

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of DOROTHY L. HILL and DEPARTMENT OF VETERANS AFFAIRS,  
VETERANS CANTEEN SERVICE, Los Angeles, CA

*Docket No. 99-1729; Submitted on the Record;  
Issued May 29, 2001*

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DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,  
BRADLEY T. KNOTT

The issues are: (1) whether appellant met her burden to establish that she sustained an injury in the performance of duty; and (2) whether appellant is entitled to a review of the record before an Office of Workers' Compensation Programs' hearing representative under 5 U.S.C. § 8124(b)(1).

On August 15, 1997 appellant, then a 40-year-old kitchen supervisor, filed a claim alleging that she injured her lower back and head that date when she stepped into a puddle of grease and fell to the floor. A medical clinic treatment note dated August 18, 1997 indicates that appellant was placed on sick leave by Dr. James A. Mays, a specialist in internal medicine, until September 15, 1997.

Appellant filed a Form CA-2a claim for recurrence of disability on September 28, 1998, alleging that she experienced pain in her lower back, left hip and left leg on September 22, 1998 which was caused or aggravated by her August 15, 1997 work injury.

By letter dated November 5, 1998, the Office advised appellant that it required additional factual and medical evidence to determine whether she was eligible for compensation benefits. The Office asked appellant to submit a comprehensive medical report from her treating physician describing her symptoms and the medical reasons for her condition and an opinion as to whether her claimed condition was causally related to her federal employment. The Office requested that appellant submit the additional evidence within 30 days. Appellant did not submit any additional evidence.

By decision dated January 14, 1999, the Office denied appellant's claim for compensation, finding that her claimed lower back, left hip and left leg injuries were not sustained in the performance of duty.<sup>1</sup>

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<sup>1</sup> The Office stated that it had handled the initial August 15, 1997 claim administratively because appellant had lost a minimal amount of time off from work and that it had never formally accepted any medical condition as causally related to her employment, although the claim was uncontroverted. Thus, the Office adjudicated the instant claim based on whether her current claimed conditions were sustained in the August 15, 1997 incident.

In a letter received by the Office on April 1, 1999, appellant requested a review of the record before an Office hearing representative.

By decision dated May 3, 1999, the Office denied appellant's request for a review of the record because it was not made within 30 days and she was not entitled as a matter of right to such a review. The Office stated that appellant's request was further denied on the grounds that the issue in the case could be equally well addressed by requesting reconsideration before the Office and submitting evidence not previously considered which could establish that her claimed conditions were causally related to the August 15, 1997 employment injury.

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 August 15, 1997.

An employee seeking benefits under the Federal Employees' Compensation Act<sup>2</sup> 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 for which compensation is claimed are causally related to the employment injury.<sup>3</sup> 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.<sup>4</sup>

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "fact of injury" has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.<sup>5</sup> Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.<sup>6</sup> 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.<sup>7</sup>

In the present case, it is uncontested that appellant experienced the employment incident at the time, place and in the manner alleged. However, the question of whether an employment

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> *Joe Cameron*, 42 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>4</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>5</sup> *John J. Carlone*, 41 ECAB 354 (1989).

<sup>6</sup> *Id.* For a definition of the term "injury," see 20 C.F.R. § 10.5(a)(14).

<sup>7</sup> *Id.*

incident caused a personal injury generally can be established only by medical evidence.<sup>8</sup> Appellant has not submitted rationalized, probative medical evidence to establish that the employment incident on August 15, 1997 caused a personal injury and resultant disability.

Appellant has not submitted a rationalized, probative medical opinion sufficient to demonstrate that her August 15, 1997 employment incident caused a personal injury or resultant disability. In this regard, the Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.<sup>9</sup> Neither the fact that the condition became apparent during a period of employment nor the belief that the condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.<sup>10</sup> Causal relationship must be established by rationalized medical opinion evidence and appellant failed to submit such evidence in the present case. Appellant did not provide a medical opinion to sufficiently describe or explain the medical process through which the August 15, 1997 work incident would have been competent to cause the claimed injury. The Office's January 14, 1999 decision is affirmed.

The Board finds that the Office did not abuse its discretion in denying appellant's April 1, 1999 request for a hearing before an Office hearing representative, pursuant to 5 U.S.C. § 8124.

Section 8124(b)(1) of the Act,<sup>11</sup> concerning a claimant's entitlement to a hearing before an Office hearing representative states: "Before review under section 8128(a) of this title, a claimant for compensation not satisfied with a decision of the Secretary under subsection (a) of this section 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." The Board has held that section 8124(b)(1) is "unequivocal" in setting forth the time limitation for requesting hearings. A claimant is entitled to a hearing as a matter of right only if the request is filed within the requisite 30 days.<sup>12</sup> The Board has held that section 8124 provides the opportunity for a "review of the written record" before an Office hearing representative in lieu of an "oral hearing" and that such review of the written record is also subject to the same requirement that the request be made within 30 days of the Office's final decision.<sup>13</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 of such hearings, and that the Office must exercise this discretionary authority in deciding whether to grant a hearing.<sup>14</sup>

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<sup>8</sup> See *John J. Carlone*, *supra* note 5.

<sup>9</sup> See *Joe T. Williams*, 44 ECAB 518, 521 (1993).

<sup>10</sup> *Id.*

<sup>11</sup> 5 U.S.C. § 8124(b)(1).

<sup>12</sup> *Tammy J. Kenow*, 44 ECAB 619 (1993); *Ella M. Garner*, 36 ECAB 238 (1984).

<sup>13</sup> See *Michael J. Welsh*, 40 ECAB 994 (1989); 20 C.F.R. § 10.131(b).

<sup>14</sup> *Johnny S. Henderson*, 34 ECAB 216 (1982).

The principles underlying the Office's authority to grant or deny a written review of the record are analogous to the principles underlying its authority to grant or deny a hearing.<sup>15</sup> The Office's procedures, which require the Office to exercise its discretion to grant or deny a request for a review of the written record when such a request is untimely or made after reconsideration or an oral hearing, are a proper interpretation of the Act and Board precedent.<sup>16</sup>

In the present case, the Office on January 14, 1999 issued its decision denying compensation on the grounds that appellant did not sustain an injury in the performance of duty on August 15, 1997. On April 1, 1999 appellant requested a review of the record by an Office hearing representative. By decision dated May 3, 1999, the Office denied appellant's request for a review of the record because it was not made within 30 days. The Office exercised its discretion in considering appellant's request, noting that it had considered the matter and determined that the issue in the case could be resolved through the reconsideration process by submitting evidence not previously considered which established that she sustained an injury in the performance of duty on August 15, 1997.

The Board finds that the Office properly denied appellant's request for a review of the written record pursuant to section 8124 of the Act. The Board therefore affirms the Office's May 3, 1999 decision denying appellant a review of the written record by an Office hearing representative.

The decisions of the Office of Workers' Compensation Programs dated May 3 and January 14, 1999 are therefore affirmed.

Dated, Washington, DC  
May 29, 2001

David S. Gerson  
Member

Michael E. Groom  
Alternate Member

Bradley T. Knott  
Alternate Member

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<sup>15</sup> *Id.*; *Herbert C. Holley*, 33 ECAB 140 (1981); *Rudolf Bermann*, 26 ECAB 354 (1975).

<sup>16</sup> *Herbert C. Holley*, *supra* note 15.