

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JUAN R. SALAZ and U.S. POSTAL SERVICE,
POST OFFICE, Farmington, NM

*Docket No. 99-597; Submitted on the Record;
Issued May 25, 2000*

DECISION and ORDER

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

The issues are: (1) whether appellant sustained a recurrence of disability on or about June 16, 1998 that was causally related to his accepted employment injury of December 30, 1986; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for a hearing.

On January 2, 1987 appellant, a letter carrier, filed a claim asserting that he had developed lower leg aches and cramps while in the performance of his duties. He first became aware of the disease or illness on December 30, 1986. The Office accepted appellant's claim for the condition of bilateral metatarsalgia and paid benefits. He sustained a recurrence of disability on September 20, 1995.

On July 15, 1998 appellant filed a claim asserting that he sustained a second recurrence of disability on or about June 16, 1998 that was causally related to his employment injury of December 30, 1986. He indicated that he had received no medical treatment following the claimed recurrence. The record shows that appellant was removed from the employing establishment effective June 16, 1998 for insubordination. On July 24, 1998 the Office advised him of the evidence necessary to establish his claim, including a physician's opinion, with a supporting explanation, as to the causal relationship between his current disability or condition and the original injury.

In a form report dated July 16, 1998, appellant's attending podiatrist, Dr. Henry L. Mittleman, indicated that appellant had bilateral metatarsalgia and was totally disabled for usual work. He indicated, however, that he last examined appellant on February 13, 1998 and was not currently treating appellant. Although Dr. Mittleman indicated that appellant's current condition was due to the injury for which compensation was claimed, he did not identify the date and hour of the injury.

In a decision dated August 25, 1998, the Office denied appellant's claim of recurrence on the grounds that the evidence of record failed to establish that the claimed recurrence was causally related to the injury of December 30, 1986.

On August 31, 1998 appellant requested reconsideration. He stated that his physician had refused to cooperate in mailing to the Office the information requested.

In a decision dated October 27, 1998, the Office reviewed the merits of appellant's claim and denied modification of its prior decision. Noting that the record contained medical evidence not previously addressed, the Office found that there was no medical documentation that discussed a relationship between appellant's employment factors and the claimed recurrence of disability.

Appellant requested a hearing. In a decision dated November 18, 1998, the Office denied his request for a hearing. The Office found that appellant had previously requested reconsideration and was therefore not entitled to a hearing as a matter of right. Exercising its discretion, the Office denied appellant's request because the issue involved could be addressed equally well by requesting reconsideration and submitting evidence not previously considered establishing that he sustained a recurrence of his December 30, 1986 injury.

The Board finds that the evidence fails to establish that appellant sustained a recurrence of disability on or about June 16, 1998 that was causally related to his accepted employment injury of December 30, 1986.

An individual who claims a recurrence of disability resulting from an accepted employment injury has the burden of establishing that the disability is related to the accepted injury. This burden requires furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and who supports that conclusion with sound medical reasoning.¹

Appellant furnished no such medical evidence. The Office advised him of the evidence necessary to establish his claim, including a physician's opinion, with a supporting explanation, as to the causal relationship between his current disability or condition and the original injury. The only medical evidence that remotely addresses the period of disability in question is the July 16, 1998 form report of Dr. Mittleman. This report, however, provided no reasoned medical opinion on whether appellant's recurrence of disability on or about June 16, 1998 was causally related to the employment injury of December 30, 1986. Indeed, the report did not identify the employment injury of December 30, 1986. Further, it appears that Dr. Mittleman last examined appellant on February 13, 1998 and did not examine appellant following the claimed recurrence of disability. As this evidence is of little or no probative value in establishing appellant's claim of recurrence, the Board finds that appellant has not met his burden of proof.

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

¹ *Dennis E. Twardzik*, 34 ECAB 536 (1983); *Max Grossman*, 8 ECAB 508 (1956); 20 C.F.R. § 10.121(a).

Any claimant not satisfied with a final decision of the Office shall be afforded an opportunity for an oral hearing before an Office representative. A hearing must be requested in writing within 30 days of the date of issuance of the decision. A claimant is not entitled to an oral hearing if the request is not made within 30 days of the date of issuance of the decision or if a request for reconsideration of the decision is made prior to requesting a hearing.²

The Board has held, however, that the Office, in its broad discretionary authority in the administration of the Federal Employees' Compensation 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 that discretionary authority.³ Specifically, the Board has held that the Office has the discretion to grant or deny a hearing request when the request is made after the 30-day period for requesting a hearing⁴ or when the request is made after a request for reconsideration.⁵ In such cases, the Office will determine whether a discretionary hearing should be granted and, if not, will so advise the claimant with reasons.⁶ The Office's procedures, which require the Office to exercise its discretion to grant or deny a hearing when the request is untimely or made after reconsideration, are a proper interpretation of the Act and a Board precedent.⁷

Because appellant made a request for reconsideration before requesting a hearing, he was not entitled to a hearing as a matter of right. The Office retained discretion to grant a hearing and denied appellant's request because the issue in his case could be equally well addressed through the reconsideration process. As the issue in this case is a medical one, requiring the submission of a reasoned medical opinion explaining how appellant's disability for work beginning on or about June 16, 1998 was causally related to the employment injury of December 30, 1986, appellant may indeed address the issue in this case equally well through the reconsideration process. The Board finds that the Office did not abuse its discretion in denying appellant's request.

² 5 U.S.C. § 8124(b)(1); 20 C.F.R. § 10.131(a)2(a).

³ *Mary B. Moss*, 40 ECAB 640 (1989) (untimely request); *Shirley A. Jackson*, 39 ECAB 540 (1988) (hearing request made after request for reconsideration); *Johnny S. Henderson*, 34 ECAB 216 (1982) (request for a second hearing); *Rudolph Bermann*, 26 ECAB 354 (1975) (injury occurring prior to effective date of the statutory amendments providing right to hearing).

⁴ *Herbert C. Holley*, 33 ECAB 140 (1981).

⁵ *James W. Croake*, 37 ECAB 219 (1985).

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.4.b(3) (June 1997).

⁷ *Jeff Micono*, 39 ECAB 617 (1988); *Henry Moreno*, 39 ECAB 475 (1988).

The November 18 and October 27, 1998 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, D.C.
May 25, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member