U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LYNN E. BRAVO and DEPARTMENT OF TREASURY, INTERNAL REVENUE SERVICE, Washington, D.C.

Docket No. 99-1202; Submitted on the Record;
Issued July 3, 2000

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issues are: (1) whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits on the grounds that her employment-related disability ceased; and (2) whether the Office properly denied appellant's request for a hearing pursuant to section 8124(b) of the Federal Employees' Compensation Act.

Appellant filed a notice of occupational injury and claim for compensation alleging that her carpal tunnel syndrome was caused by her duties of typing and writing form letters at work. Appellant did not lose time from work as a result of the claimed condition. The Office accepted her condition of bilateral carpal tunnel syndrome as compensable on August 31, 1995.

On September 8, 1998, the Office issued a notice of proposed termination of compensation, based on the second opinion evaluation of Dr. Carlos Grovas-Badrena, a Board-certified orthopedic surgeon, dated June 26, 1998, who found no clinical evidence of carpal tunnel syndrome at that time; no related condition to the employment incident of January 31, 1995; no surgery or treatment required as a result of the accepted condition; and that appellant was able to perform her regular work duties. Appellant responded to the notice in an August 15, 1998 letter and stated that she disagreed with Dr. Grovas-Badrena's clinical findings. She argued that since Dr. Grovas-Badrena is not a hand surgeon, he does not have the medical knowledge to interpret the results of the electromyography examination provided by appellant, which were conducted by Dr. Mercedes Stefani, attending physician, on August 22, 1995. Appellant further argued that Dr. Grovas-Badrena only spent five minutes conducting his medical examination, and that he did not include in his medical report the symptoms related to her condition that appellant relayed at that time.

The Office issued a final decision dated September 8, 1998 terminating appellant's compensation, effective on that same date. The Office found that the weight of the medical evidence remained the well-rationalized report of Dr. Grovas-Badrena.

Appellant requested an oral hearing before an Office representative, in an undated letter postmarked on October 9, 1998.

By decision dated November 6, 1998, the Office denied appellant's request for a hearing on the grounds that the request was not made within 30 days after issuance of the September 8, 1998 final decision.

The Board finds that the opinion of Dr. Grovas-Badrena is sufficient to meet the Office's burden of proof in terminating appellant's compensation.

Under the Federal Employees' Compensation Act[1], once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of compensation.[2] Thus, after the Office determines that an employee has a condition causally related to his or her employment, the Office may not terminate compensation without establishing either that its original determination was erroneous or that the condition has ceased or is no longer related to the employment injury.[3]

In assessing medical evidence, the number of physicians supporting one position or another is not controlling; the weight of such evidence is determined by its reliability, its probative value and its convincing quality. The factors that comprise the evaluation of medical evidence include the opportunity for, and the thoroughness of, physical examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.[4]

The Office met its burden of proof in terminating appellant's disability compensation. Dr. Grovas-Badrena reviewed the statement of accepted facts and the medical records, noting that appellant's physician, Dr. Alberto Cruz Landron, had previously diagnosed her carpal tunnel syndrome after evaluation on February 24, 1995. Dr. Grovas-Badrena recorded a detailed history as stated by appellant and outlined her occupational status and the fact that appellant had worked with the employing establishment from 1983 to 1990 as a revenue officer. He found no evidence of edema, atrophy or contractures, and noted that Tinel's, Phalen's and Adson maneuvers were negative. Based upon his thorough evaluation, he found that there was no clinical evidence of carpal tunnel syndrome at that time. With respect to causal relationship, Dr. Grovas-Badrena stated that there was no related condition found to the employment incident of January 31, 1995, and with respect to disability, the doctor concluded that appellant was able to perform her regular work duties.

[1] 5 U.S.C. §§ 8101-8193.

[2] *William Kandel*, 43 ECAB 1011, 1020 (1992).

[3] *See Marvin T. Schwartz*, 48 ECAB 521 (1997).

[4] *Connie Johns*, 44 ECAB 560, 570 (1993).

Inasmuch as Dr. Grovas-Badrena provided a comprehensive opinion supported by medical rationale that appellant did not have carpal tunnel syndrome or a condition caused by her employment, the Board finds that the Office met its burden of proof in terminating appellant's compensation.[5]

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

Section 8124(b) of the Act, concerning a claimant's entitlement to a hearing, states that: "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 issuance of the decision, to a hearing on his claim before a representative of the Secretary.[6]" 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.[7]

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 1966 amendments to the Act which provided the right to a hearing,[8] when the request is made after the 30-day period established for requesting a hearing,[9] or when the request is for a second hearing on the same issue.[10] 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.[11]

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 September 8, 1998 and, thus, appellant was not entitled to a hearing as a matter of right. Appellant requested a hearing in a letter postmarked October 9, 1998. Therefore, the Office was correct in stating in its November 6, 1998 decision that appellant was not entitled to a hearing as a matter of right because the hearing request was not made within 30 days of the Office's September 8, 1998 decision.

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[5] *See Cleopatra McDougal-Saddler*, 47 ECAB 480, 488 (1996) (finding that the reports of the Office referral physician established that appellant's degenerative pathology was not work related and were sufficient to meet the Office's burden of proof in terminating disability compensation).

[6] 5 U.S.C. § 8124 (b)(1).

[7] *Frederick D. Richardson*, 45 ECAB 454 (1994).

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

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

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

[11] *Sandra F. Powell*, 45 ECAB 877 (1994).

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 November 6, 1998 decision, properly exercised its discretion by stating that it had considered appellant's request and had denied it on the basis that the issue in this case could equally well be addressed by requesting reconsideration from the district office and submitting evidence not previously considered which established that the claimed medical condition or disability was causally related to the injury. 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.[12] In this 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 November 6 and September 8, 1998 are affirmed.

Dated, Washington, D.C.
July 3, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

[12] *Daniel J. Perea*, 42 ECAB 214 (1990).