

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of EUGENIA D. OWENS and U.S. POSTAL SERVICE,
POST OFFICE, Hyattsville, MD

*Docket No. 98-2024; Submitted on the Record;
Issued January 11, 2000*

DECISION and ORDER

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

The issues are: (1) whether appellant has met her burden of proof to establish that she sustained an injury in the performance of duty; and (2) whether the Branch of Hearings and Review properly denied appellant's request for a review of the written record as untimely.

The Board has duly reviewed the case on appeal and finds that appellant failed to meet her burden of proof to establish that she sustained an injury in the performance of duty.

Appellant, a manual clerk, filed a claim alleging that on August 18, 1997 she injured her left shoulder picking up a large parcel. The Office of Workers' Compensation Programs requested additional information from appellant including medical evidence on August 22, 1997. By decision dated October 2, 1997, the Office denied appellant's claim finding that she failed to establish fact of injury as she submitted no medical evidence in support of her claim. By letter dated February 10, 1998, appellant requested review of the written record and submitted additional evidence.¹ The Branch of Hearings and Review denied this request as untimely by decision dated April 6, 1998.

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.² The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence. To establish a causal relationship between the condition,

¹ As the Office did not review this evidence in reaching a final decision, the Board may not consider it for the first time on appeal. 20 C.F.R. § 501.2(c).

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

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.³ 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. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.⁴

In this case, appellant failed to submit any medical evidence in support of her claim for a left shoulder injury prior to the Office's October 2, 1997 merit decision. Without the necessary medical evidence establishing a diagnosed condition and an opinion on the causal relationship between appellant's diagnosed condition and her employment incident, the record is insufficient to establish fact of injury and the Office properly denied appellant's claim.

The Board further finds that the Branch of Hearings and Review properly denied appellant's request for a review of the written record.

The Office issued its decision on October 2, 1997. Appellant requested review of the written record by letter dated February 10, 1998. By decision dated April 6, 1998, the Branch of Hearings and Review denied appellant's request as untimely and found that she could pursue her claim through a request for reconsideration before the Office.

Section 8124(b) of the Federal Employees' Compensation Act,⁵ 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."⁶

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.⁷ Even where the hearing request is not timely filed, the Office may within its discretion, grant a hearing, and must exercise this discretion.⁸

³ See 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

⁴ *James Mack*, 43 ECAB 321 (1991).

⁵ 5 U.S.C. §§ 8101-8193.

⁶ 5 U.S.C. § 8124(b)(1).

⁷ *Tammy J. Kenow*, 44 ECAB 619 (1993).

⁸ *Id.*

In the instant case, the Office properly determined appellant's February 10, 1998 request for a review of the written record was not timely filed as it was made more than 30 days after the issuance of the Office's October 2, 1997 decision. The Office, therefore, properly denied appellant's review of the written record as a matter of right.

The Office then proceeded to exercise its discretion, in accordance with Board precedent, to determine whether to grant review in this case. The Office determined that review of the written record 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 appellant's request for review of the written record as untimely and properly exercised its discretion in determining to deny appellant's request as she had other review options available.

The April 6, 1998 and October 2, 1997 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, D.C.

January 11, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

Michael E. Groom
Alternate Member