

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PAULA J. DENT and U.S. POSTAL SERVICE,
TOMBALL POST OFFICE, Tomball, TX

*Docket No. 98-2298; Submitted on the Record;
Issued December 5, 2000*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issues are: (1) whether appellant has met her burden of proof in establishing that her bilateral arm condition was causally related to factors of her employment; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for a hearing before an Office hearing representative.

On April 30, 1997 appellant, then a 43-year-old rural letter carrier, filed a claim for cervical disc disease and carpal tunnel syndrome. She noted that she used her left hand almost exclusively, even for driving. She indicated that her condition had become progressively worse. In response to questions from the Office, appellant stated that she used her own car in her job and lifted heavy objects over her seat. She noted that she had been lifting heavy circulars for a long time. She commented that when casing mail, she held the mail in her left hand.

In an August 26, 1997 decision, the Office rejected appellant's claim on the grounds that she had not established a causal relationship between her medical condition and the factors of her employment.

In a letter postmarked May 14, 1998, appellant requested a hearing before an Office hearing representative. In a June 17, 1998 decision, the Office found that appellant was not entitled to a hearing as a matter of right because her request for a hearing was not submitted within 30 days of the August 26, 1997 decision. The Office reviewed appellant's request in its discretion and denied appellant's request on the grounds that the issue in the case could be equally well addressed by submitting evidence not previously considered and requesting reconsideration.¹

¹ Oral argument before the Board was scheduled in this matter, as requested by appellant, on November 15, 2000. Appellant did not appear and the appeal proceeds to a decision on the record. See 20 C.F.R. §§ 501.5(c) and 501.6.

The Board finds that appellant has not met her burden of proof in establishing that her bilateral arm condition is causally related to her employment.

A person who claims benefits under the Federal Employees' Compensation Act² has the burden of establishing the essential elements of her claim. Appellant has the burden of establishing by reliable, probative and substantial evidence that her medical condition was causally related to a specific employment incident or to specific conditions of employment.³ As part of such burden of proof, rationalized medical opinion evidence showing causal relation must be submitted.⁴ The mere fact that a condition manifests itself or worsens during a period of employment does not raise an inference of causal relationship between the condition and the employment.⁵ Such a relationship must be shown by rationalized medical evidence of causal relation based upon a specific and accurate history of employment incidents or conditions which are alleged to have caused or exacerbated a disability.⁶

Appellant submitted a March 14, 1997 report from Dr. Phylliss N. Chappell, a Board-certified radiologist, who stated that a magnetic resonance imaging (MRI) scan showed spondylosis and degenerative disc desiccation on several levels of the cervical spine. She, however, made no comment on the cause of the cervical condition.

In a March 7, 1997 report, Dr. Sherif Ramzy indicated that an electromyogram (EMG) showed mild bilateral carpal tunnel syndrome, more on the right, and evidence of a C5-6 nerve root irritation lesion. In a March 17, 1997 report, he stated that neurological examination continued to show paracervical muscle spasm, more on the left. Dr. Ramzy noted the results of the MRI scan which showed multiple levels of disc bulges with early, multiple, osteophyte formations. In a June 25, 1997 report, Dr. Ramzy reviewed his treatment of appellant and stated that a current examination indicated that she was apparently suffering from a recurrence of her symptoms. He stated appellant complained of neck pain with radiation to the left arm and continued to have muscle spasms of the paracervical region. Dr. Ramzy noted that he had advised appellant to avoid repetitive wrist movements and repeated neck and bending and twisting. He limited appellant to lifting 12 pounds. Dr. Ramzy did not state in any of these reports that appellant's neck condition or bilateral carpal tunnel syndrome was caused by appellant's work duties. Furthermore, he did not explain how appellant's work duties would have caused or aggravated the diagnosed conditions. Dr. Ramzy's reports, therefore, have limited probative value. Appellant has not met her burden of proof in establishing a causal relationship between her work duties and her diagnosed medical condition.

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

² 5 U.S.C. §§ 8101-8193.

³ *Margaret A. Donnelly*, 15 ECAB 40, 43 (1963).

⁴ *Daniel R. Hickman*, 34 ECAB 1220, 1223 (1983).

⁵ *Juanita C. Rogers*, 34 ECAB 544, 546 (1983).

⁶ *Edgar L. Colley*, 34 ECAB 1691, 1696 (1983).

Section 8124(b)(1) of the Federal Employees' Compensation Act⁷ dealing with a claimant's entitlement to a hearing before an Office hearing representative states, "[b]efore 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 [her] claim before a representative of the Secretary." The Board has noted that section 8124(b)(1) "is unequivocal in setting forth the limitation in requests for hearings."⁸ The Office's decision in appellant's case was August 26, 1997. As she did not request a hearing until her May 14, 1998 letter, her request for a hearing was untimely.

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 the Office must exercise this discretionary authority in deciding whether to grant a hearing. 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; when the request is made after the 30-day period established for requesting a hearing; or when the request is for a second hearing on the same issue. The Office's procedures, which require the Office to exercise its discretion to grant or deny a hearing when a hearing request is untimely or made after reconsideration under section 8128(a), are a proper interpretation of the Act and Board precedent. In this case, the Office exercised its discretion and determined that appellant could obtain a review of her claim by submitting evidence not previously submitted and requesting reconsideration. 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 deductions from known facts.⁹ There is no evidence that the Office abused its discretion in denying appellant's request for a hearing.

⁷ 5 U.S.C. § 8124(b)(1).

⁸ *Ella M. Garner*, 36 ECAB 238 (1984); *Charles E. Varrick*, 33 ECAB 1746 (1982).

⁹ *Daniel J. Perea*, 42 ECAB 214 (1990).

The decisions of the Office of Workers' Compensation Programs, dated June 17, 1998 and August 26, 1997, are hereby affirmed.

Dated, Washington, DC
December 5, 2000

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member