U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of VICKI L. MULLINS and DEPARTMENT OF LABOR,
MINE SAFETY & HEALTH ADMINISTRATION, Mount Hope, WV

Docket No. 99-916; Submitted on the Record;
Issued June 8, 2000

DECISION and ORDER

Before GEORGE E. RIVERS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issues are: (1) whether appellant met her burden of proof in establishing that she sustained an injury in the performance of duty; and (2) whether the Office of Workers' Compensation Programs properly denied appellant a hearing based on its finding that her request for a hearing was not timely filed.

On July 14, 1998 appellant, then a 37-year-old coal mine inspector filed a notice of traumatic injury, Form CA-1, alleging that on July 13, 1998, she was involved in an automobile accident. She claimed she injured her chest, clavicle, sternum and right knee. On the reverse of the form, appellant's supervisor indicated that appellant did not stop working.

In an August 11, 1998 letter, the Office advised appellant that the information submitted in her claim was not sufficient to determine whether appellant was eligible for benefits under the Federal Employees' Compensation Act. The Office advised appellant of the additional medical and factual evidence needed to support her claim.

By decision dated September 16, 1998, the Office denied appellant's claim. The Office found that while the evidence of file supported that appellant experienced the claimed incident, the medical evidence did not establish that a condition had been diagnosed in connection with the work incident. Therefore, it was determined that appellant did not sustain an injury as alleged.

By letter dated October 27, 1998, appellant requested a hearing before an Office hearing representative and review of the written record. On December 1, 1998 the Office found that appellant was not entitled to a hearing as a matter of right as her request was not made within 30 days.

The Board finds that appellant has failed to establish that she sustained an injury in the performance of duty as alleged.

An employee seeking benefits under the Act[1] has the burden of establishing that the essential elements of his or her claim including the fact that the individual is an "employee of the United States" within the meaning of the Act, that an injury was sustained in the performance of duty as alleged, and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.[2] These are essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[3]

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.[4]

The second component is whether the employment incident caused a personal injury and generally can be established only be medical evidence. To establish a causal relationship between the condition, 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.[5]

In the instant case, it is not disputed that appellant experienced the claimed work factor, *i.e.*, she was involved in an automobile accident while in the course of her employment. However, appellant has submitted no medical evidence establishing that she has, indeed, sustained an injury due to the automobile accident. On August 11, 1998 the Office advised appellant of the evidence needed to establish her claim. However, such evidence was not submitted prior to the Office's September 16, 1998 decision.[6]

As noted above, part of appellant's burden of proof includes the submission of medical evidence establishing that the claimed condition is causally related to employment factors. As appellant has not submitted such evidence, she has not met her burden of proof in establishing her claim.

In a letter dated October 27, 1998, appellant requested a hearing before an Office hearing representative.

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[1] 5 U.S.C. §§ 8101-8193.

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

[3] *Daniel J. Overfield*, 42 ECAB 718, 721 (1991); *Victor J. Woodhams*, 41 ECAB 345 (1989).

[4] *Elaine Pendleton*, *supra* note 2.

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

[6] The record contains a medical report from Dr. Ujjal Sandhu, a Board certified obstetrician/gynecologist, and appellant's response to the Office's August 11, 1998 letter, received after the Office's September 16, 1998 decision. The Board's jurisdiction is limited to evidence which was before the Office at the time it rendered the final decision. Inasmuch as this evidence was not considered by the Office, it cannot be considered on review by the Board. 20 C.F.R. § 501.2(c). This decision does not preclude appellant from submitting such evidence to the Office as part of a reconsideration request.

By decision dated December 1, 1998, the Office found that appellant was not entitled to a hearing as a matter of right as her request was not made within 30 days. The Office noted further considering the matter and found that the request for a discretionary hearing was also denied because appellant could further pursue her claim by submitting new evidence in a reconsideration request.

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

Section 8124(b)(1) of the Act provides a claimant with the right to a hearing on his claim "on request made within 30 days after the date of issuance of the decision."[7] As the Board has pointed out, this section "is unequivocal in setting forth the limitation on requests for hearings."[8]

In the present case, appellant's October 27, 1998 letter requesting a hearing is filed more than 30 days after the September 16, 1998 Office decision. Appellant's request was not timely made and she therefore had no right to a hearing.

Even though appellant has no right to a hearing if not requested within 30 days the Office must exercise its discretion in either granting or denying a late request for a hearing.[9]

The Office, here, properly exercised its discretion in denying appellant's request for a hearing. The Office considered the matter and determined that any new evidence appellant might have could be submitted together with a request for reconsideration. Consequently, the Office properly denied appellant's request for a hearing.

The decisions of the Office of Workers' Compensation Programs dated December 1 and September 16, 1998 are hereby affirmed.

Dated, Washington, D.C.
June 8, 2000

George E. Rivers
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

[7] 5 U.S.C. § 8124(b)(1).

[8] *See Clyde Bovender*, 32 ECAB 1883 (1981).

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