

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of THOMAS A. HAMRICK and U.S. POSTAL SERVICE,
POST OFFICE, Sun City, AZ

*Docket No. 98-2416; Submitted on the Record;
Issued February 18, 2000*

DECISION and ORDER

Before GEORGE E. RIVERS, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issues are: (1) whether appellant has established that he sustained an injury in the performance of duty on or about October 4, 1997; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's hearing request.

On October 21, 1997 appellant, then a 35-year-old letter carrier, filed a claim for occupational disease alleging that on October 4, 1997 "a substance fell out of the inspector walkway," causing him to get headaches, cough and sneeze. He noted that on October 17, 1997 he "started experiencing severe headaches that would not go away." Appellant claimed a respiratory or sinus infection. On October 23, 1997 appellant filed a claim for traumatic injury alleging that "earlier in the month an insulation type substance fell on the case that caused me to sneeze and have headaches."

In a medical report dated October 23, 1997, Dr. Ted Stuart, appellant's treating physician and Board-certified in family practice, stated that appellant had "headaches and syncope" as a result of "insulation type material" haven fallen on his work area. Dr. Stuart checked a box indicating that appellant's condition was caused by his employment.

On November 5, 1997 the employing establishment stated that on October 29, 1997 an independent contractor analyzed the inspection hallway area and determined that the work area revealed no asbestos-containing building materials.

By letter dated December 4, 1997, the Office advised appellant that he needed to submit additional information regarding his claim for compensation, including a detailed narrative medical report from a doctor explaining how the doctor believed that a causal relationship existed between appellant's condition and his employment.

By decision dated January 13, 1998, the Office denied appellant's claims on the grounds that he failed to prove that a specific event occurred in the manner alleged or that a medical condition existed for which compensation was claimed.

In a letter received by the Office on May 13, 1998, appellant requested an oral hearing. In a decision dated June 23, 1998, the Office denied appellant's request on the grounds that it was untimely.

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing that he or she sustained an injury while in the performance of duty.² 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. The second component is whether the employment incident caused a personal injury and generally this can be established only by medical evidence.³

In the present case, appellant alleged that on or about October 4, 1997 an insulation-type substance fell on the case he was working on which caused him to sneeze and have headaches. Appellant claimed a respiratory or sinus infection. The Board finds no contrary evidence and, therefore, appellant has established that the incident occurred as alleged. To establish his claim, however, he must submit probative medical evidence establishing causal relationship between the identified incident and a diagnosed condition. Appellant submitted a report from Dr. Stuart, his treating physician, who stated that appellant had headaches and syncope as a result of exposure to insulation-type material. Although he stated that appellant's condition was caused by exposure to insulation-type material, Dr. Stuart did not offer a rationalized medical opinion that the headaches and syncope were causally related to the employment incident with supporting medical reasoning. The report is, therefore, not sufficient to establish a causally related medical condition to appellant's federal employment.⁴

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

¹ 5 U.S.C. §§ 8101-8193.

² *Melinda C. Epperly*, 45 ECAB 196, 198 (1993); *see also* 20 C.F.R. § 10.110(a).

³ *See John J. Carlone*, 41 ECAB 354, 357 (1989).

⁴ *See Lucretia M. Nelson*, 42 ECAB 583, 594 (1991).

Section 8124(b)(1) of the Act 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 under subsection (a) of this title 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

A claimant requesting a hearing after the 30-day period is not entitled to a hearing as a matter of right.⁶ In this case, appellant requested an oral hearing by letter received on May 13, 1998. Since this is more than 30 days after the January 13, 1998 Office decision, appellant is not entitled to a hearing as a matter of right.

Although appellant’s request for a hearing was untimely, the Office has discretionary authority with respect to granting a hearing and the Office must exercise such discretion. In the June 23, 1998 decision, the Office advised appellant that it had considered the matter in relation to the issue involved and the hearing was denied on the grounds that appellant could resolve the issue by requesting reconsideration and submitting relevant evidence. This is considered a proper exercise of the Office’s discretionary authority. There is no evidence of an abuse of discretion in this case.

The decisions of the Office of Workers’ Compensation Programs dated June 23, 1998 is affirmed and the decision dated January 13, 1998 is affirmed as modified.

Dated, Washington, D.C.
February 18, 2000

George E. Rivers
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

⁵ 5 U.S.C. § 8124(b)(1).

⁶ See *Robert Lombardo*, 40 ECAB 1038 (1989).