

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GALE FORD and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Los Angeles, CA

*Docket No. 97-1930; Submitted on the Record;
Issued September 28, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issues are: (1) whether appellant has met her burden of proof in establishing that she was totally disabled from May 22 through August 9, 1996, due to her accepted December 11, 1995 left wrist strain; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for a hearing under section 8124 of the Federal Employees' Compensation Act.

On December 12, 1995 appellant, then a 27-year-old laundry worker filed a claim for a traumatic injury, alleging that on December 11, 1995 she sustained an injury to her left hand when "I was pushing a rack and as I was turning around I back[ed] up against the wall with the rack and my hand (left) bent backwards." On the reverse side of the form, the employing establishment indicated that appellant lost no time from work and incurred no medical expenses. Also, appellant's supervisor stated that appellant was working with him at the time of the alleged incident and "I am controvert[ing] continuation of pay, because I cannot see how [appellant] had an accident right where I [was] working ... and I did n[o]t know anything about it."

Accompanying the claim form were a December 12, 1995 report, of contact on which appellant's supervisor gave a statement about the alleged incident on December 11, 1995; temporary limited-duty statements from the employing establishment health office indicating that appellant was treated commencing December 12, 1995 and placed on restricted duty from excessive pulling and pushing with her left hand due to a sprain of the left wrist and tenosynovitis de Quervains; December 12 and 26, 1995 and February 22, 1996, limited-duty offers which complied with her medical restrictions and which appellant accepted; appellant's March 8, 1996 letter requesting a change of physicians; employing establishment certificate indicating appellant was returned to full duty on January 22 and March 15, 1996. Also received with the original claim was a notice of recurrence of disability and claim for continuation of

pay/compensation, Form CA2-a, dated March 11, 1996;¹ and a March 20, 1996 medical report by Dr. Edward A. Ridgill, who specializes in internal medicine/rheumatology.

By letter dated April 16, 1996, the Office requested additional factual information from appellant. The Office also informed appellant that a change in treating physicians was not approved at that time. By letter dated April 17, 1996, the Office instructed the employing establishment to continue appellant's pay without interruption.

By letter received May 1, 1996, appellant again requested a change of treating physicians.

On May 6, 1996 an April 18, 1996 employing establishment report of the employee's emergency treatment was submitted indicating that appellant was issued a new left wrist brace, returned to limited duty and was to be reevaluated in one month; employing establishment health unit records covering the period March 28 through April 18, 1996; and an April 17, 1996 report by Dr. Ridgill.

The Office accepted appellant's claim for a left wrist strain.

By letter dated May 29, 1996, the Office denied appellant's request to change treating physicians to Dr. Ridgill as his specialty was rheumatology and advised her to continue looking for an orthopedist to provide ongoing care.

On June 4, 1996 the record was supplemented to include appellant's response to the Office's April 16, 1996 request, for additional information and a statement from a coworker who stated that on December 11, 1995 appellant had told her that she had hurt her hand.

On August 9, 1996 appellant filed a Form CA-7, claiming compensation from May 22 through August 9, 1996. She also submitted a report completed by Dr. Ridgill, an August 9, 1996 supplemental attending physician's report by Dr. Ridgill and an undated letter from appellant.

By letter dated August 19, 1996, the Office advised appellant that the claim was not payable at that time. The Office explained that appellant's medical documentation came from an unauthorized physician and that she still needed to find a suitable orthopedist and submit medical evidence showing total disability for the period claimed. Also, that the Form CA-7 had not been forwarded to the employing establishment to complete the reverse side. Appellant was given 30 days to resubmit the information.

By letter dated October 2, 1996, the Office responded to appellant's inquiry of her case. The Office explained that the case had been accepted for a minor injury and that she was not authorized to change physicians to Dr. Ridgill. The Office also explained that medical evidence of record indicated that she may have tenosynovitis and/or carpal tunnel syndrome. However, the conditions were not accepted in this case and that if she believed that she had the

¹ The Office did not adjudicate appellant's claim for a recurrence of disability commencing February 22, 1996. Therefore, the claim is not before the Board on appeal.

aforementioned conditions she would need to file a claim for an occupational disease, Form CA 2. In addition, the Office advised appellant that since no medical evidence was submitted by the recognized treating physician at the VA medical clinic, the case was closed administratively. Furthermore, the Office advised appellant to file a Form CA-2a if she believed she had continuing residuals from her accepted condition.

