

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of VELMA JOHNSON and U.S. POSTAL SERVICE,  
POST OFFICE, Shreveport, LA

*Docket No. 00-1384; Submitted on the Record;  
Issued April 27, 2001*

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DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,  
A. PETER KANJORSKI

The issues are: (1) whether appellant met her burden of proof to establish that she sustained an injury on April 29, 1999, causally related to her federal employment; and (2) whether the Office of Workers' Compensation Programs, by its October 28, 1999 decision, properly denied appellant's oral hearing request on the grounds that it was untimely filed.

On May 28, 1999 appellant, then a 50-year-old rural route carrier, filed a traumatic injury claim alleging that on April 29, 1999 she sustained neck, shoulder, right arm and right elbow injuries. On the claim form, she stated that she "overexerted trying to work under stress and make [the] evaluated schedule" when she reached out to mailboxes, lifted mail trays out of a hamper and moved mail trays to the front of her car. On the reverse side of the claim form, appellant's supervisor noted that appellant worked on April 29 and 30, 1999 but left work on May 1, 1999 complaining of leg cramps. Appellant first received medical treatment from Dr. William F. Webb, a Board-certified orthopedic surgeon, on May 4, 1999. She stopped work on that date and returned on May 8, 1999.

In a supplementary statement, appellant's supervisor alleged that appellant had an "extensive history of unsatisfactory work performance with discipline beginning in 1996 and culminating with [her] removal from service in May 1997." She stated that appellant was reinstated and alleged that her unsatisfactory work performance continued. The supervisor noted appellant's absences and work restrictions.

To support her claim, appellant submitted notes dated December 19, 1996 to March 12, 1999 in which Dr. E. Blaine Pittman, a Board-certified surgeon, noted that appellant was disabled from work until January 1, 1997 and was unable to work without a sling thereafter. In his March 12, 1999 note, Dr. Pittman diagnosed severe right shoulder tendinitis and advised that appellant would be released to work on March 22, 1999. Appellant also submitted a note dated May 4, 1999 in which Dr. Webb stated that he treated appellant for overuse injuries to her right shoulder, elbow and knee. He advised that appellant was unable to work more than three days per week. Dr. Webb's May 21, 1999 note indicated that appellant was restricted to working 20

hours per week with permanent restrictions. His May 27, 1999 note stated that appellant was unable to work on May 29, 1999.

In a statement dated June 9, 1999, the employing establishment controverted appellant's claim. It argued that appellant sustained a nonemployment-related condition and that the medical evidence failed to establish her claim.

By letter dated June 22, 1999, the Office requested additional factual and medical evidence from appellant, including responses to a list of questions and allowed her 30 days within which to respond to its request.

In response, appellant submitted a narrative statement dated July 19, 1999 in which she stated that the onset of her condition occurred over a period of time and that she was accustomed to having pain after work. She stated that she treated her pain with ice and hot baths but it became more constant and severe. Appellant explained that her pain was caused by lifting parcels and mail trays out of a two-foot deep hamper, placing them on the front seat of her car, and reaching out of the car window into mailboxes. She stated that she tried using a stick to reach the mailboxes but she worked beyond her scheduled work hours. Appellant noted that she worked in the office for 2 hours and delivered mail to 400 mailboxes for 5 hours. She stated that after work on April 29, 1999 her knee "popped with a lot of pain all night long" and that her legs cramped. Appellant further stated that she tried to work on May 1, 1999 but the pain was too severe and she left the employing establishment after completing her office work. She asserted that she experienced stress because she tried to complete her deliveries within the evaluated weekly time schedule. Appellant described her symptoms and noted her work history.

By decision dated July 27, 1999, the Office denied appellant's claim on the grounds that the evidence of record was insufficient to establish that her alleged injury was causally related to factors of her federal employment.

By letter dated August 27, 1999, appellant requested an oral hearing before an Office hearing representative. She alleged that her condition was caused by reaching out of the passenger's side window of her car over 500 times daily in order to deposit mail and standing and reaching into mail cases above her shoulders for 3 to 5 hours daily. Appellant also alleged that she was intimidated and verbally abused by the postmaster.

Appellant submitted progress notes dated November 7, 1995 to June 22, 1999 in which Dr. Webb noted appellant's subjective complaints and his objective findings. He diagnosed right rotator cuff syndrome and right elbow tendinitis with lateral epicondylitis secondary to overuse as a mail carrier. In an undated form report, Dr. Webb advised that appellant could not work more than three days per week.

Appellant also submitted an x-ray report dated March 20, 1997 from Orthopedic Specialists of Louisiana regarding an alleged injury sustained on March 17, 1997. The report included a left foot contusion diagnosis.

Appellant submitted a report dated June 3, 1999 in which Dr. John A. Thompson, a chiropractor, noted his objective findings and diagnosed rotator cuff syndrome, brachial plexus irritation radiating to the right elbow and hand, cervicalgia and lumbago. He opined that

appellant's symptoms resulted from work-related incidents and that she was permanently partially disabled.

By decision dated October 28, 1999, the Office denied appellant's oral hearing request on the grounds that it was untimely filed. In its discretion, the Office further denied appellant's request on the grounds that the issue in her case could equally well be addressed by requesting reconsideration and submitting evidence not previously considered.

