U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WALTER WATKINS and U.S. POSTAL SERVICE,
DE SOTO STATION, Memphis, TN

Docket No. 98-815; Submitted on the Record;
Issued October 6, 1999

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
MICHAEL E. GROOM

The issues are: (1) whether appellant met his burden of proof to establish that he sustained a groin injury in the performance of duty on April 22, 1997; and (2) whether appellant is entitled to a hearing before an Office of Workers' Compensation Programs' hearing representative under 5 U.S.C. § 8124(b)(1).

On May 2, 1997 appellant, a 42-year-old letter carrier, filed a claim for benefits based on traumatic injury. Appellant alleged that he sustained torn muscle tissue in his groin in April 1997, which he believed had been caused by lifting heavy objects, such as trays, while in the performance of his employment duties.

In support of his claim, appellant submitted: a treatment note dated May 2, 1997 from Dr. J.T. Bridges, a specialist in occupational medicine and appellant's treating physician, who released appellant to return to work on May 6, 1997 with limitations on heavy lifting for two to three weeks a Form CA-17 dated May 13, 1997, which indicated that Dr. Bridges had placed restrictions on some of appellant's work activities, including heavy lifting and a May 2, 1997 ultrasound examination report, which indicated that appellant had sustained a muscle tear in his right upper extremity. In an employing establishment routing slip dated May 18, 1997, appellant stated that, to the best of his knowledge, his injury occurred on April 22, 1997.

The record also contains a statement from one of appellant's supervisors who asserted that appellant approached him at the supervisor's desk on May 2, 1997 and informed him that he was experiencing pain in his groin, although he never indicated that he had been injured on the job. In a letter dated May 16, 1997, Dr. Lloyd E. Robinson, a Board-certified family practitioner, stated that appellant had not indicated a specific date of injury and that he had approached his supervisor on May 2, 1997 and informed him that he had injured himself while working on his house. Based on this information, Dr. Robinson concluded that appellant's condition likely did not occur at his place of employment. Finally, the employing establishment

submitted a letter dated May 22, 1997 alleging that appellant had stated, in the presence of his union steward, that he did not know when he was injured.

In a letter to appellant dated June 11, 1997, the Office requested that he submit additional information in support of his claim. Appellant did not respond to this request within 30 days.

By decision dated July 17, 1997, the Office found that appellant failed to submit sufficient evidence to support his claim that he sustained an injury in the performance of duty on April 22, 1997.

By facsimile dated October 22, 1997, appellant's union steward requested a hearing before an Office hearing representative. The request was submitted with a copy of a letter from appellant's union steward to the district office, dated August 6, 1997, which accompanied the facsimile. Appellant submitted additional medical evidence in support of his request.

By decision dated November 25, 1997, the Office denied appellant's request for a hearing because it was not made within 30 days and he was not as a matter of right entitled to a hearing. The Office stated that appellant's request was further denied on the grounds that the issue in the case could be equally well addressed by requesting reconsideration from the district office and submitting evidence not previously considered which could establish that an injury was sustained as alleged.

The Board finds that appellant has not met his burden of proof to establish that he sustained a groin injury in the performance of duty on April 22, 1997.

An employee seeking benefits under the Federal Employees' Compensation Act[1] has the burden of establishing that 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 and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[3]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "fact of injury" has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.[4] Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to

[1] 5 U.S.C. § 8101 *et seq.*

[2] *Joe Cameron*, 42 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[3] *Victor J. Woodhams*, 41 ECAB 345 (1989).

[4] *John J. Carlone*, 41 ECAB 354 (1989).

establish that the employment incident caused a personal injury.[5] The medical evidence required to establish causal relationship is usually rationalized medical 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, 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.[6]

In the instant case, there is no dispute that appellant was an "employee" within the meaning of the Act, or that appellant timely filed his claim for compensation. Nevertheless, appellant failed to submit any evidence establishing he actually experienced the employment incident at the time, place and in the manner alleged. Nor did he submit a rationalized, probative medical opinion from a physician to establish that the employment incident caused a personal injury. The Office advised appellant of the deficiency in the evidence, both factual and medical, but appellant failed to respond to the Office's request for additional information. Appellant, therefore, failed to meet his burden of proof.

An award of compensation may not be based on surmise, conjecture, or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that his condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship. Causal relationship must be established by rationalized medical opinion evidence. Appellant failed to submit such evidence and the Office therefore properly denied appellant's claim for compensation.

As there is no factual or medical evidence addressing and explaining why his claimed injury was caused by the alleged April 22, 1997 employment incident, appellant has not met his burden of proof in establishing that he sustained an injury in the performance of duty. Thus, the Office's decision is affirmed.

The Board finds that the Office did not abuse its discretion in denying appellant's October 22, 1997 request for a hearing before an Office hearing representative, pursuant to 5 U.S.C. § 8124.

