

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of FRANK J. MOULTRIE and U.S. POSTAL SERVICE,
POST OFFICE, Laurel, MD

*Docket No. 98-610; Submitted on the Record;
Issued September 9, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issues are: (1) whether appellant has met his burden of proof to establish that he sustained an injury while in the performance of duty on May 10, 1996; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for an oral hearing as untimely.

The Board has duly reviewed the case record in this appeal and finds that appellant has failed to meet his burden of proof to establish that he sustained an injury while in the performance of duty on May 10, 1996.

On October 16, 1996 appellant, then a 45-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on May 10, 1996 he injured his back while in the performance of his duties. He stated on his claim form that his back pain was caused by carrying a mailbag and added that his pain was very subtle at the start and later became more severe. Appellant stopped work on August 30, 1996 and returned to work on November 11, 1996. His claim was accompanied by medical evidence.

By letter dated March 24, 1997, the Office advised appellant that additional factual evidence was needed before the Office could make a determination in his claim. In addition to other information requested, the Office specifically asked appellant to describe how the injury occurred and to explain why, when he stated on his claim form that the injury occurred May 10, 1996, he delayed seeking medical attention until approximately the end of September 1996. The Office allowed appellant 30 days to submit the requested information.

By decision dated April 30, 1997, the Office found the evidence of record insufficient to establish a causal relationship between appellant's diagnosed lumbar disc herniation and factors of his federal employment. The Office specifically noted that as appellant had not responded to the March 24, 1997 request for additional information, many questions regarding appellant's claim remained unanswered.

Subsequent to the Office's April 30, 1997 decision, by letter postmarked June 5, 1997 and addressed to the Branch of Hearings and Review, Office of Workers' Compensation Programs, appellant stated that he would like to "request an oral hearing. He further stated that he had never received the Office's March 24, 1997 request for additional factual information.

In a decision dated July 17, 1997, the Office denied appellant's request, however, on the grounds that it was not timely filed within 30 days of its prior decision.

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing 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 limitations 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

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.⁴ In this case, the Office accepted that the incident, the carrying of a mailbag, did occur.

The second component is whether the employment incident caused a personal injury and that generally can be established only by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background, supporting such a causal relationship.⁵ In the instant case, appellant has submitted no rationalized medical evidence establishing that he sustained a medical condition causally related to the May 10, 1996 employment incident.

In support of his claim, appellant submitted a disability slip dated September 21, 1996 from Dr. Charles J. Lancelotta, Jr., a Board-certified neurological surgeon. The slip indicated that appellant came under Dr. Lancelotta's care on September 21, 1996 and that he would be totally disabled for work for four weeks. In further support of his claim, appellant submitted an October 29, 1996 duty status report from his treating physician, Dr. Lawrence Swink, a Board-certified family practitioner. In this report, he noted that appellant had a history of

¹ 5 U.S.C. §§ 8101-8193.

² *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ *Daniel J. Overfield*, 42 ECAB 718 (1991).

⁴ *Elaine Pendleton*, *supra* note 2.

⁵ 20 C.F.R. § 10.110(a); *see John M. Tornello*, 35 ECAB 234 (1983).

carrying a heavy mail satchel and diagnosed a lumbar disc herniation. Dr. Swink noted that appellant had undergone a discectomy and could return to work on November 5, 1996, but would remain partially disabled, within certain physical restrictions, until November 19, 1996. Appellant did not submit any medical evidence contemporaneous with the stated date of injury, May 10, 1996 and neither Dr. Lancelotta nor Dr. Swink, indicated the date of appellant's injury or provided any medical rationale explaining how or why appellant's diagnosed lumbar disc herniation was caused by his employment.

Inasmuch as appellant has failed to submit medical evidence establishing that he sustained an injury while in the performance of duty on May 10, 1996, the Board finds that he has failed to meet his burden of proof.

The Board further finds that the Office properly denied appellant's request for an oral hearing as untimely.

Appellant requested an oral hearing by letter postmarked June 5, 1997.

Section 8124(b) of the Act,⁶ concerning a claimant's entitlement to a hearing before an Office representative, states: "Before review under section 8128(a) of this title, a claimant ... not satisfied with a decision of the Secretary ... is entitled, on request made within 30 days after the date of issuance of the decision, to a hearing on his claim before a representative of the Secretary."⁷

The Board has held that section 8124(b)(1) is "unequivocal" in setting forth the time limitation for requesting 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 Even where the hearing request is not timely filed, the Office may within its discretion, grant a hearing and must exercise this discretion.⁹

In the instant case, the Office properly determined that appellant's June 5, 1997 request for a hearing was not timely filed as it was made more than 30 days after the issuance of the Office's April 30, 1997 decision. The Office therefore, properly found that appellant was not entitled to a hearing as a matter of right in regard to his claim for traumatic injury.

The Office then proceeded to exercise its discretion, in accordance with Board precedent, to determine whether to grant a hearing in this case. The Office determined that a hearing was not necessary as the issue in the case was medical and could be resolved through the submission of medical evidence in the reconsideration process. Therefore, the Office properly denied

⁶ 5 U.S.C. §§ 8101-8193.

⁷ 5 U.S.C. § 8124(b)(1).

⁸ *Tammy J. Kenow*, 44 ECAB 619 (1993).

⁹ *Id.*

appellant's request for a hearing as untimely and properly exercised its discretion in determining to deny appellant's request for a hearing as he had other review options available.¹⁰

The decisions of the Office of Workers' Compensation Programs dated July 17 and April 30, 1997 are hereby affirmed.

Dated, Washington, D.C.
September 9, 1999

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

¹⁰ The Board notes that by letter received by the Office on August 4, 1997, appellant requested reconsideration of the Office's decision and submitted additional medical evidence in support of his request. On October 2, 1997 however, prior to the issuance of a decision by the Office on appellant's request for reconsideration, the Board received appellant's request for an appeal, together with a copy of the medical report submitted to the Office on reconsideration. As the Office did not consider this evidence in reaching a final decision, the Board may not review it for the first time on appeal. 20 C.F.R. § 501.2(c).