

U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of TERESA WEGENER and NATIONAL PARK SERVICE,
LAKE MEAD NATIONAL RECREATION AREA, Boulder, CO

*Docket No. 99-193; Submitted on the Record;
Issued May 1, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issues are: (1) whether appellant has met her burden of proof in establishing that her carpal tunnel syndrome was causally related to factors of her federal employment; and (2) whether the Office of Workers' Compensation Programs properly denied her request for a hearing pursuant to section 8124(b).

On July 31, 1997 appellant, then a 33-year-old laborer, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that on April 20, 1995 she first realized that her carpal tunnel syndrome was due to her unloading boxes of tar. Appellant noted that she had lifted boxes of tar on March 24, April 5, April 7 and April 10, 1995. Appellant retired effective November 13, 1995.

In an accident/injury treatment report dated May 22, 1995, Dr. William T. Stewart, an attending Board-certified orthopedic surgeon, diagnosed probable bilateral carpal tunnel syndrome. The physician noted that appellant was totally disabled for the period May 22 through June 30, 1995 due to carpal tunnel surgery.

Dr. Samuel A. Wise, Board-certified in physical medicine and rehabilitation, in a progress notes dated April 20 and May 15, 1995, diagnosed bilateral carpal tunnel syndrome. The April 20, 1995 report that appellant appeared to have "some wasting of her left hand of the hand intrinsics" and a +/- Tinel's sign at her wrist bilaterally as well as a positive Phalen's test for median entrapment bilaterally. In a report dated May 13, 1997, Dr. Wise diagnosed bilateral carpal tunnel syndrome.

By letter dated April 17, 1998, the Office informed appellant regarding the deficiencies in her claim and advised her as to the information required to support her claim.

By decision dated June 5, 1998, the Office denied appellant's claim on the grounds that the evidence failed to establish the claimed condition or factors of employment, which caused the claimed condition.

On July 24, 1998 appellant requested an oral hearing.

In a letter decision dated September 4, 1998, the Office denied appellant's request for a hearing as untimely. The Office found that the record showed that a final decision was rendered on June 5, 1998 but that appellant's request for a hearing was dated July 24, 1998, which was more than 30 days after the decision. Although appellant was not entitled to a hearing as a matter of right, the Branch or Hearings and Review considered the matter in relation to the issue involved and denied appellant's request on the grounds that she could submit additional evidence in writing to the Office with a request for reconsideration.¹

The Board finds that appellant has not met her burden of proof in establishing that her carpal tunnel syndrome was causally related to factors of her federal employment.

An employee seeking benefits under the Federal Employees' Compensation Act² 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.³ These are essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

To establish appellant's occupational disease claim that she has sustained a disabling condition in the performance of duty, appellant must submit the following: (1) factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to her condition; (2) rationalized medical opinion evidence establishing that she sustained a medical condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to the condition.⁵ Rationalized medical opinion evidence is medical evidence that 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. Such an opinion of the physician must be based on a complete factual and medical background of the claimant,⁶ must be one of reasonable medical

¹ Subsequent to the Office's June 5, 1998 merit decision and the September 4, 1998 letter denying her hearing request, appellant submitted additional evidence. The Board cannot consider new evidence on appeal, however, appellant can submit new evidence to the Office and request reconsideration, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.138(b); *see* 20 C.F.R. § 501.2(c).

² 5 U.S.C. §§ 8101-8193.

³ *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1983).

⁴ *Victor J. Woodhams*, 41 ECAB 345 (1989); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁵ *See Purvis Nettles*, 44 ECAB 623, 627 (1993).

⁶ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

certainty⁷ and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by appellant.⁸

In the instant case, appellant has not established that she sustained an injury in the performance of duty as alleged. While appellant has attributed carpal tunnel syndrome to employment factors, the medical evidence submitted does not establish that diagnosis. Appellant has not submitted rationalized medical evidence, which indicates that she has a medical condition causally related to her federal employment. While the record indicates surgery by Dr. Stewart for bilateral carpal tunnel syndrome, the medical reports of the physician have not related her treatment to appellant's employment activities.

Appellant submitted medical reports from Dr. Wise, which diagnosed bilateral carpal tunnel syndrome. These reports are insufficient to establish appellant's claim as Dr. Wise has not provided a rationalized medical opinion, based on an accurate factual background, explaining why and how appellant's employment conditions caused or aggravated any physical condition or resulted in disability. As noted above, appellant must submit medical evidence supporting that her employment caused or aggravated her claimed medical condition. Therefore, Dr. Wise's reports are insufficient to establish appellant's claim.

The Board, therefore, finds that appellant failed to establish that her condition is related to factors of her employment.

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

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 issuance of the decision, to a hearing on [her] claim before a representative of the Secretary."⁹ The Board has noted that section 8124(b)(1) "is unequivocal in setting forth the limitation in requests for hearings...."¹⁰

In this case, the Office issued its decision denying appellant's claim on June 5, 1998. Appellant requested a hearing in a letter dated July 24, 1998. Thus, the Board finds that appellant did not request a hearing within 30 days of the Office's June 5, 1998 decision and that she was not entitled to a hearing as a matter of right.

The Board has held that 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 that the Office must exercise this discretionary authority in deciding whether to grant a hearing.¹¹ Specifically, the Board has held that the

⁷ See *Morris Scanlon*, 11 ECAB 384, 385 (1960).

⁸ *Id.*

⁹ 5 U.S.C. § 8124(b)(1).

¹⁰ *Delphine L. Scott*, 41 ECAB 799 (1990).

¹¹ *Henry Moreno*, 39 ECAB 475, 482 (1988).

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,¹² when the request is made after the 30-day period for requesting a hearing,¹³ and when the request is for a second hearing on the same issue.¹⁴ 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.¹⁵ In this case, the Office's Branch of Hearings and Review exercised its discretion and denied the request for a hearing on the grounds that the case could be considered further upon the submission of new evidence to the Office with a request for reconsideration. The Office did not abuse its discretion in making this determination.

The decisions of the Office of Workers' Compensation Programs dated September 4 and June 5, 1998 are hereby affirmed.

Dated, Washington, D.C.
May 1, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

¹² *Rudolph Bermann*, 26 ECAB 354, 360 (1975).

¹³ *Herbert C. Holley*, 33 ECAB 140, 142 (1981).

¹⁴ *Frederick D. Richardson*, 45 ECAB 454 (1994); *Johnny S. Henderson*, 34 ECAB 216, 219 (1982).

¹⁵ *Jeff Micono*, 39 ECAB 617 (1988).