U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CYNTHIA L. LOGAN and U.S. POSTAL SERVICE,
GEORGETOWN POST OFFICE, Washington, D.C.

Docket No. 99-2365; Submitted on the Record;
Issued November 2, 2000

DECISION and ORDER

Before MICHAEL E. GROOM, A. PETER KANJORSKI,
PRISCILLA ANNE SCHWAB

The issues are: (1) whether the Office of Workers' Compensation Programs properly terminated appellant's compensation effective February 8, 1999; and (2) whether the Office properly denied appellant's request for a hearing.

The Office accepted that appellant sustained a lumbosacral strain on January 13, 1996 as alleged. Appellant underwent conservative medical treatment and returned to duty. By decision dated February 8, 1999, the Office terminated appellant's medical benefitis on the basis that she had no continuing disability or residuals as a result of her January 13, 1996 employment injury.

By letter dated April 9, 1999, appellant requested an oral hearing. By decision dated May 21, 1999, the Office's Branch of Hearings and Review denied appellant's request for a hearing as untimely and found that the matter could be further pursued through the reconsideration process.

The Board had duly reviewed the entire case record and finds that the Office properly terminated appellant's medical benefits.

Under the Federal Employees' Compensation Act,[1] once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of compensation.[2] After the Office determines that an employee has a disability causally related to his or her employment, the Office may not terminate compensation without establishing that its original

[1] 5 U.S.C. §§ 8101-8193.

[2] *William Kandel*, 43 ECAB 1011 (1992).

determination was erroneous or that the disability has ceased or is no longer related to the employment injury.[3]

The fact that the Office accepts appellant's claim for a specified period of disability does not shift the burden of proof to appellant to show that he or she is still disabled. The burden is on the Office to demonstrate an absence of employment-related disability in the period subsequent to the date when compensation is terminated or modified.[4] Therefore, the Office must establish that appellant's condition was no longer aggravated by employment factors after February 8, 1999, and the Office's burden includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.[5]

In this case, the Office terminated appellant's medical benefits based on the August 8, 1996 examination of Dr. Willie Thompson, an orthopedist consultant and appellant's attending physician. In a report dated August 8, 1996, Dr. Thompson indicated that appellant was on limited duty and had been undergoing a course of rehabilitation since May 20, 1996 for an injury to her lower back she received while lifting tubs of mail at work on January 13, 1996. He reported the results of his clinical examination and noted that appellant was very tearful and cried easily for no apparent reason.

Dr. Thompson stated that there were no objective signs of pathology in appellant, there were a number of nonorganic signs and inconsistencies in appellant's examination and there was a definite lack of effort on appellant's part to participate in the examination. He stated that there was no objective evidence to document the need for any formal medical treatment or physical limitations on appellant whether work related or otherwise. Dr. Thompson stated that appellant reached maximum medical improvement and was capable of returning to full, unlimited duty immediately without restrictions.

Dr. Thompson's report is sufficient to establish that appellant has no continuing disability due to her accepted employment injury of lumbar strain as it resolved and requires no further investigation or medical treatment.[6] Moreover, the Office, in accordance with the Federal (FECA) Procedure Manual, properly did not issue a pretermination notice as appellant's treating physician found that further medical treatment for the accepted employment injury was not necessary.[7] The Office has met its burden of proof in terminating appellant's medical benefits effective February 8, 1999 on the grounds that her employment injury of January 13, 1996 had resolved.

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

---

[3] *Carl D. Johnson*, 46 ECAB 804 (1995).

[4] *Dawn Sweazey*, 44 ECAB 824 (1993).

[5] *Mary Lou Barragy*, 46 ECAB 781 (1995).

[6] The record indicates that appellant filed another claim for a back injury sustained on November 1, 1996, case number A25-0498342. That Claim is not before the Board.

[7] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowance*, Chapter 2.1400.6(d) (March 1997).

Section 8124(b)(1) of the Act provides in pertinent part:

> "Before review under section 8128(a) of this title, a claimant for compensation not satisfied with a decision of the Secretary under subsection (a) of this title is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on his claim before a representative of the Secretary."[8]

A claimant requesting a hearing after the 30-day period is not entitled to a hearing as a matter of right.[9] In this case, the record contains a letter dated April 9, 1999 and received by the Office on April 13, 1999 requesting a hearing. The April 9, 1999 letter was clearly not filed within 30 days of the February 8, 1999 Office decision and, thus, appellant was not entitled to a hearing as a matter of right.

Although appellant's request for a hearing was untimely, the Office has discretionary authority with respect to granting a hearing and the Office must exercise such discretion.[10] In the May 21, 1999 letter decision, the Office advised appellant that the request for a hearing was further denied because the issue in the case could be addressed by requesting reconsideration and submitting relevant evidence. This is considered a proper exercise of the Office's discretionary authority.[11] There is no evidence of an abuse of discretion in this case.

For these reasons, the Office properly denied appellant's request for a hearing under section 8124 of the Act.

[8] 5 U.S.C. § 8124(b)(1).

[9] *See Robert Lombardo*, 40 ECAB 1038 (1989).

[10] *See Herbert C. Holley*, 33 ECAB 140 (1981).

[11] *Mary B. Moss*, 40 ECAB 640, 647 (1989).

The decisions of the Office of Workers' Compensation Programs dated May 21 and February 8, 1999 are hereby affirmed.

Dated, Washington, DC
November 2, 2000

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

Priscilla Anne Schwab
Alternate Member