

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BRIAN D. PATTERSON and U.S. POSTAL SERVICE,
POST OFFICE, Atlanta, GA

*Docket No. 00-587; Submitted on the Record;
Issued February 1, 2001*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issues are: (1) whether appellant met his burden in establishing that his claimed lower back conditions as of March 31, 1998 were causally related to his federal employment; (2) whether the Office of Workers' Compensation Programs properly denied his request for an oral hearing on his claim by an Office hearing representative.

On March 31, 1998 appellant, a 36-year-old mailhandler, allegedly injured his lower back while throwing sacks of mail. He filed a claim for benefits on the date of injury.

By letter dated July 16, 1998, the Office advised appellant that it required additional medical evidence, including a comprehensive medical report, to support his claim that his alleged injury as of March 31, 1998 was caused or aggravated by factors of his federal employment. The Office also requested that appellant indicate whether he had experienced any similar back symptoms or disability prior to the alleged injury, and to provide information regarding any prior claims.

In a letter dated August 4, 1998, appellant informed the Office that he had experienced similar back symptoms on prior occasions which were causally related to his federal employment. He stated that "[t]he prior conditions were lower back pains resulting from other injuries that occurred while working in the same job," and indicated that he had been treated for back injuries at various times in 1993, 1994 and 1996.¹ Appellant subsequently submitted numerous medical reports from June and July 1998 which indicated that he was being treated for chronic low back pain with nerve root impingement, S1 radiculopathy, low back disc irritation on the right, left-sided disc protrusion at L1-2 and right sided disc protrusion, and degenerative disc changes at L5-S1.

¹ Appellant made reference to prior claims for back injuries which, he implied, had been accepted by the Office. The case file contains no documentation pertaining to these prior claims, although the Office also indicated that appellant had sustained prior work-related back injuries.

The Office accepted appellant's claim for lumbar strain on August 20, 1998.

By letter dated October 23, 1998, the Office advised appellant that it required additional medical evidence, including a comprehensive medical report, to support his claim that his claimed lower back conditions as of March 31, 1998 were caused or aggravated by factors of his federal employment. The Office informed appellant that he had 30 days to submit the requested information. Appellant did not submit any additional evidence within 30 days.

By decision dated November 30, 1998, the Office found that appellant failed to submit sufficient medical evidence establishing that the claimed conditions and/or disability were caused or aggravated by factors of his employment.

By letter to the Office dated March 12, 1998, appellant requested an oral hearing.

In a decision dated May 17, 1999, the Office found that appellant's request for an oral hearing was untimely filed. The Office noted that appellant's request was postmarked March 12, 1999, which was more than 30 days after the issuance of the Office's November 30, 1998 decision, and that he was therefore not entitled to a hearing as a matter of right. The Office nonetheless considered the matter in relation to the issue involved and denied appellant's request on the grounds that the issue was factual and medical in nature and could be addressed through the reconsideration process by submitting additional evidence.

By letter dated June 16, 1999, appellant requested reconsideration of the Office's November 30, 1998 decision. In support of his claim, appellant submitted reports dated September 16 and November 17, 1998, February 25, March 25 and April 29, 1999 from Dr. Olumide A. Danisa, a specialist in orthopedic surgery, who stated findings on examination and diagnosed degenerative change at L5-S1 consistent with lumbar spondylosis, degenerative disc bulge on the right at S1 at the nerve root, degenerative changes abutting the L2 nerve root at the L1-2 interface and a facet injury at L5-S1. Dr. Danisa, however, did not provide a rationalized medical opinion regarding whether appellant's lower back conditions were causally related to factors of his federal employment.

By decision dated August 18, 1999, the Office denied appellant's request for reconsideration, finding that appellant did not submit evidence sufficient to warrant modification of the November 30, 1998 decision.

The Board finds that appellant has not met his burden of proof in establishing that his claimed lower back conditions as of March 31, 1998 were causally related to his federal employment.

An employee seeking benefits under the Federal Employees' Compensation Act² has the burden of establishing that 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 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

² 5 U.S.C. § 8101 *et seq.*

for which compensation is claimed are causally related to the employment injury.³ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

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 is usually rationalized medical 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.⁵

In this case, appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between his claimed condition or disability as of March 31, 1998 and his employment. This burden includes providing medical evidence from a physician who concludes that the disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.⁶

The only medical evidence appellant submitted consisted of Dr. Danisa's treatment reports, none of which contained a probative, rationalized medical opinion causally relating his current condition to factors of his employment. Dr. Danisa stated in his March 25, 1999 report that it was difficult for him to state whether appellant's back problems were due to his recent work injury or whether they stemmed from a cumulative effect; he further noted that appellant's lower back conditions may have had something to do with work or may have been worsened by work. Dr. Danisa's opinion is therefore of limited probative value because it is generalized in nature and equivocal in that he only noted summarily that appellant's lower conditions may have been causally related to his employment without relating how these conditions were caused or aggravated by her employment injury.⁷ His opinion is of further limited probative value as it does not contain any medical rationale relating how appellant's chronic lower back conditions

³ *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁵ *Id.*

⁶ *See Nicolea Brusco*, 33 ECAB 1138, 1140 (1982).

⁷ *William C. Thomas*, 45 ECAB 591 (1994).

are currently affected by or related to factors of employment.⁸ Causal relationship must be established by rationalized medical opinion evidence. As Dr. Danisa's reports constituted the only evidence appellant submitted in support of his claim, he failed to provide a rationalized, probative medical opinion indicating that his current conditions were caused or aggravated by factors of his federal employment. Therefore, appellant has not met his burden of proof in establishing that his claimed lower back conditions as of March 31, 1998 were causally related to his employment.

The Board finds that the Office properly denied appellant's request for an oral hearing on his claim before an Office hearing representative.

Section 8124(b)(1) of the Act provides that a claimant is entitled to a hearing before an Office representative when a request is made within 30 days after issuance of an Office final decision.⁹ A claimant is not entitled to a hearing if the request is not made within 30 days of the date of issuance of the decision as determined by the postmark of the request.¹⁰ The Office has discretion, however, to grant or deny a request that is made after this 30-day period.¹¹ In such a case, the Office will determine whether a discretionary hearing should be granted or, if not, will so advise the claimant with reasons.¹²

In the present case, because appellant's March 12, 1999 request for a hearing was postmarked more than 30 days after the Office's November 30, 1998 decision, he is not entitled to a hearing as a matter of right. The Office considered whether to grant a discretionary hearing and correctly advised appellant that he could pursue his claim through the reconsideration process. As appellant may address the issue in this case by submitting to the Office new and relevant evidence with a request for reconsideration, the Board finds that the Office properly exercised its discretion in denying appellant's request for a hearing.¹³

⁸ *Id.*

⁹ 5 U.S.C. § 8124(b)(1).

¹⁰ 20 C.F.R. § 10.616(a)(b) (1999).

¹¹ *William E. Seare*, 47 ECAB 663 (1996).

¹² *Id.*

¹³ The Board has held that the denial of a hearing on these grounds is a proper exercise of the Office's discretion. *E.g., Jeff Micono*, 39 ECAB 617 (1988).

The August 18 and May 17, 1999 decisions of the Office of Workers' Compensation Programs are therefore affirmed.

Dated, Washington, DC
February 1, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member