dr. Adams recommended that appellant see a general physician or go to a mental health clinic if her problems persisted.

Finally, appellant submitted a June 15, 1994 report from Dr. Gal G. Margalit, a general surgeon. Dr. Margalit noted the history of the January 31, 1994 injury, which he indicated had aggravated appellant's "preexisting symptoms of right carpal tunnel syndrome, which had been present for approximately two years." He further noted that appellant's carpal tunnel had been successfully treated by Dr. Adams, but that after the employment accident, appellant had increasing pain in her right hand and sought treatment from Dr. Blanchard. Dr. Margalit performed a complete physical examination, including an examination of the spine and reviewed x-rays of appellant's hands and wrists. Dr. Margalit concluded that appellant was "[s]tatus post on-the-job injury to the right hand in January 1994 with contusion to the fourth MCP joint and possible aggravation of right carpal tunnel syndrome, which was present for approximately two years prior to the injury of January 1994 and is probably work related which has not responded well recently to conservative treatment."

The employing establishment controverted appellant's claim, stating that following the January 31, 1994 injury, appellant continued to work without complaint until February 10, 1994, when she complained of hand pain to her supervisor. The employing establishment stated that when questioned about the cause of her pain, appellant indicated that it was related to an injury she had sustained in January 1992 and was not due to a more recent traumatic injury. The employing establishment further maintained that it was not until she returned to light duty on February 14, 1994, that appellant indicated that she had pain in her arms and upper back, which she felt was due to the January 31, 1994 injury.

In a letter dated November 3, 1994, the Office requested that appellant submit additional factual and medical evidence in support of her claim, to include a narrative statement and a rationalized medical report from her treating physician.

By decision dated February 10, 1995, the Office denied appellant's claims for compensation benefits on the grounds that the evidence of record failed to establish that she had sustained an employment-related injury on January 31, 1994. The Office noted that the record contained conflicting evidence regarding whether the incident occurred at the time, place and in the manner alleged and that appellant had not responded to the Office's request for clarifying supportive evidence.

By letter dated March 27, 1995, appellant, through counsel, requested reconsideration of the Office's February 10, 1994 decision. In support of the request, appellant submitted additional progress notes from Dr. Margalit, documenting his treatment of her hand and wrist pain. Dr. Margalit's notes do not, however, discuss the etiology of appellant's pain.

By letter dated January 9, 1997 and received by the Office on January 23, 1997, appellant, through counsel, noted that she had received no response from the Office regarding the March 27, 1995 request for reconsideration and, therefore, requested that the case be set for an oral hearing before an Office representative.

In a decision dated February 4, 1997, the Office modified its prior decision to find that appellant sustained a contusion to her right hand on January 31, 1994. The Office further found, however, that the medical evidence of record failed to establish that appellant's carpal tunnel syndrome or other medical conditions were caused or aggravated by the accepted injury, as

alleged. The Office concluded that as appellant's physician had returned her to light duty on February 11, 1994 and as light duty was made available to appellant, no disability resulted from the January 31, 1994 accepted employment injury.

By letter dated May 12, 1997, appellant's counsel inquired as to the status of his prior request for an oral hearing.

In a decision dated July 14, 1997, Office denied appellant's request for a hearing under section 8124 of the Federal Employees' Compensation Act, on the grounds that appellant was not entitled to a hearing as a matter of right as she had previously made a request for reconsideration. The Office further stated that the issue of whether appellant's carpal tunnel syndrome and related back and shoulder conditions are causally related to her January 31, 1994 employment injury could be addressed through a reconsideration request.

On August 11, 1997 appellant, through counsel, filed an appeal to the Board of the Office's July 14, 1997 decision.<sup>1</sup>

The Board finds that the Office did not abuse its discretion in denying appellant's request for an oral hearing under 5 U.S.C. § 8124.

By decision dated July 14, 1997, the Office denied appellant's hearing request. The Office stated that appellant was not entitled to a hearing as a matter of right because she had previously requested reconsideration. The Office exercised its discretion to conduct a limited review of the case and indicated that appellant's request was also denied on the basis that the issue of causal relationship could be addressed through a reconsideration application.

Section 8124(b)(1) of the Act, concerning a claimant's entitlement to a hearing before an Office representative, provides in pertinent part: "Before review under section 8128(a) of this title, 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>2</sup>

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.<sup>3</sup> Specifically, the Board has held that the Office has the discretion to grant or deny a hearing request on a claim involving an injury sustained prior to the enactment of the 1966 amendments to the Act, which provided the right to

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<sup>1</sup> The body of the letter to the Board from appellant's attorney, Mr. Joseph L. Smalls, Jr., reads, in its entirety: "This will serve as [appellant's] Appeal of the denial of an administrative hearing for the above-referenced matter. Notice of denial was dated July, 14, 1997." Mr. Small does not indicated that appellant wishes to appeal the Office's February 4, 1997 decision to the Board.

<sup>2</sup> *John T. Horrigan*, 47 ECAB 166 (1995).

<sup>3</sup> *Philip G. Feland*, 47 ECAB 418 (1996).

a hearing,<sup>4</sup> when the request is made after the 30-day period for requesting a hearing,<sup>5</sup> and when the request is for a second hearing on the same issue.<sup>6</sup> The Office's procedures, which require the Office to exercise its discretion to grant or deny a hearing when the request is untimely or made after reconsideration, are a proper interpretation of the Act and Board precedent.<sup>7</sup>

In the present case, appellant's January 17, 1994 hearing request was made after she had requested reconsideration in connection with her claim and, thus, appellant was not entitled to a hearing as a matter of right. On March 27, 1995 appellant had requested reconsideration of the Office's February 10, 1995 decision. Hence the Office was correct in stating in its July 14, 1997 decision that appellant was not entitled to a hearing as a matter of right because she made her hearing request after she had requested reconsideration.

While the Office also has the discretionary power to grant a hearing when a claimant is not entitled to a hearing as a matter of right, the Office, in its July 14, 1997 decision, properly exercised its discretion by stating that it had considered the matter in relation to the issue involved and had denied appellant's hearing request on the basis that the issue in the case was medical and could be resolved by submitting additional medical evidence to establish that her injury was causally related to factors of employment. 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.<sup>8</sup> 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.

For these reasons, the Office properly denied appellant's request for a hearing under 5 U.S.C. § 8124.

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<sup>4</sup> *Frederick D. Richardson*, 45 ECAB 454 (1994).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Stephen C. Belcher*, 42 ECAB 696, 701-02 (1991).

<sup>8</sup> *Frederick D. Richardson*, *supra* note 4; *Daniel J. Perea*, 42 ECAB 214, 221 (1990).

The decisions of the Office of Workers' Compensation Programs dated and finalized July 14 and April 5, 1997 are affirmed.

Dated, Washington, D.C.  
July 8, 1999

George E. Rivers  
Member

Willie T.C. Thomas  
Alternate Member

Bradley T. Knott  
Alternate Member