By decision dated January 29, 1997, the Office denied appellant's claim of total disability from May 22 through August 9, 1996.

By undated letter received by the Office on April 1, 1997, appellant requested an oral hearing before an Office hearing representative.

By decision dated April 18, 1997, the Office's Branch of Hearings and Review denied appellant's request on the grounds that it was not filed within 30 days of the Office's last merit decision issued on January 29, 1997. The Office stated that it had considered the matter in relation to the issue involved and further denied appellant's hearing request on the basis that the case could be resolved by submitting additional evidence on reconsideration to establish that her medical condition is causally related to the accepted employment-related injury from May 22 through August 9, 1996.

The Board finds that appellant has failed to meet her burden of proof in establishing that she was temporarily totally disabled from May 22 through August 9, 1996.

In this case, the record supports that commencing December 12, 1995 appellant was treated at the employing establishment health office by a physician's assistant who diagnosed acute left wrist strain and subsequently tenosynovitis de Quervains.² Appellant had intermittent periods of limited duty through May 21, 1996³ On August 9, 1996 appellant filed a claim for compensation on account of traumatic injury (Form Ca-7) alleging that she was temporarily totally disabled from May 22 through August 9, 1996.

The medical evidence in support of her claim for temporary total disability from May 22 through August 9, 1996, consists of an August 9, 1996 attending physician's report, (Form CA-20) by Dr. Ridgill, who specializes in internal medicine/rheumatology. Dr. Ridgill gave a history of the December 11, 1995 incident, diagnosed acute left wrist strain and tenosynovitis de Quervains and carpal tunnel syndrome of the left wrist. He checked "yes" to the question on causal relationship; an August 9, 1996 attending physician's supplemental report, (Form CA-20a) by Dr. Ridgill, on which he stated the same diagnosis and checked "yes" on the question concerning causal relationship as he did on the Form CA-20.⁴ As well, he failed to provide a rationalized medical opinion explaining how appellant was disabled as of May 22,

² A physician's assistant does not meet the definition of a physician under the Act. 5 U.S.C. § 8101(2); *see Shelia Arbour (Victor E. Arbour)*, 43 ECAB 779 (1992).

³ Appellant was discharged from her job during her probationary period effective May 21, 1996 due to excessive absenteeism.

⁴ *See Lester Covington*, 47 ECAB 539 (1996).

1996 due to her accepted December 11, 1995 left wrist strain. His reports are insufficient to establish appellant's claim for temporary total disability from May 22 through August 9, 1996. Therefore, the Board finds that the evidence of record is insufficient to meet appellant's burden of proof.

The Board further finds that the Office properly denied appellant's request for a hearing under section 8124 of the Act.

Section 8124(b)(1) of the Act, concerning a claimant's entitlement to a hearing before an Office hearing 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."⁵ 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.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 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 a hearing,⁸ when the request is made after the 30-day period for requesting a hearing⁹ and when the request is for a second hearing on the same issue.¹⁰

In the present case, appellant's hearing request was made more than 30 days after the date of issuance of the Office's prior decision dated January 29, 1997 and thus, appellant was not entitled to a hearing as a matter of right. Appellant requested a hearing in a letter postmarked March 29, 1997. Therefore, the Office was correct in finding in its April 18, 1997 decision that appellant was not entitled to a hearing as a matter of right because her hearing request was not made within 30 days of the Office's January 29, 1997 decision.

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 April 18, 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 case could be resolved

⁵ 5 U.S.C. § 8124(b)(1).

⁶ *Ella M. Garner*, 36 ECAB 238, 241-42 (1984).

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

⁸ *Rudolph Bermann*, 26 ECAB 354, 360 (1975).

⁹ *Herbert C. Holley*, 33 ECAB 140, 142 (1981).

¹⁰ *Johnny S. Henderson*, 34 ECAB 216, 219 (1982).

by submitting additional evidence to establish that her disability for work for the period May 22 through August 9, 1996, was causally related to her accepted December 11, 1995 left wrist strain. 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.¹¹ 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 section 8124 of the Act.

The decisions of the Office of Workers' Compensation Programs dated April 18 and January 29, 1997 are affirmed.

Dated, Washington, D.C.
September 28, 1999

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

¹¹ *Daniel J. Perea*, 42 ECAB 214, 221 (1990).