

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KENNETH LUCKETT and U.S. POSTAL SERVICE,
POST OFFICE, Chicago, IL

*Docket No. 00-353; Submitted on the Record;
Issued November 8, 2000*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
PRISCILLA ANNE SCHWAB

The issues are: (1) whether appellant has met his burden of proof in establishing that his left knee meniscus tear is causally related to his federal employment; and (2) whether the Branch of Hearings and Review abused its discretion by denying appellant's request for an oral hearing.

The Board has duly reviewed the case on appeal and finds that appellant failed to meet his burden of proof in establishing that his meniscus tear is causally related to his federal employment.

Appellant, a mail carrier, filed a claim on July 12, 1993 alleging that on July 10, 1993 he injured his left knee walking up stairs in the performance of duty. The Office of Workers' Compensation Programs accepted appellant's claim for left knee strain on August 23, 1993. Appellant filed a second claim for traumatic injury on January 11, 1996 alleging that on January 9, 1996 he experienced pain in his left knee. The Office denied this claim by decision dated March 11, 1996 finding that appellant failed to establish fact of injury.

Appellant filed a notice of recurrence of disability on July 15, 1997 alleging that on July 9, 1997 he sustained a recurrence of disability causally related to his 1993 employment injury. Appellant filed a similar claim on May 27, 1998. On June 12, 1998 appellant filed a notice of traumatic injury and alleged that on July 9, 1997 he sustained a meniscus tear as he experienced pain upon delivery of mail.

By decision dated September 14, 1998, the Office noted that it had developed appellant's claim as an occupational disease and denied appellant's claim for failure to establish causal relationship between his condition and his employment. Appellant requested reconsideration on October 8, 1998 and submitted new evidence.¹ Appellant requested an oral hearing on November 11, 1998. By decision dated December 30, 1998, the Branch of Hearings and Review

¹ This request was received by the Office on November 16, 1998.

denied appellant's request for an oral hearing as untimely. Appellant requested reconsideration and by decision dated July 19, 1999, the Office denied modification of its September 14, 1998 decision.

An employee seeking benefits under the Federal Employees' Compensation Act² has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence, including the fact that the individual is an "employee of the United States" within the meaning of the Act and 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 or specific condition for which compensation is claimed is causally related to the employment injury.³

In this case, appellant stated on June 10, 1998 that the continued pain in his left knee was due to post-traumatic arthritis which developed after his 1993 employment injury. Appellant stated that his knee sometimes locked, swelled and was painful after delivering mail. He noted that he continued to complain of pain and that the 1997 magnetic resonance imaging (MRI) scan demonstrated a focal tear in the posterior aspect of the lateral meniscus.

Appellant submitted notes from Dr. Amy Parker, a physician, diagnosing left knee meniscus tear and stating that the condition was "job related." These reports are not sufficient to meet appellant's burden of proof as Dr. Parker did not provide any history of injury or medical explanation of why he believed that appellant's condition was related to his employment.

In a report dated May 26, 1998, Dr. M. Parker Russell, a physician, noted examining appellant for left knee pain beginning on June 17, 1997. Dr. Russell diagnosed meniscus tear and stated that the injury was work related. This report also fails to meet appellant's burden of proof as Dr. Russell did not provide a history of injury and did not provide any medical rationale in support of his opinion that appellant's meniscus tear was due to his employment.

Dr. Richard A. Berger, a Board-certified orthopedic surgeon, completed a report on October 8, 1998 and stated that appellant injured his knee on June 17, 1997 while delivering mail. Dr. Berger stated that appellant reported twisting his left knee while walking up stairs in the performance of duty. He stated that appellant sustained a meniscus tear from the twisting incident. Dr. Berger added that appellant's past history of knee problems was not related to his current condition.

While this report provides a diagnosis, an opinion on causal relationship and medical rationale noting that twisting injuries frequently result in meniscal tears, Dr. Berger's report is not based on a consistent history of injury. Appellant had not previously reported a twisting injury to his knee on June 17, 1997. He claimed injury on July 9, 1997 and indicated that this injury was due to repeated deliveries of mail. As appellant has not provided the Office and Dr. Berger with consistent histories of injury, Dr. Berger's report is not sufficient to meet appellant's burden of proof.

² 5 U.S.C. §§ 8101-8193.

³ *Kathryn Haggerty*, 45 ECAB 383, 388 (1994).

The Board further finds that the Branch of Hearings and Review did not abuse its discretion in denying appellant's request for an oral hearing.

Section 8124(b) of the Act,⁴ concerning a claimant's entitlement to a hearing before an Office representative, states: "Before review under section 8128(a) of this title, a claimant ... 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 his claim before a representative of the Secretary."⁵

The Board has held that section 8124(b)(1) is "unequivocal" in setting forth the time limitation for requesting hearings. A claimant is entitled to a hearing as a matter of right only if the request is filed within the requisite 30 days.⁶ Even where the hearing request is not timely filed, the Office may within its discretion, grant a hearing, and must exercise this discretion.⁷

In this case, appellant's November 11, 1998 request for a hearing was not timely filed as it was made more than 30 days after the issuance of the Office's September 14, 1998 decision. The Office, therefore, properly denied appellant's hearing as a matter of right.

The Office then proceeded to exercise its discretion, in accordance with Board precedent, to determine whether to grant a hearing in this case. The Office determined that a hearing was not necessary as the issue in the case was medical and could be resolved through the submission of medical evidence in the reconsideration process. Therefore, the Office properly denied appellant's request for a hearing as untimely and properly exercised its discretion in determining to deny appellant's request for a hearing as he had other review options available.

⁴ 5 U.S.C. §§ 8101-8193.

⁵ 5 U.S.C. § 8124(b)(1).

⁶ *Tammy J. Kenow*, 44 ECAB 619 (1993).

⁷ *Id.*

The July 19, 1999 and December 30, 1998 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
November 8, 2000

David S. Gerson
Member

Michael E. Groom
Alternate Member

Priscilla Anne Schwab
Alternate Member