

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of DEBORAH M. MELTON and DEPARTMENT OF HEALTH & HUMAN SERVICES, INDIAN HEALTH SERVICE, Rockville, MD

*Docket No. 99-46; Submitted on the Record;  
Issued May 11, 2001*

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DECISION and ORDER

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

The issues are: (1) whether appellant is entitled to compensation for intermittent periods of disability from December 9, 1994 through July 14, 1995 causally related to her accepted employment injury; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for a hearing under 5 U.S.C. § 8124.

On May 16, 1995 appellant, then a 43-year-old manager, filed an occupational disease claim for upper respiratory infections and allergies to dust and mold which she attributed to factors of her federal employment. By decision dated November 7, 1995, the Office denied appellant's claim on the grounds that the evidence did not establish fact of injury.

Appellant requested a hearing before an Office hearing representative. By decision dated August 2, 1996 and finalized August 5, 1996, the hearing representative affirmed the Office's November 7, 1995 decision, denying compensation prior to October 1994 and subsequent to August 1995. He, however, set aside the Office's finding that appellant had not established fact of injury. The hearing representative determined that appellant had established that she sustained a temporary aggravation of allergic rhinitis which had resolved as of August 30, 1995. He concluded that the Office should authorize leave repurchase for dates of employment-related disability from October 1994 through August 1995.

In a letter dated August 22, 1996, the Office informed appellant that she should submit rationalized medical evidence supporting disability from work due to her employment injury for the time claimed. The Office noted that appellant had established entitlement to compensation for time lost from work due to medical treatment on November 23, 1994, May 23 and 30, 1995, June 5 and July 3, 1995.

Appellant submitted a medical report dated September 6, 1996 from Dr. Leszek Karowiec, a Board-certified internist and her attending physician. By letter dated April 14, 1997, the Office discussed the deficiencies in the medical evidence and requested that appellant submit treatment notes from Dr. Karowiec dated October 1994 through August 1995 and also submit a

rationalized medical report from him addressing the exact dates of disability from employment and providing a rationalized opinion regarding causation.

By decision dated January 20, 1998, the Office denied appellant's claim for compensation for intermittent wage loss for the period December 9, 1994 through July 14, 1995 on the grounds that the medical evidence was insufficient to establish that she lost time from work due to her accepted employment injury.

In a letter dated February 25, 1998, appellant requested a hearing before an Office hearing representative. By decision dated June 1, 1998, the Office denied appellant's request for a hearing as untimely under section 8124.

The Board finds that appellant has not established that she is entitled to compensation for intermittent periods of disability from December 9, 1994 through July 14, 1995 causally related to her accepted employment injury.

An employee seeking benefits under the Federal Employees' Compensation Act<sup>1</sup> has the burden of establishing the essential elements of his or her claim, including the fact 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 are causally related to the employment injury.<sup>2</sup>

The evidence generally required to establish causal relationship is rationalized medical opinion evidence. The claimant must submit a rationalized medical opinion that supports a causal connection between her current condition and the employment injury. The medical opinion must be based on a complete factual and medical background with an accurate history of the claimant's employment injury and must explain from a medical perspective how the current condition is related to the injury.<sup>3</sup>

Appellant submitted verification of treatment notes dated May 23 and 30, 1995 and July 3, 1995 in which a physician indicated that he had treated her for an upper respiratory infection. In the note dated May 23, 1995, the physician found that appellant was disabled from May 30 to June 1, 1995 but did not relate the diagnosed condition or disability to specific factors of appellant's employment and thus his opinion is of little probative value. In office visit notes dated July 28, August 23 and September 29, 1995, a physician indicated that he had treated appellant for allergic rhinitis but did not find that she sustained any specific period of disability and thus these office visit notes are of little relevance to the issue at hand.

In a report dated May 5, 1995, Dr. Karowiec noted that appellant had been disabled due to upper respiratory infections, "triggered/aggravated most probably by environmental factors in her office." He stated: "The environmental condition was corrected, [appellant's] problem resolved and she is currently asymptomatic." In a report dated September 12, 1995, Dr. Karowiec diagnosed building-related illness and noted that appellant's condition had

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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> *John A. Ceresoli, Sr.*, 40 ECAB 305 (1988).

improved since she transferred to another building. He noted that she was currently working full time and stated: “By continuing on the current medications and beginning to have the allergy shots, [appellant] should be able to continue to work full time.” Dr. Karowiec, however, did not address whether appellant sustained any specific periods of disability causally related to factors of her federal employment; therefore, his reports are of little relevance to the pertinent issue in this case.