The Board finds that appellant did not meet her burden of proof to establish that she sustained an injury in the performance of duty on April 29, 1999, causally related to her federal employment.

An employee seeking benefits under the Federal Employees' Compensation Act<sup>1</sup> has the burden of establishing the essential elements of 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 timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed is causally related to the employment injury.<sup>2</sup> Regardless of whether the asserted claim involves traumatic injury or occupational disease, an employee must satisfy this burden of proof.<sup>3</sup>

To determine whether an employee sustained a traumatic injury in the performance of duty, the Office must determine whether "fact of injury" is established. First, an employee has the burden of demonstrating the occurrence of an injury at the time, place and in the manner alleged, by a preponderance of the reliable, probative and substantial evidence.<sup>4</sup> Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish a causal relationship between the employment incident and the alleged disability and/or condition for which compensation is claimed.<sup>5</sup> An employee may establish that the employment incident occurred as alleged, but fail to show that her disability and/or condition relates to the employment incident. As the Office did not dispute that the April 29, 1999 employment incident occurred at the time, place and in the manner alleged, the remaining issue is whether the alleged injury was caused by the employment incident.

In order to satisfy her burden of proof, an employee must submit a physician's rationalized medical opinion on the issue of whether the alleged injury was caused by the employment incident.<sup>6</sup> Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>3</sup> *See Ronald K. White*, 37 ECAB 176, 178 (1985).

<sup>4</sup> *See John J. Carlone*, 41 ECAB 354 (1989).

<sup>5</sup> *Shirley A. Temple*, 48 ECAB 404, 407 (1997); *Elaine Pendleton*, *supra* note 2 at 1145.

<sup>6</sup> *Gary L. Fowler*, 45 ECAB 365, 371 (1994).

between the employee's alleged injury and the employment incident. The physician's opinion must be based on a complete factual and medical history of the employee, must be of reasonable certainty and must rationally explain the relationship between the diagnosed injury and the employment incident as alleged by the employee.<sup>7</sup>

The medical evidence of record does not contain rationalized medical opinion evidence relating appellant's alleged injuries to the April 29, 1999 employment incident. Dr. Pittman's notes, dated December 19, 1996 to March 12, 1999, lack probative value because they are not contemporaneous with appellant's alleged injury. Dr. Webb's notes, dated November 7, 1995 to June 22, 1999, also lack probative value because they are not contemporaneous with appellant's alleged injury and fail to explain how her alleged injury was related to the April 29, 1999 employment incident. Dr. Webb's notes state appellant's complaints and the doctor's objective findings but do not adequately address the causal relationship issue. The remaining medical evidence of record, including Dr. Webb's undated report and notes dated November 7, 1995 to June 22, 1999, the March 20, 1997 report from Orthopedic Specialists of Louisiana and Dr. Thompson's June 3, 1999 report, may not be considered on appeal. The Board's jurisdiction to decide appeals from final decisions of the Office is limited to reviewing evidence that was before the Office at the time of its final decision. Although the Office received this evidence at the time it issued its October 28, 1999 decision it did not consider it. Appellant also submitted evidence to the Board that was not previously considered by the Office and, therefore, it may not be considered.

The Board further finds that the Office, by its October 28, 1999 decision, properly denied appellant's oral hearing request on the grounds that it was untimely filed.

Section 8124 of the Act<sup>8</sup> provides that a claimant is entitled to a hearing before an Office hearing representative when a request is made within 30 days after issuance of a final Office decision.<sup>9</sup>

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 hearings and that the Office must exercise this discretionary authority in deciding whether to grant a hearing.<sup>10</sup> The Office's procedures, which require the Office to exercise its discretion to grant or deny a hearing request when such request is untimely or made after reconsideration or an oral hearing, are a proper interpretation of the Act and Board precedent.<sup>11</sup>

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<sup>7</sup> See *Shirley R. Haywood*, 48 ECAB 404, 407 (1997).

<sup>8</sup> 5 U.S.C. §§ 8101-8193.

<sup>9</sup> 5 U.S.C. § 8124.

<sup>10</sup> *Linda J. Reeves*, 48 ECAB 373, 377 (1997).

<sup>11</sup> *Id.*; see *Michael J. Welsh*, 40 ECAB 994 (1989).

In the present case, appellant's August 27, 1999 hearing request, postmarked August 27, 1999, was made more than 30 days after the date of issuance of the Office's July 27, 1999, decision and, thus, she was not entitled to a hearing as a matter of right.

The Office, in its October 28, 1999 decision, properly exercised its discretion by considering the matter of appellant's hearing request in relation to the issue involved and further denied her request on the basis that it could be addressed through a reconsideration application. 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.<sup>12</sup>

As the evidence of record does not indicate that the Office committed any act in connection with its denial of appellant's request for a hearing which could be found to be an abuse of discretion, the Office properly denied appellant's request for a hearing.

The decisions of the Office of Workers' Compensation Programs dated October 28 and July 27, 1999 are hereby affirmed.

Dated, Washington, DC  
April 27, 2001

David S. Gerson  
Member

Bradley T. Knott  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>12</sup> *Daniel J. Perea*, 42 ECAB 214, 221 (1990).