

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ADA L. GUEST and DEPARTMENT OF THE ARMY,  
TANK AUTOMOTIVE & ARMAMENTS COMMAND, Warren, MI

*Docket No. 99-2011; Submitted on the Record;  
Issued October 13, 2000*

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DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issues are: (1) whether appellant met her burden of proof in establishing that she had any disability beginning July 29, 1998 causally related to the accepted injury of June 19, 1997 and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for a hearing before a Office hearing representative.

On June 30, 1997 appellant, then a 47-year-old program analyst, filed a claim for compensation alleging that she sustained a strained back, right hip and arms on June 19, 1997 while walking and carrying luggage at an airport. Appellant stopped work on June 20, 1997 and returned to work on June 24, 1997.

The Office accepted appellant's claim for bilateral arm and back strain and authorized continuation of pay for time missed from work.

On September 9, 1998 appellant filed a Form CA-7 requesting wage-loss compensation for disability for the period July 29 to August 14 and August 17 to September 11, 1998. In support of her claim, appellant submitted an x-ray of the lumbar spine, right hip and cervical spine dated June 25, 1997 as well as an attending physician's report dated September 15, 1998, prepared by Dr. Gerald Rakotz, a family practitioner. The x-ray revealed negative results for the lumbar spine. However, the cervical spine x-ray indicated mild hypertrophy of the right uncovertebral joint at C5-6. The right hip x-ray indicated an oval calcification in the soft tissues adjacent to the right inferior acetabular margin of uncertain etiology. The attending physician's report diagnosed right hip pain, back sprain and bilateral arm and foot pain. Dr. Rakotz indicated with a checkmark "yes" that appellant's condition was caused or aggravated by an employment activity.

By letter dated October 1, 1998, the Office requested additional medical evidence from appellant stating that the initial information submitted was insufficient to establish that appellant

was totally disabled for the periods of time claimed. The Office advised appellant of the type of medical evidence needed to establish this claim.

By letter dated November 4, 1998, the Office notified appellant that it had not received the information requested in the letter of October 1, 1998 and enclosed a second copy of the letter.

Thereafter, appellant submitted a narrative statement dated November 9, 1998, a duplicative copy of an x-ray report dated June 25, 1997, a duplicative copy of a report from Dr. Ashok Soorya, an internist, dated September 3, 1997, a return to work certificate dated July 28, 1998 and an October 20, 1998 disability slip from Dr. Rakotz. The return to work certificate dated July 28, 1998 indicated that appellant was having cervical disc problems and right hip pain and was disabled from July 9 to August 27, 1998. The disability slip dated October 20, 1998, prepared by Dr. Rakotz indicated appellant was able to return to work on a part-time status.

In a decision dated January 19, 1999, the Office denied appellant's claim, was finding that the medical evidence was not sufficient to establish that the claimed period of total disability is causally related to the injury of June 19, 1997.

By letter postmarked February 23, 1999, appellant requested a hearing before an Office hearing representative. She also submitted additional medical evidence.

By decision dated March 30, 1999, the Office denied appellant's request for a hearing. The Office found that the request was not timely filed. Appellant was informed that her case had been considered in relation to the issues involved and that the request was further denied for the reason that the issues in this case could be addressed by requesting reconsideration from the district office and submitting evidence not previously considered.

The Board finds that appellant has failed to establish that her condition during the claimed period of disability is causally related to the accepted employment injury of June 19, 1997.

Appellant has the burden of establishing by the weight of reliable, probative and substantial evidence that the period of claimed disability was caused or adversely affected by the employment injury. As part of this burden, she must submit rationalized medical opinion evidence based on a complete factual and medical background showing a causal relationship between her disability and the federal employment. The fact that the condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.<sup>1</sup>

In this case, the Office accepted appellant's claim for bilateral arm and back strain and appellant returned to work before filing a claim for wage-loss compensation beginning July 29, 1998. However, the medical evidence submitted in support of the wage-loss

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<sup>1</sup> See *Nicolea Bruso*, 33 ECAB 1138 (1982).

compensation claim for disability for the period beginning July 29, 1998 is insufficient to establish an aggravation of appellant's medical condition. The x-ray's dated June 25, 1997 of the lumbar spine, cervical spine and right hip were essentially normal except for the cervical spine which revealed a mild hypertrophy of the right uncovertebral joint C5-6; and the right hip predates the onset of the claimed disability. The only report supporting causal relationship between appellant's employment and diagnosed condition is Dr. Rakotz's report dated September 15, 1998 in which he diagnosed right hip pain, back sprain and bilateral arm and foot pain and indicated with a checkmark "yes" that appellant's condition was caused or aggravated by an employment activity. 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 condition was related to the history given is of little probative value. Without any explanation or rationale for the conclusion reached, such report is insufficient to establish causal relationship.<sup>2</sup> Therefore, this report is insufficient to meet appellant's burden of proof. Other reports from Dr. Rakotz indicated appellant's disability status but they did not attempt to explain the relationship between the claimed period of disability and the June 19, 1997 work injury. Other medical evidence submitted by appellant either predates the period of claimed disability or does not address causal relationship.

The Office, on October 8 and November 4, 1998,<sup>0</sup> requested additional medical evidence from appellant stating that the initial information submitted was insufficient to establish that appellant was totally disabled for the period claimed. However, sufficient medical evidence was not submitted.

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

Section 8124(b) of the Federal Employees' Compensation Act,<sup>3</sup> concerning a claimant's entitlement to a hearing before an Office representative, states: "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 issuance of the decision, to a hearing on his claim before a representative of the Secretary."<sup>4</sup>

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.<sup>5</sup> Even where the hearing request is not timely filed, the Office may within its discretion grant a hearing and must exercise this discretion.<sup>6</sup>

In the instant case, the Office properly determined that appellant's request for a hearing postmarked February 23, 1999 was not timely filed as it was made more than 30 days after the

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<sup>2</sup> *Lucrecia M. Nielson*, 41 ECAB 583, 594 (1991).

<sup>3</sup> 5 U.S.C. §§ 8101-8193.

<sup>4</sup> 5 U.S.C. § 8124(b)(1).

<sup>5</sup> *Tammy J. Kenow*, 44 ECAB 619 (1993).

<sup>6</sup> *Id.*

issuance of the Office's January 19, 1999 decision.<sup>7</sup> 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.<sup>8</sup>

The March 30 and January 19, 1999 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC  
October 13, 2000

Michael J. Walsh  
Chairman

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>7</sup> Accompanying appellant's request for an oral hearing was a medical report from Dr. Rakotz dated January 8, 1999. Appellant's request for an oral hearing was determined to be untimely, therefore, the Office did not consider this report in the March 30, 1999 decision. Consequently, the Board is precluded from considering this report on appeal; *see* 20 C.F.R. § 501.2(c). This decision does not preclude appellant from submitting such reports to the Office as part of a reconsideration request.

<sup>8</sup> With her untimely request for a hearing and on appeal, appellant submitted additional evidence. However, the Board may not consider new evidence on appeal; *see* 20 C.F.R. § 501.2(c).