

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of CHRISTINE SYLVERS and U.S. POSTAL SERVICE,  
LENOX HILL STATION, New York, NY

*Docket No. 98-1975; Submitted on the Record;  
Issued February 8, 2001*

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DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issues are: (1) whether appellant sustained a recurrence of total disability on March 1, 1996 causally related to her May 31, 1991 employment injury; and (2) whether the Office of Workers' Compensation Programs acted within its discretion in denying appellant's request for a hearing.

On May 31, 1991 appellant, then a 35-year-old letter carrier, sustained a left knee sprain in the performance of duty. Appellant lost intermittent periods of time from work commencing on June 3, 1991 and returned to work on September 8, 1992 performing sedentary limited-duty work.

On March 15, 1996 appellant filed a claim for a recurrence of total disability on March 1, 1996 which she attributed to her May 31, 1991 employment injury. She indicated that on March 1, 1996 she was delivering mail when her left leg went out from under her and she felt pain but continued working until the end of the day. She stopped work the following day. On the reverse of the claim form, an employing establishment manager stated that appellant did not mention an injury before she left work on March 1, 1996.

In a note dated March 5, 1996, Dr. John A. Galeno, a Board-certified orthopedic surgeon, stated that appellant had a medial meniscus tear of the knee which required arthroscopic surgery. He stated that she could work full time at a sedentary position.

In a report dated March 11, 1996, Dr. Mark Waeltz, a Board-certified orthopedic surgeon, related that appellant experienced pain and swelling in the left knee after walking for several hours. He provided findings on examination, diagnosed internal derangement, and recommended a magnetic resonance imaging scan to rule out a meniscus tear.

In a disability certificate dated March 25, 1996, Dr. Waeltz indicated that appellant could perform sedentary work.

By decision dated May 31, 1997, issued June 9, 1997, the Office denied appellant's claim for a recurrence of disability on March 1, 1996.<sup>1</sup>

By letter dated March 5, 1998, appellant requested an oral hearing. She stated that on June 27, 1997 she had requested an oral hearing but had not received an acknowledgment of her request from the Office. Appellant stated that she was enclosing a copy of the June 27, 1997 letter.<sup>2</sup>

By decision dated April 28, 1998, the Office denied appellant's request for an oral hearing on the grounds that the request was untimely filed more than 30 days after the May 31, 1997 decision and on the grounds that the issue in the case could be equally well addressed by requesting reconsideration and submitting additional evidence. The Office noted that appellant did not attach the June 27, 1997 letter mentioned in her March 5, 1998 request for reconsideration and there was no copy of this letter in her file.

The Board finds that appellant failed to establish that she sustained a recurrence of total disability on March 1, 1996 causally related to her May 31, 1991 employment injury.

When an employee, who is disabled from the job she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that she can perform the light-duty position, the employee has the burden to establish, by the weight of the reliable, probative and substantial evidence, a recurrence of total disability and show that she cannot perform such light duty. As part of this burden, the employee must show either a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty requirements.<sup>3</sup> In the instant case, appellant has failed to establish either a change in the nature or extent of her light-duty requirements or a change in her accepted injury-related condition.

In this case, appellant submitted reports from her attending physicians, Drs. Galeno and Waeltz, who indicated that her complaints of knee pain might be causally related to her May 31, 1991 employment injury. However, the reports did not provide medical rationale explaining how appellant's claimed recurrence of disability was causally related to a change in the nature or extent of her employment injury or a change in the nature or extent of her light-duty job requirements. Therefore, appellant has failed to meet her burden of proof to establish that she sustained a recurrence of total disability on March 1, 1996 causally related to her May 31, 1991 employment injury.

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<sup>1</sup> The Office mailed a copy of the May 31, 1997 decision to appellant's authorized representative on June 9, 1997. Thus, June 9, 1997 is the date the decision was issued; see *Thomas H. Harris*, 39 ECAB 899 (1988); *Charles A. Hinton*, 39 ECAB 756 (1988). Subsequent to the issuance on June 9, 1997 of the Office's decision dated May 31, 1997, appellant submitted additional evidence. The Board has no jurisdiction to review this evidence for the first time on appeal; see 20 C.F.R. § 501.2(c); *Robert D. Clark*, 48 ECAB 422, 428 (1997).

<sup>2</sup> The Board notes that there is no copy of the June 27, 1997 letter in the case record.

<sup>3</sup> See *Cynthia M. Judd*, 42 ECAB 246, 250 (1990); *Stuart K. Stanton*, 40 ECAB 859, 864 (1989).

The Board further finds that the Office acted within its discretion in denying appellant's request for a hearing.

Section 8124(b)(1) of the Federal Employees' Compensation Act, provides that, before review under section 8128(a), a claimant for compensation who is not satisfied with a decision of the Secretary is entitled to a hearing on her claim on a request made within 30 days after the date of the issuance of the decision before a representative of the Secretary.<sup>4</sup> 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.<sup>5</sup> As appellant's request for a hearing was dated March 5, 1998 and postmarked March 6, 1998, more than 30 days after the Office's May 31, 1997 decision, issued June 9, 1997, she was not entitled to a hearing as a matter of right. The Office then exercised its discretion and properly determined that the issue in the case could be resolved equally well by the submission of additional evidence with a request for reconsideration.

The decisions of the Office of Workers' Compensation Programs dated April 28, 1998 and May 31, 1997 are affirmed.

Dated, Washington, DC  
February 8, 2001

David S. Gerson  
Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>4</sup> See 5 U.S.C. § 8124(b)(1).

<sup>5</sup> See *Charles J. Prudencio*, 41 ECAB 499, 501 (1990); see also 20 C.F.R. § 10.131.