U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PATRICIA B. BIGGERS and U.S. POSTAL SERVICE,
YUKON POST OFFICE, Yukon, OK

Docket No. 99-2487; Submitted on the Record;
Issued November 9, 2000

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
VALERIE D. EVANS-HARRELL

The issues are: (1) whether appellant has met her burden of proof to establish that she sustained a recurrence of disability on August 3, 1998 causally related to her December 15, 1997 employment injury; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for a hearing under 5 U.S.C. § 8124(b).

On April 16, 1998 appellant, then a 61-year-old distribution/window clerk, filed a claim for an occupational disease (Form CA-2) alleging that on December 15, 1997 she first realized that her tendinitis of the right elbow and arm were caused or aggravated by her employment. Subsequent to her injury, appellant performed limited-duty work.

By letter dated June 12, 1998, the Office accepted appellant's claim for right lateral epicondylitis. In addition, the Office provided authorization for diagnostic and neurological testing and a referral for appellant's pain and inflammation.

On August 26, 1998 appellant filed a claim for compensation on account of traumatic injury or occupational disease (Form CA-7) requesting wage-loss compensation for the period beginning August 3, 1998. In a September 4, 1998 letter, the Office advised appellant that her Form CA-7 could not be processed. The Office then advised appellant to submit a recurrence claim (Form CA-2a) along with supportive factual and medical evidence.

On October 22, 1998 appellant filed another Form CA-7 requesting wage-loss compensation for the period August 3 through October 13, 1998. On the same date, appellant filed a Form CA-2a alleging that she sustained a recurrence of disability on August 3, 1998. Appellant indicated that she stopped work on August 3, 1998.

By decision dated December 15, 1998, the Office found the evidence of record insufficient to establish that appellant sustained a recurrence of disability on August 3, 1998

causally related to her December 15, 1997 employment injury. In a January 15, 1999 letter, appellant requested reconsideration of the Office's decision accompanied by medical evidence.

By decision dated March 8, 1999, the Office denied appellant's request for modification based on a merit review.

In a telephone conversation on May 4, 1999, the Office advised the office of appellant's congressional representative that appellant should exercise her appeal rights. In an undated letter that was postmarked May 8, 1999, appellant requested "an oral hearing or a review of the written record."

In a June 11, 1999 decision, the Office denied appellant's request for an oral hearing on the grounds that it was untimely filed under section 8124 of the Federal Employees' Compensation Act.

The Board has duly reviewed the case record in this appeal and finds that appellant has failed to meet her burden of proof to establish that she sustained a recurrence of disability on August 3, 1998 causally related to her December 15, 1997 employment injury.

An employee returning to light duty, or whose medical evidence shows the ability to perform light duty, has the burden of proof to establish a recurrence of temporary total disability by the weight of substantial, reliable and probative evidence and to show that he or she cannot perform the light duty.[1] As part of her burden, the employee must show a change in the nature and extent of the injury-related conditions or a change in the nature and extent of the light-duty requirements.[2]

In the present case, appellant has neither shown a change in the nature and extent of her injury-related condition or a change in the nature and extent of the light-duty requirements. The record shows that, following the December 15, 1997 employment-related right lateral epicondylitis, appellant returned to work in a limited-duty capacity with certain physical restrictions. The record does not establish, nor does appellant allege, that the claimed recurrence of total disability was caused by a change in the nature or extent of the limited-duty job requirements.

The only medical evidence of record which addresses whether appellant's current condition was caused by her December 15, 1997 employment injury is the May 1, 1999 attending physician's report (Form CA-20) of Dr. J. Keith Gannaway, a Board-certified orthopedic surgeon and appellant's treating physician. In this report, Dr. Gannaway indicated a history of appellant's December 15, 1997 employment injury and a diagnosis of chronic lateral epicondylitis. He further indicated that appellant's condition was caused and aggravated by an employment activity by placing a checkmark in the box marked "yes." The Board has held that an opinion on causal relationship which consists only of a physician checking "yes" to a medical form report question on whether the claimant's disability was related to the history is of

[1] *Terry R. Hedman*, 38 ECA 222, 227 (1986).

[2] *Id.*

diminished probative value. Without any explanation or rationale for the conclusion reached, such report is insufficient to establish causal relationship.[3] Inasmuch as Dr. Gannaway failed to explain how or why appellant's current elbow condition was caused by the December 15, 1997 employment injury, his report is insufficient to establish appellant's burden.

The Board further finds that the Office properly denied appellant's request for a hearing under 5 U.S.C. § 8124(b).

Section 8124(b) of the Act, concerning a claimant's entitlement to a hearing, states: "Before review under section 8128(a) of this title, a claimant for compensation 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."[4] As section 8124(b)(1) is unequivocal in setting forth the time limitation for requesting a hearing, a claimant is not entitled to a hearing as a matter of right unless the request is made within the requisite 30 days.[5] 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,[6] when the request is made after the 30-day period established for requesting a hearing,[7] or when the request is for a second hearing on the same issue.[8] 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.[9]

In the present case, appellant's hearing request was made more than 30 days after the date of issuance of the Office's prior decision dated March 8, 1999 and, thus, appellant was not entitled to a hearing as a matter of right. Appellant requested a hearing in an undated letter that was postmarked May 8, 1999. Hence, the Office was correct in stating in its June 11, 1999 decision that appellant was not entitled to a hearing as a matter of right because her hearing request was not made within 30 days of the Office's March 8, 1999 decision.

While the Office also has the discretionary power to grant a hearing when a claimant is not entitled to a hearing as a matter of right, the Office, in its June 11, 1999 decision, properly

[3] *Lucrecia M. Nielsen*, 42 ECAB 583, 594 (1991).

[4] 5 U.S.C. § 8124(b)(1).

[5] *Frederick D. Richardson*, 45 ECAB 454 (1994).

[6] *Rudolph Bermann*, 26 ECAB 354 (1975).

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

[8] *Johnny S. Henderson*, 34 ECAB 216 (1982).

[9] *Sandra F. Powell*, 45 ECAB 877 (1994).

exercised its discretion by stating that it had considered the matter in relation to the issue involved and had denied appellant's hearing request on the basis that the case could be resolved by submitting additional evidence to establish that she sustained a recurrence of disability due to the work-related injury of December 15, 1997. The Board has held that, 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 deduction from established facts.[10] In the present case, the evidence of record does not indicate that the Office committed any act in connection with its denial of appellant's hearing request that could be found to be an abuse of discretion. For these reasons, the Office properly denied appellant's request for a hearing under section 8124 of the Act.

The June 11 and March 8, 1999 and December 15, 1998 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
November 9, 2000

David S. Gerson
Member

Willie T.C. Thomas
Member

Valerie D. Evans-Harrell
Alternate Member

[10] *Daniel J. Perea*, 42 ECAB 214 (1990).