

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CASSANDRA J. GALLOWAY and U.S. POSTAL SERVICE,
POST OFFICE, Houston, TX

*Docket No. 99-1327; Submitted on the Record;
Issued July 11, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issues are: (1) whether appellant met her burden of proof to establish that she sustained an occupational disease causally related to factors of her federal employment; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for a hearing.

On May 10, 1998 appellant, then a 40-year-old rural carrier, filed a notice of occupational disease indicating that in the course of her federal employment she sustained a ruptured disc which caused neck pain, burning in the arms and shoulders, and a soreness in her back and legs. Appellant stated that she became aware of the disease or illness and that it was caused or aggravated by her federal employment on November 5, 1997. Appellant stopped working on April 23, 1998. In an accompanying statement, appellant noted that she fell on November 5, 1997 after tripping over a tree root in the performance of duty. She stated that her neck continued to hurt after the injury and spread into her shoulders and arms. She indicated that medical tests revealed a ruptured neck disc, pinched nerves in her neck and left arm, carpal tunnel syndrome in her right hand and disc herniations in her mid and lower back. She stated that her conditions were constantly aggravated by her work which involves moving her neck and head in multiple directions.

Dr. Lloyd L. Ramby, a chiropractor, completed a disability certificate on April 30, 1998. He stated that appellant was totally incapacitated from April 24 through May 11, 1998 and that she was partially incapacitated from May 11 through June 11, 1998 from a job-related injury.

In a brief note dated May 5, 1998, Dr. Walter S. Sassard, a Board-certified orthopedic surgeon, stated that he saw appellant for a large disc herniation in her neck. Dr. Sassard stated that, based on her history, the condition was job related.

On June 4, 1998 the Office requested additional information, including a comprehensive medical report explaining how exposures or incidents of appellant's federal employment contributed to her condition. Appellant was given 30 days to submit the requested evidence.

By decision dated July 22, 1998, the Office denied appellant's claim because the medical evidence was not sufficient to establish that her condition was caused by an employment factor. The Office noted that the only medical evidence, provided by Dr. Sassard, failed to provide a reasoned medical opinion as to whether and how her employment activities caused injury.

In a letter dated September 28, 1998, appellant requested reconsideration and reported that she submitted additional medical evidence.

In a letter dated October 28, 1998, appellant's representative requested an oral hearing. In support of the request for a hearing and following the Office's July 22, 1998 decision, appellant's attorney submitted additional medical evidence, including reports addressing her alleged employment condition from Drs. Sassard, Ramby, Massoud Bina, Patricia Beaver, Creed Abell and Anthony Hanson. Appellant's attorney also requested that the new medical evidence be considered as a supplement to appellant's request for reconsideration should the hearing request be denied.

By decision dated December 18, 1998, the Office denied appellant's request for a hearing because it was not received within 30 days of the July 22, 1998 decision. The Office further denied appellant's request for the reason that the issue involved could be equally resolved by requesting reconsideration and the submission of additional evidence.¹

The Board finds that appellant did not meet her burden of proof to establish that she sustained an occupational disease causally related to factors of her federal employment.

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.² The medical evidence required to establish a causal relationship, generally, is rationalized

¹ The Office did not note that appellant had requested reconsideration nor did the Office grant appellant's reconsideration request following the denial of hearing.

² See *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

medical opinion evidence.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,⁴ must be one of reasonable medical certainty,⁵ 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.⁶

In this case, appellant submitted an April 30, 1998 disability certificate from Dr. Ramby, a chiropractor, to support her claim for an occupational disease. The Board has held that medical opinion, in general, can only be given by a qualified physician.⁷ Pursuant to sections 8101(2) and (3) of the Federal Employees' Compensation Act,⁸ the Board has recognized chiropractors as physicians to the extent of diagnosing spinal subluxations according to the Office's definition⁹ and treating such subluxations by manual manipulation. Consequently, because Dr. Ramby's opinion is not supported by x-ray evidence of a spinal subluxation, his opinion does not constitute valid medical evidence and has no probative medical value.¹⁰

Appellant also submitted a brief note from Dr. Sassard, a Board-certified orthopedic surgeon, dated May 5, 1998 which indicated that appellant had a large disc herniation in her neck and that, "[B]ased on her history, the condition is job related." Because he failed to explain his opinion and it is based solely on appellant's history of her accumulated injuries and is unsupported by any clinical findings, Dr. Sassard's report is insufficient to establish that appellant sustained an occupational disease due to her federal employment.¹¹ Moreover, the Office advised appellant of the deficiency of this evidence, but she failed to provide any rationalized medical opinion establishing a causal relationship between her claimed medical condition and factors of her employment. She, therefore, failed to meet her burden of proof.

³ The Board held that, in certain cases where the causal connection is obvious, expert testimony may not be necessary; see *Naomi A. Lilly*, 10 ECAB 560, 572-73 (1959). The instant case, however, is not one of obvious causal connection.

⁴ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

⁵ See *Morris Scanlon*, 11 ECAB 384-85 (1960).

⁶ See *James D. Carter*, 43 ECAB 113 (1991); *George A. Ross*, 43 ECAB 346 (1991); *William E. Enright*, 31 ECAB 426, 430 (1980).

⁷ *George E. Williams*, 44 ECAB 530 (1993).

⁸ 5 U.S.C. §§ 8101(2) and (3).

⁹ 20 C.F.R. §§ 10.400(e).

¹⁰ See *George E. Williams*, *supra* note 7.

¹¹ *Cleopatra McDougal-Saddler*, 47 ECAB 480 (1996).

The Board also finds that the Office properly denied appellant's request for a hearing.

Section 8124(b) of the Act, concerning a claimant's entitlement to a hearing before an Office representative states: "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 the issuance of the decision, to a hearing on his claim before a representative of the Secretary."¹²

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 or deny 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.¹³

In this case, the Office issued its decision denying benefits on July 22, 1998. Appellant's representative, however, requested an oral hearing in his letter dated October 28, 1998. Because appellant's representative clearly did not request a hearing within 30 days of the Office's July 22, 1998 decision, appellant was not entitled to an oral hearing under section 8124 as a matter of right. The Office also exercised its discretion, but decided not to grant appellant an oral hearing on the grounds that she could have her case further considered on reconsideration by submitting additional relevant evidence. Consequently, the Office properly denied appellant's hearing request.

¹² 5 U.S.C. § 8124(b)(1).

¹³ *Henry Moreno*, 39 ECAB 475 (1988).

The decisions of the Office of Workers' Compensation Programs dated December 18 and July 22, 1998 are affirmed.¹⁴

Dated, Washington, D.C.
July 11, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

¹⁴ The Board notes that the Office has an outstanding reconsideration request with new medical evidence which has not been adjudicated. The case is returned to the Office for appropriate action.