In a report dated September 6, 1996, Dr. Karowiec related:

“[Appellant’s] absences from work for the dates recognized in the final decision October 1994 to August 1995, are outlined accompanied with her timekeepers records in the attached documents.

“The constant recurring exposure exacerbated [appellant’s] condition causing her to be absent from work and away from the Parklawn Building to recover from the exposure. The fact that she took medication prescribed for her condition and was not exposed for several days at a time, allowed her to recuperate enough to return to work, only to be exposed to the environment again experiencing a relapse. Eventually her condition became so severe, she did not recuperate over several days, but instead, took 6 to 8 months to recover totally.”

Dr. Karowiec did not sufficiently address the relevant issue of whether appellant was disabled for any specific dates from October 1994 to July 1995. Additionally, he did not address how, with reference to the specific facts in this case, appellant’s condition worsened such that she could no longer work for intermittent periods between October 1994 and July 1995. A physician’s opinion on causal relationship is not dispositive simply because it is rendered by a physician. To be of probative value, the physician must provide rationale for the opinion reached. Where no rationale is present, the medical opinion is of diminished probative value.<sup>4</sup> The Office requested clarification from Dr. Karowiec regarding the dates of disability in a letter dated April 14, 1997; however, Dr. Karowiec, in a note dated April 30, 1997, responded that he had already provided the requested information.

Although the Office advised appellant of the type of medical evidence needed to establish her claim, appellant failed to submit medical evidence responsive to the request. Consequently, the Office properly denied appellant’s request for compensation for intermittent periods of disability from December 9, 1994 through July 14, 1995.

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

Section 8124(b) of the Act, concerning a claimant’s entitlement to a hearing states that: “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 issuance of the decision, to a hearing on his claim before a representative of the Secretary.”<sup>5</sup> As

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<sup>4</sup> *Lucrecia M. Nielsen*, 42 ECAB 583 (1991).

<sup>5</sup> 5 U.S.C. § 8124(b)(1).

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>6</sup>

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 the Office must exercise this discretionary authority in deciding whether to grant a hearing. 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,<sup>7</sup> when the request is made after the 30-day period established for requesting a hearing,<sup>8</sup> or when the request is for a second hearing on the same issue.<sup>9</sup> 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.<sup>10</sup>

In this case, appellant's hearing request was made more than 30 days after the date of issuance of the Office's prior decision dated January 20, 1998 and, thus, appellant was not entitled to a hearing as a matter of right. she requested a hearing in a letter dated February 25, 1998. Hence, the Office was correct in stating in its June 1, 1998 decision that appellant was not entitled to a hearing as a matter of right because her hearing request was not made within 30 days of the Office's January 20, 1998 decision.

While the Office also has the discretionary power to grant a hearing when a claimant is not entitled to a hearing as a matter of right, the Office, in its June 1, 1998 decision, properly exercised its discretion by stating that it had considered the matter in relation to the issue involved and had denied appellant's hearing request on the basis that the case could be resolved by appellant requesting reconsideration and submitting additional evidence to establish that she sustained employment-related disability from December 9, 1994 through July 12, 1995. 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>11</sup> In the present case, the evidence of record does not indicate that the Office committed any act in connection with its denial of appellant's hearing request, which could be found to be an abuse of discretion. For these reasons, the Office properly denied appellant's request for a hearing under section 8124 of the Act.

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<sup>6</sup> *Frederick D. Richardson*, 45 ECAB 454 (1994).

<sup>7</sup> *Rudolph Bermann*, 26 ECAB 354 (1975).

<sup>8</sup> *Herbert C. Holley*, 33 ECAB 140 (1981).

<sup>9</sup> *Johnny S. Henderson*, 34 ECAB 216 (1982).

<sup>10</sup> *Sandra F. Powell*, 45 ECAB 877 (1994).

<sup>11</sup> *Daniel J. Perea*, 42 ECAB 214 (1990).

The decisions of the Office of Workers' Compensation Programs dated June 1 and January 20, 1998 are affirmed.

Dated, Washington, DC  
May 11, 2001

David S. Gerson  
Member

Willie T.C. Thomas  
Member

A. Peter Kanjorski  
Alternate Member