

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RITA J. BRYAN and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, West Los Angeles, CA

*Docket No. 99-2333; Submitted on the Record;
Issued November 13, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, PRISCILLA ANNE SCHWAB,
VALERIE D. EVANS-HARRELL

The issues are: (1) whether appellant sustained an injury in the performance of duty causally related to factors of her federal employment; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for an oral hearing as untimely.

On June 25, 1998 appellant, then a 40-year-old nursing assistant, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that she injured her back while in the performance of duty. She described the nature of her disease as lumbar mechanical dysfunction. Appellant explained that, while working under her doctor's restrictions, she injured her back as a result of lifting heavy x-ray files.¹ In support of her claim, appellant submitted a July 1, 1998 form report from Dr. William H. Dillin, a Board-certified orthopedic surgeon, who diagnosed lumbosacral mechanical dysfunction and strain and placed appellant on limited duty with no lifting in excess of 15 pounds.

By letter dated August 25, 1998, the Office requested that appellant submit additional factual and medical information. The Office further advised appellant that the case would remain open for approximately 30 days in order to submit the requested information. Appellant did not respond to the Office's request in a timely manner.

In a decision dated October 1, 1998, the Office denied appellant's claim on the basis that she failed to establish that her back condition was caused by her employment.

By letter dated April 4, 1999, received by the Office on April 13, 1999, appellant requested an oral hearing. By decision dated May 12, 1999, the Office found that appellant did not submit her request for an oral hearing within 30 days of the Office's October 1, 1998 decision and, therefore, was not entitled to a hearing as a matter of right. Additionally, the

¹ Appellant sustained a prior employment-related back injury on February 9, 1994, which the Office accepted for lumbar strain (A13-1038950).

Office considered the matter in relation to the issue involved and denied appellant's request on the basis that the issue of whether her claimed back condition was causally related to factors of her employment could equally well be addressed through the reconsideration process.

The Board finds that appellant has not met her burden of proof in establishing that she sustained an injury in the performance of duty, causally related to factors of her federal employment.

In an occupational disease claim, in order to establish that an injury was sustained in the performance of duty, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by appellant 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.²

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that the condition was caused, precipitated or aggravated by her employment is sufficient to establish a causal relationship.³ A physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors must be based on a complete factual and medical background of the claimant.⁴ Additionally, in order to be considered rationalized, the opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and claimant's specific employment factors.⁵

In the instant case, Dr. Dillin's July 1, 1998 report was the only medical evidence submitted by appellant prior to the Office's October 1, 1998 decision.⁶ Dr. Dillin provided no information regarding the basis for his diagnosis; nor did he offer an opinion regarding causal relationship. Furthermore, the July 1, 1998 report does not include a date of injury, a description of implicated employment factors or a history of injury. In the absence of an explanation as to how appellant's alleged lifting of heavy x-ray files on or about June 19, 1998 either caused or contributed to her current back condition, Dr. Dillin's July 1, 1998 report is of limited probative value. Consequently, the medical evidence of record fails to establish a causal relationship

² *Victor J. Woodhams*, 41 ECAB 345 (1989).

³ *Robert G. Morris*, 48 ECAB 238, 239 (1996).

⁴ *Victor J. Woodhams*, *supra* note 2.

⁵ *Id.*

⁶ While the record includes evidence received by the Office subsequent to the issuance of its October 1, 1998 decision, the Board's review is limited to the evidence of record that was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c).

between appellant's diagnosed condition and her employment. Therefore, appellant has failed to demonstrate that she sustained an injury in the performance of duty.⁷

The Board also finds that the Office properly denied appellant's request for an oral hearing as untimely.

Any claimant dissatisfied with a decision of the Office shall be afforded an opportunity for an oral hearing or, in lieu, thereof, a review of the written record. A request for either an oral hearing or a review of the written record must be submitted, in writing, within 30 days of the date of the decision for which a hearing is sought. A claimant is not entitled to a hearing or a review of the written record if the request is not made within 30 days of the date of the decision for which a hearing is sought.⁸ The Office has discretion, however, to grant or deny a request that is made after this 30-day period.⁹ In such a case, the Office will determine whether a discretionary hearing should be granted and, if not, will so advise the claimant with reasons.¹⁰

Appellant's request for an oral hearing was dated April 4, 1999 and received by the Office on April 7, 1999, which is more than 30 days after the Office's October 1, 1998 decision. As such, appellant is not entitled to an oral hearing as a matter of right. Moreover, the Office considered whether to grant a discretionary review and correctly advised appellant that the issue of whether she established that she sustained an injury in the performance of duty causally related to factors of her federal employment could equally well be addressed by requesting reconsideration.¹¹ Accordingly, the Board finds that the Office properly exercised its discretion in denying appellant's untimely request for a hearing.

⁷ *Id.*

⁸ 20 C.F.R. § 10.616(a) (1999).

⁹ *Herbert C. Holley*, 33 ECAB 140 (1981).

¹⁰ *Rudolph Bermann*, 26 ECAB 354 (1975).

¹¹ The Board has held that a denial of review on this basis is a proper exercise of the Office's discretion. *E.g., Jeff Micono*, 39 ECAB 617 (1988).

The decisions of the Office of Workers' Compensation Programs dated May 12, 1999 and October 1, 1998 are hereby affirmed.

Dated, Washington, DC
November 13, 2000

Michael J. Walsh
Chairman

Priscilla Anne Schwab
Alternate Member

Valerie D. Evans-Harrell
Alternate Member