U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of YOLANDA THORNTON and U.S. POSTAL SERVICE,
POST OFFICE, Washington, D.C.

Docket No. 97-2534; Oral Argument Held May 2, 2000;
Issued September 15, 2000

Appearances: *Appellant, pro se; Catherine P. Carter, Esq.,*
for the Director, Office of Workers' Compensation Programs.

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
BRADLEY T. KNOTT

The issues are: (1) whether appellant has met her burden of proof in establishing that she sustained an injury in the performance of duty commencing November 27, 1994; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for a hearing under section 8124 of the Federal Employees' Compensation Act.

On December 1, 1994 appellant, then a 27-year-old flat sorter machine clerk, filed a notice of traumatic injury (Form CA-1), alleging that she suffered an injury to her left wrist due to a constant twisting motion. On the reverse side of the form, appellant's supervisor controverted appellant's claim for continuation of pay (COP) stating, "[s]hould be a CA-2 not a CA-1."

By letter dated January 11, 1995, the Office advised appellant that the injury she described was an occupational disease as it occurred over more than one workday or work shift and that she should have submitted a Form CA-2.[1] By another letter dated January 11, 1995, the Office requested detailed factual and medical information from appellant. By still another letter dated January 11, 1995, the Office requested additional information from the employing establishment. By letter dated March 29, 1995, the Office made a second request for factual and medical information from appellant.

By decision dated April 25, 1995, after receiving no response from appellant, the Office denied appellant's claim finding that the evidence of record failed to establish that an injury was sustained as alleged.

[1] The record supports that a CA-2 was filed in this case for an injury commending November 27, 1994.

By letter dated September 14, 1995, appellant requested reconsideration of the April 25, 1995 decision. In support, appellant submitted a December 1, 1994 injury report describing what happened on November 27, 1994; a June 23, 1995 duty status report by Dr. Eunice Shakir, a Board-certified family practitioner, providing a diagnosis of a history of wrist strain and indicating that appellant could work with restrictions.

By decision dated September 28, 1995, after a merit review, the Office denied appellant's request for reconsideration finding that the evidence of record was insufficient to warrant modification of the prior decision.

By letter dated October 24, 1995, appellant requested reconsideration of the September 28, 1995 decision. In support appellant submitted a December 20, 1994 x-ray report of the left wrist interpreted by Dr. Martin S. Kneller, a Board-certified radiologist, as being normal January 6 and March 8 and 22, 1995 office notes by Dr. Robert Collins, a Board-certified orthopedic surgeon, who diagnosed wrist strain, prescribed medication and recommended a pad to rest her wrist when typing and an April 25, 1995 report by Dr. V. John Blazina, a Board-certified neurologist, who conducted an electromyograph and diagnosed "Normal electromyographic, motor, sensory and mixed conduction studies as well as F-waves of the left upper extremity. Normal electromyographic examination of the right upper extremity."

By decision dated November 27, 1995, the Office after a merit review, denied appellant's request for reconsideration finding that the evidence of record was insufficient to warrant modification of the prior decision.

By letter dated August 14, 1996, appellant requested reconsideration of the November 27, 1995 decision. In support, she submitted an August 14, 1996 report, by Dr. N. Joseph Okafor, a Board-certified internist. Dr. Okafor stated that appellant had been treated for wrist tendinitis, which started on November 27, 1994 stemming from the repetitive side motion from keying for four years on the flat sorter machine at the employing establishment. He recommended that appellant not perform duties requiring repetitive motion.

By decision dated September 11, 1996, the Office after a merit review, denied appellants request for reconsideration finding that the evidence of record was insufficient to warrant modification of the prior decision.

By letter dated December 20, 1996, appellant requested an oral hearing before an Office hearing representative.

By decision dated January 27, 1997, the Office's Branch of Hearings and Review denied appellant's request on the grounds that she had previously requested reconsideration and as a matter of right, was not entitled to an oral hearing on the same issue. Also, the Office, in exercising its discretion, determined that the issue in this case could equally well be addressed by requesting reconsideration from the Office and submitting evidence not previously considered which established that he sustained an injury as claimed.

The Board finds that appellant failed to meet her burden of proof in establishing that she sustained an injury in the performance of duty causally related to factors of her federal employment commencing November 27, 1994.

An employee seeking benefits under the Act[2] has the burden of establishing the essential elements of his or her claim including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was filed within the applicable time limitations of the Act.[3] An individual seeking disability compensation must also establish that an injury was sustained at the time, place and in the manner alleged,[4] that the injury was sustained while in the performance of duty,[5] and that the disabling condition for which compensation is claimed was caused or aggravated by the individual's employment.[6] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.[7]

To establish that an injury was sustained in the performance of duty in an occupational disease claim, 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 the claimant 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.