Section 8124(b)(1) of the Act,[7] concerning a claimant's entitlement to a hearing before an Office hearing representative, states: "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 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." The Board has held that section 8124(b)(1) is "unequivocal" in setting forth the time limitation for requesting

[5] *Id.* For a definition of the term "injury," see 20 C.F.R. § 10.5(a)(14).

[6] *Id.*

[7] 5 U.S.C. § 8124(b)(1).

hearings. A claimant is entitled to a hearing as a matter of right only if the request is filed within the requisite 30 days.[8]

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 of such hearings and that the Office must exercise this discretionary authority in deciding whether to grant a hearing.[9] 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 for a hearing,[10] when the request is made after the 30-day period for requesting a hearing,[11] and when the request is for a second hearing on the same issue.[12] In these instances the Office will determine whether a discretionary hearing should be granted and, if not, will so advise the claimant with reasons.[13] 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.[14]

In the present case, the Office on July 17, 1997 issued its decision denying compensation on the grounds that appellant did not sustain an injury in the performance of duty. On October 22, 1997 appellant requested a hearing before an Office hearing representative. By decision dated November 25, 1997, the Office denied appellant's request for a hearing because it was not made within 30 days. The Office exercised its discretion in considering appellant's request, noting that it had considered the matter and determined that the issue in the case could be resolved through the reconsideration process by submitting evidence not previously considered which could establish that an injury was sustained as alleged.

An abuse of discretion can be shown only through proof of manifest error, a manifestly unreasonable exercise of judgment, prejudice, partiality, intentional wrong or action against logic.[15] There is no evidence in the case record to establish that the Office abused its discretion in refusing to grant appellant's hearing request. Appellant's representative contended in his appeal to the Board that a request for an oral hearing was mistakenly submitted to the district office and that he submitted another letter, dated August 13, 1997, to the Branch of Hearings and Review which the Office apparently never received. Appellant's representative therefore asserts

[8] *Tammy J. Kenow*, 44 ECAB 619 (1993); *Ella M. Garner*, 36 ECAB 238 (1984).

[9] *Johnny S. Henderson*, 34 ECAB 216 (1982).

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

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

[12] *Johnny S. Henderson, supra* note 9.

[13] *Id.; Rudolph Bermann, supra* note 10.

[14] *Herbert C. Holley, supra* note 11.

[15] *See Sherwood Brown*, 32 ECAB 1847 (1981).

that appellant should be granted a hearing on the merits of his claim, given that both of these letters were mailed within 30 days of the Office's July 17, 1997 decision.

The Board finds that the Office properly denied appellant's request for a hearing on the grounds of untimeliness. A request for a hearing is timely only if it was mailed, as determined by the postmark, within 30 days of issuance of the district office's decision. If a claimant sends the request to the district office instead of the Branch of Hearings and Review and the envelope was not retained, then the request was timely filed only if it was date stamped by the district office within 30 days of issuance of the decision.[16] Further, the Branch of Hearings and Review may deny requests date stamped after the decision was issued on the basis that the date stamp showed untimely receipt and the claimant's failure to send the request to the Branch of Hearings and Review, as specified in the appeal rights accompanying the decision, made it impossible to determine timeliness from the postmark.[17] In the instant case, the record does not contain the envelope in which appellant allegedly sent his August 6, 1997 request and the date stamp on the facsimile indicates that it was received on October 22, 1997. Thus, the earliest indication in the record as to when the Office initially received appellant's request for a hearing was provided by the October 22, 1997 facsimile, which was the only evidence of a hearing request before the Office at the time it made its determination denying appellant's hearing request.[18] Thus, the Office exercised its discretionary powers in denying appellant's request for a hearing and in so doing did not act improperly.[19] The Board therefore affirms the Office's determination.

[16] Federal [FECA] Procedure Manual, Part 2, *Claims, Hearings and Reviews of the Written Record*, Chapter 2.1601.4(a) (October 1992).

[17] Federal [FECA] Procedure Manual, Part 2, *Claims, Hearing and Review of the Written Record*, Chapter 2.1601.4 (June 1997).

[18] The record also contains another copy of the letter dated August 6, 1997 from appellant's union steward. This copy has a facsimile date stamp of September 30, 1997 and appears to have a date stamp indicating receipt by the Office on August 20, 1997. This copy is immaterial to the instant case, however, as there is no indication in the record that the Branch of Hearings and Review possessed this evidence prior to its November 25, 1997 denial of appellant's hearing request. More importantly, as both of these date stamps indicate dates occurring more than 30 days after the Office's July 17, 1997 decision, neither of them would be sufficient to establish that appellant filed a timely request for hearing even had they been authenticated.

[19] *Stephen C. Belcher*, 42 ECAB 696 (1991); *Ella M. Garner*, 36 ECAB 238 (1984).

The decisions of the Office of Workers' Compensation Programs dated November 25 and July 17, 1997 are hereby affirmed.

Dated, Washington, D.C.
October 6, 1999

Michael J. Walsh
Chairman

David S. Gerson
Member

Michael E. Groom
Alternate Member