

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of VICTORIA M. WAGNER and DEPARTMENT OF COMMERCE,
CENSUS BUREAU, Jeffersonville, IN

*Docket No. 99-262; Submitted on the Record;
Issued May 16, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
A. PETER KANJORSKI

The issues are: (1) whether appellant has met her burden of proof in establishing that her bilateral arm condition is causally related to factors of her employment; and (2) whether the Office of Workers' Compensation Programs properly denied her request for a hearing before an Office hearing representative.

On February 24, 1998 appellant, then a 29-year-old mailroom equipment operator, filed a claim for numbness in both hands and pain shooting down her back. She attributed her condition to her duties in lifting boxes of mail, opening the boxes, dumping the mail in the boxes on to conveyer belts and sorting the mail. In a July 1, 1998 decision, the Office denied appellant's claim on the grounds that she had not met her burden of proof in establishing that her condition was causally related to factors of her employment. In a letter dated August 9, 1998 and postmarked August 11, 1998, appellant requested a hearing before an Office hearing representative. In a September 11, 1998 decision, the Office denied appellant's request for a hearing as untimely. The Office reviewed the case under its own discretion and found that appellant's request could be equally well handled by a request for reconsideration, accompanied by evidence not previously submitted. It therefore denied appellant's request for a hearing.

The Board finds that appellant has not met her burden of proof in establishing that her bilateral arm condition is causally related to factors of her 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;¹ (2) a factual statement identifying the employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;² and (3) medical evidence establishing that

¹ See *Ronald K. White*, 37 ECAB 176, 178 (1985).

² See *Walter D. Morehead*, 31 ECAB 188, 194 (1979).

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.³ The medical evidence required to establish causal relationship, generally, is rationalized medical opinion evidence. 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

Appellant gave a detailed description of the repetitive motions in her job which she contended caused her bilateral arm condition. However, she did not submit sufficient medical evidence to establish a causal relationship between appellant's job and her bilateral arm condition. In a February 24, 1998 form report, Dr. Lisa C. Campisano, an internist, diagnosed probable right carpal tunnel syndrome and marked on the form that it was related to appellant's employment injury. However, she did not provide any discussion on how the factors of appellant's employment would cause carpal tunnel syndrome. In a March 24, 1998 report, a physician with an illegible signature diagnosed bilateral carpal tunnel syndrome. Once again, however, the report did not contain a description on how appellant's employment would cause her condition. In a May 5, 1998 report, a physician diagnosed right cubital tunnel syndrome and stated that appellant became worse after she returned to regular-duty work. The physician indicated that appellant had bilateral positive Tinel's and Phalen's tests. There was no discussion of the issue of causal relationship. Appellant submitted a March 2, 1998 report from Dr. Victor P. Matibag, a Board-certified neurologist, who stated that nerve conduction studies indicated bilateral carpal tunnel syndrome, bilateral ulnar entrapment at the elbows and possible peripheral neuropathy. Dr. Matibag did not give an opinion on the cause of these findings. Appellant has not submitted any medical evidence that contains a detailed, rationalized medical explanation on how the factors of employment caused her bilateral arm condition. She therefore has not met her burden of establishing that her bilateral arm condition was causally related to her employment.

The Board further finds that the Office did not abuse its discretion in denying appellant's request for a hearing before an Office hearing representative.

Section 8124(b)(1) of the Federal Employees' Compensation Act⁷ dealing with a claimant's entitlement to a hearing before an Office hearing representative states that, "[b]efore

³ See generally *Lloyd C. Wiggs*, 32 ECAB 1023, 1029 (1981).

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

⁵ See *Morris Scanlon*, 11 ECAB 384, 385 (1960).

⁶ See *William E. Enright*, 31 ECAB 426, 430 (1980).

⁷ 5 U.S.C. § 8124(b)(1).

review under section 8128(a) of this title, a claimant for compensation not satisfied with a decision of the Secretary ... is entitled, on request within 30 days after the date of the issuance of the decision, to a hearing on his claim before a representative of the Secretary.” The Board has noted that section 8124(b)(1) “is unequivocal in setting forth the limitation in requests for hearings....”⁸ In this case, appellant’s request for a hearing, postmarked August 11, 1998, was made more than 30 days after the Office July 1, 1998 decision. Appellant therefore did not have a statutory right to a hearing.

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 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. In this case, the Office considered appellant’s case and found that she could equally receive review of her case by submitting new evidence and requesting reconsideration. The Office thereupon exercised its discretion not to have a hearing. As the only limitation on the Office’s authority is reasonableness, abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deductions from known facts.⁹ There is no evidence that the Office abused its discretion in this case.

⁸ *Ella M. Garner*, 36 ECAB 238 (1984); *Charles E. Varrick*, 33 ECAB 1746 (1982).

⁹ *Daniel J. Perea*, 42 ECAB 214 (1990).

The decisions of the Office of Workers' Compensation Programs dated September 11 and July 1, 1998 are hereby affirmed.

Dated, Washington, D.C.
May 16, 2000

Michael J. Walsh
Chairman

George E. Rivers
Member

A. Peter Kanjorski
Alternate Member