The medical evidence required to establish causal relationship, generally, is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[8]

In the instant case, there is no dispute that appellant has left wrist problems. However, there is insufficient rationalized medical opinion evidence to support a causal relationship between the factors of employment identified by appellant and a diagnosed condition. The medical evidence submitted in support of appellant's claim consists of a December 22, 1994

[2] 5 U.S.C. §§ 8101-8193.

[3] *Elaine Pendleton*, 40 ECAB 1143 (1989).

[4] *Robert A. Gregory*, 40 ECAB 478 (1989).

[5] *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[6] *Steven R. Piper*, 39 ECAB 312 (1987).

[7] *David J. Overfield*, 42 ECAB 718 (1991); *Victor J. Woodhams*, 41 ECAB 345 (1989).

[8] *Id*.

report of a December 20, 1994 x-ray of the left wrist by Dr. Martin S. Kneller, a Board-certified radiologist who interpreted it as revealing no abnormalities; January 6 and March 8 and 22, 1995 office notes by Dr. Robert Collins, a Board-certified orthopedic surgeon, who diagnosed a wrist strain, but failed to identify the employment factors to which appellant attributes her condition or to provide a rationalized medical opinion causally relating a condition to those employment factors a report by Dr. Blazina, a Board-certified neurologist who interpreted an April 24, 1995 electromyograph test as being normal and an August 14, 1996 report by Dr. Okafor, a Board-certified internist, who stated that appellant was treated for wrist tendinitis which started on November 27, 1994 stemming from repetitive side motion from keying on a flat shorter machine. He did not indicate when he started treating appellant, did not provide a history of treatment, findings on examination, or test results, to support a diagnosis nor did Dr. Okafor explain how engaging in the employment duties identified by appellant over a period of time either contributed or caused a diagnosed condition. None of the medical evidence mentioned above is sufficient to establish appellant's claim. The Office, by letters dated January 11 and March 29, 1995 advised appellant of the specific evidence needed to establish her occupational disease claim, but such evidence was not submitted. The Board finds that the evidence of record is insufficient to meet appellant's burden of proof.

The Board further finds that the Office properly denied appellant's request for a hearing under section 8124 of the Act.

Section 8124(b)(1) of the Act,[9] concerning a claimant's entitlement to a hearing by an Office representative, 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 … 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."[10] As section 8124(b)(1) is unequivocal in setting forth the time limitation for requesting a hearing,[11] a claimant is not entitled to a hearing or a review of the written record as a matter of right if he has requested reconsideration under section 8128(a) of the Act prior to requesting a hearing before an Office hearing representative.

The Board has held that 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 and that the Office must exercise this discretionary authority in deciding whether to grant a hearing.[12] 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,[13] when the request is made after the 30-day period for requesting a hearing[14] and when the request is for a

[9] 5 U.S.C. § 8124(b)(1).

[10] 5 U.S.C. § 8124(b)(1).

[11] *Ella M. Garner*, 36 ECAB 238 (1984); *Charles E. Varrick*, 33 ECAB 1746 (1982).

[12] *Henry Moreno*, 39 ECAB 475, 482 (1988).

[13] *Rudolph Bermann*, 26 ECAB 354, 360 (1975).

[14] *Herbert C. Holley*, 33 ECAB 140, 142 (1981).

second hearing on the same issue.[15] 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.[16]

In the present case, appellant had previously requested reconsideration on September 14 and October 24, 1995 and August 14, 1996. The Office denied appellant's requests for reconsideration on September 28 and November 27, 1995 and September 11, 1996. The Office exercised its discretion by finding that appellant could have the issue of whether he sustained an injury as claimed be considered equally well by submitting new, relevant evidence and requesting reconsideration. As the only limitation on 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 deductions from known facts.[17] For these reasons, the Office properly denied appellant's request for a hearing under section 8124 of the Act.

The decisions of the Office of Workers' Compensation Programs dated January 27, 1997 and September 11, 1996 are affirmed.[18]

Dated, Washington, DC
September 15, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

Bradley T. Knott
Alternate Member

[15] *Johnny S. Henderson*, 34 ECAB 216, 219 (1982).

[16] *Henry Moreno*, *supra* note 12.

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

[18] The Board notes that appellant filed a claim for a traumatic injury on December 19, 1996 with supporting evidence for a condition different from that previously claimed. No decision was issued on that claim. Therefore, it is not on appeal before the Board. The Office should review the claim and issue an appropriate decision.