

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SARA K. PEARCE and U.S. POSTAL SERVICE,
POST OFFICE, Raleigh, NC

*Docket No. 98-708; Submitted on the Record;
Issued May 12, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issues are: (1) whether appellant sustained a recurrence of disability for the periods between March 4, 1994 and March 31, 1996, causally related to her accepted bilateral carpal tunnel syndrome; (2) whether appellant has established that she sustained a recurrence of disability for the period July 1 to July 31, 1997; and (3) whether the Office of Workers' Compensation Programs abused its discretion in denying appellant's request for an oral hearing under 5 U.S.C. § 8124(b)(1).

The Board has given careful consideration to the issue involved, pertaining to whether appellant was disabled for periods between March 4, 1994 and March 31, 1996 due to her accepted bilateral carpal tunnel syndrome, the complete case record and appellant's contentions on appeal. The Board finds that the decision of the Office hearing representative dated and finalized May 9, 1997 is in accordance with the facts and the law in this case, and hereby adopts the findings and conclusions of the hearing representative.¹

Following the issuance of the hearing representative's May 9, 1997 decision, appellant submitted an August 8, 1997 Form CA-8 claim for compensation for the period July 1 through July 31, 1997.

On September 5, 1997 the Office advised appellant that the medical evidence of record was insufficient to support her claim of disability for the period July 1 to 31, 1997 and gave her 30 days within which to submit additional evidence. The Office noted that, although appellant's physician implicated disability due to reflex sympathetic dystrophy, the only condition accepted by the Office as employment related was bilateral carpal tunnel syndrome.

¹ The Office hearing representative issued his findings and decision based upon a review of the written record under 5 U.S.C. § 8124(b)(1). The Office found that the medical evidence of record did not establish that appellant was totally disabled due to her accepted employment condition for the periods claimed.

No further medical evidence was received by the Office.

By decision dated October 6, 1997, the Office rejected appellant's claim for compensation for the period July 1 to 31, 1997, finding that the evidence of record was insufficient to establish that she was unable to work eight hours per day for that period due to her accepted employment-related condition. This decision was addressed and mailed only to appellant, without a copy being sent or provided to her designated representative, David Boone, Esq.²

By letter dated November 14, 1997, appellant's representative noted that on November 8, 1997 appellant was "handed a copy" of the October 6, 1997 decision, which was her first notification that her claim for the period July 1 to 31, 1997 had been denied. Mr. Boone argued that he had not received a copy of the October 6, 1997 decision, and that therefore his letter should be considered a timely request for an oral hearing.

By decision dated December 2, 1997, the Branch of Hearings and Review noted that an oral hearing had been untimely requested and denied the claim on the grounds that the issue could be equally well addressed by requesting reconsideration and by submission of further relevant evidence not previously considered.

The Board finds that the Office decision dated October 6, 1997 was not properly issued.

The applicable Office regulations state:

"A representative, appointed and qualified as provided in this part, may make or give on behalf of the claimant any request or notice relative to any proceeding before the Office under the [Federal Employees' Compensation] Act, including hearing and review. A representative shall be entitled to present or elicit evidence and to make allegations as to facts and law in any proceeding affecting the claimant and to obtain information with respect to the claim to the same extent as the claimant. Notice to any claimant of any administrative action, determination or decision, or request to any party for the production of evidence shall be sent to the representative, and the notice or request shall have the same force and effect as if it has been sent to the claimant."³

The Board finds that notification of appellant's authorized representative was required and that failure to notify him effectively denied appellant the opportunity to have him assist her in remedying the deficiencies of her claim, and the full opportunity to exercise her appeal rights in a timely fashion. As a result, appellant was unfairly prejudiced by the omission to her detriment.

² The record demonstrates that Mr. Boone had been appellant's designated representative before the Office regarding her disability claims for over two years, and that a copy of the May 9, 1997 hearing representative decision had been properly addressed and sent to Mr. Boone.

³ See 20 C.F.R. § 10.144 (April 1, 1997); see also *Franklin H. Brydon*, Docket No. 95-3110 (issued December 12, 1997); *Ivan R. Sturdivant*, Docket No. 94-1809 (issued May 10, 1996).

The case will be remanded to the Office for proper reissuance of the October 6, 1997 decision to afford appellant the opportunity to completely exercise her appeal rights. As the Board is making this finding with regard to the October 6, 1997 decision, the Board finds that the Branch of Hearings and Review decision dated December 2, 1997 is null and void.

Consequently, the decision of the Office of Workers' Compensation Programs dated May 9, 1997 is hereby affirmed; the decision dated October 6, 1997 is hereby set aside and the case is remanded for further action in accordance with this decision and order of the Board; and the December 2, 1997 decision is null and void.

Dated, Washington, D.C.

May 12, 2000

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member