

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

---

In the Matter of BARBARA L. PEREZ and DEPARTMENT OF THE INTERIOR,  
FISH & WILDLIFE SERVICE, Red Bluff, CA

*Docket No. 98-2243; Submitted on the Record;  
Issued March 8, 2000*

---

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,  
BRADLEY T. KNOTT

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 Office of Workers' Compensation Programs properly denied appellant's request for an oral hearing as untimely.

On January 29, 1998 appellant, then a 55-year-old biological technician, filed a notice of occupational injury (Form CA-2) alleging that her bladder condition had been aggravated by her employment duties, necessitating corrective surgery.

In support of her claim, appellant submitted a February 6, 1998 attending physician's report (Form CA-20) on which Dr. David W. Ferguson, a Board-certified urologist, listed a diagnosis of "stress urinary incontinence." On the form, Dr. Ferguson further stated that appellant's condition, characterized as voiding dysfunction and bladder spasm necessitating the constant wearing of protection, was "exacerbated by heavy lifting requirements." The physician indicated that appellant had undergone an earlier surgical procedure in an attempt to correct her problem, but required additional surgical intervention. An accompanying February 6, 1998 duty status report from Dr. Ferguson described appellant's condition as internal bladder problems aggravated by bending over to pick up fish and boxes while working.

By letter dated March 10, 1998, the Office informed appellant of her responsibility to provide factual and medical evidence to substantiate her claim. Appellant was also advised that medical evidence containing a diagnosis and the physician's reasoned opinion regarding the relationship between the condition and specific employment duties was required. Appellant provided additional factual information, but the requested medical evidence was not received.

By decision dated April 10, 1998, the Office denied appellant's claim as the evidence submitted failed to establish fact of injury. The Office noted that appellant was advised of the deficiencies in the claim and afforded the opportunity to provide supportive evidence.

By letter postmarked May 14, 1998, appellant requested an oral hearing before an Office representative.

In a decision dated June 26, 1998, the Office's Branch of Hearings and Review found that appellant was not entitled to an oral hearing as her request was untimely. The Office, however, found that the issue in this case could be equally well addressed by requesting reconsideration from the district Office and submitting evidence not previously considered which supports a determination that an injury was sustained as alleged.

The Board has duly reviewed the case record in the present appeal and finds that appellant failed to meet her burden of proof to establish that she sustained an injury, as alleged.

An employee seeking benefits under the Federal Employees' Compensation Act<sup>1</sup> has the burden of establishing 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 the claim was timely filed within the applicable time limitation period 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.<sup>2</sup> These are essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>3</sup>

In order to determine whether an employee actually sustained an injury in the performance of his 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.<sup>4</sup> The employee has the burden of establishing the occurrence of the alleged injury at the time, place and in the manner alleged, by a preponderance of the reliable, probative and substantial evidence. An employee has not met this burden when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.

The second requirement to establish fact of injury is that the employee must submit sufficient evidence, usually in the form of medical evidence, to establish that the employment incident caused a personal injury.<sup>5</sup> As part of this burden, the employee must submit rationalized medical evidence based upon a complete and accurate factual and medical

---

<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Joe D. Cameron*, 41 ECAB 153 (1989), *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>3</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>4</sup> *Elaine Pendleton*, *supra* note 2.

<sup>5</sup> *John J. Carlone*, 41 ECAB 354 (1989).

background showing a causal relationship between the current condition and the accepted employment factors.<sup>6</sup>

In this case, while it is undisputed that appellant's job required her to lift up to 30 pounds, there is insufficient medical evidence in the file to support that appellant's bladder condition was aggravated by her working conditions. From the evidence before the Office at the time of its April 10, 1998 decision, the medical reports of record fail to contain a rationalized opinion explaining the relationship between the lifting requirement of appellant's job and her diagnosed bladder condition. Moreover, the Office provided appellant with opportunities to cure the deficiencies in the claim, but she failed to submit the requested medical evidence to substantiate her claim. Appellant, therefore, has failed to meet her burden of proof to establish that she sustained an employment injury and thus has failed to establish fact of injury.

The Board further finds that the Office's refusal to grant appellant an oral hearing before an Office hearing representative did not constitute an abuse of discretion.

Section 8124(b)(1) of the Act provides that "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."<sup>7</sup> 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.<sup>8</sup>

In the present case, the Office issued its decision on April 10, 1998. As noted above, the Act is unequivocal in setting forth the time limitation for a hearing request. Appellant's request for a hearing was postmarked May 14, 1998, and thus it is outside the 30-day statutory limitation for the decision. Since appellant did not request a hearing within 30 days, she was not entitled to a hearing under section 8124 as a matter of right.

Even when the hearing request is not timely, the Office has discretion to grant the hearing request, and must exercise that discretion.<sup>9</sup> In the present case, the Office exercised its discretion and denied the request for a hearing on the grounds that appellant could pursue the issues in question by requesting reconsideration and submitting additional medical evidence. Accordingly, the Board finds that the Office properly exercised its discretion in denying appellant's untimely request for a hearing.

---

<sup>6</sup> *Herman W. Thorton*, 39 ECAB 875, 887 (1988); *Henry L. Kent*, 34 ECAB 361, 366 (1982); *Steven J. Wagner*, 32 ECAB 1446 (1981).

<sup>7</sup> 5 U.S.C. § 8124(b)(1).

<sup>8</sup> *Charles J. Prudencio*, 41 ECAB 499 (1990); *Ella M. Garner*, 36 ECAB 238 (1984).

<sup>9</sup> *Herbert C. Holley*, 33 ECAB 140 (1981).

The decisions of the Office of Workers' Compensation Programs dated June 26 and April 10, 1998 are affirmed.<sup>10</sup>

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

George E. Rivers  
Member

Willie T.C. Thomas  
Alternate Member

Bradley T. Knott  
Alternate Member

---

<sup>10</sup> Appellant filed her appeal with the Board on July 15, 1998. Subsequently, on August 5, 1998, appellant requested reconsideration before the Office of the Office's April 10, 1996 decision and submitted additional medical evidence in support of her request. In a decision dated August 13, 1998, the Office found the additional evidence insufficient to support modification of the prior decision. The Office's August 13, 1998 decision is null and void as both the Board and the Office cannot have jurisdiction over the same issue in the same case. 20 C.F.R. § 501.2(c); *Douglas E. Billings*, 41 ECAB 880 (1990). The Board further notes that the additional evidence submitted by appellant after the Office's June 26, 1998 decision, the last decision issued by the Office prior to appellant's appeal to the Board, represents new evidence which cannot be considered by the Board. The Board's jurisdiction is limited to reviewing the evidence that was before the Office at the time of the final decision before the Board. 20 C.F.R. § 501.2(c).