U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHARLIE M. DAVIS and U.S. POSTAL SERVICE,
BULK MAIL CENTER, Atlanta, GA

Docket No. 02-773; Submitted on the Record;
Issued August 8, 2002

DECISION and ORDER

Before MICHAEL J. WALSH, COLLEEN DUFFY KIKO,
A. PETER KANJORSKI

The issues are: (1) whether appellant sustained an injury on May 9, 2001 causally related to factors of her employment; and (2) whether the Office of Workers' Compensation Programs properly denied her request for a hearing.

The Board finds that appellant failed to meet her burden of proof to establish that she sustained an injury on May 9, 2001 causally related to factors of her employment.

An award of compensation may not be based on surmise, conjecture, speculation or appellant's belief of causal relationship.[1] Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that she sustained an injury in the performance of duty and that her disability was caused or aggravated by her employment.[2] As part of this burden, a claimant must present rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relationship.[3] The mere manifestation of a condition during a period of employment does not raise an inference of causal relationship between the condition and the employment.[4] Neither the fact that the condition became apparent during a period of employment nor appellant's belief that the employment caused or aggravated her condition is sufficient to establish causal relationship.[5]

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[1] *See William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

[2] *See Daniel R. Hickman*, 34 ECAB 1220, 1223 (1983).

[3] *See Mary J. Briggs*, 37 ECAB 578, 581 (1986); *Joseph T. Gulla*, 36 ECAB 516, 519 (1985).

[4] *See Edward E. Olson*, 35 ECAB 1099, 1103 (1984).

[5] *Joseph T. Gulla, supra* note 3.

On May 30, 2001 appellant, then a 59-year-old machine clerk, filed a traumatic injury claim alleging that she sustained an injury to her neck, lower back and left arm while putting mail into sacks and lifting the sacks.

By decision dated August 7, 2001, the Office denied appellant's claim on the grounds that the medical evidence of record did not establish that appellant sustained an injury on May 9, 2001 causally related to factors of her employment.

By letter dated September 19, 2001, appellant requested a review of the written record.

By decision dated October 29, 2001, the Office denied appellant's request for a hearing on the grounds that the request was not timely filed within 30 days of the Office's August 7, 2001 decision and the issue could be resolved through the submission of additional evidence and a request for reconsideration.

In notes dated May 14 and July 9, 2001, Dr. Christian Werness, a chiropractor, stated that appellant sustained an injury while lifting mail on May 9, 2001. He diagnosed a cervical and lumbosacral strain and paraspinal muscle sprain. However, under section 8101(2) of the Federal Employees' Compensation Act, chiropractors are only considered physicians, and their reports considered medical evidence, to the extent that they treat spinal subluxations as demonstrated by x-ray to exist.[6] Dr. Werness did not indicate in his reports that appellant had subluxations. Therefore, his reports have no probative value on the issue of whether appellant sustained an employment-related injury.

In reports dated June 2 and 6 and July 18, 2001, Dr. Ahmad Jingo, appellant's attending internist, indicated that appellant had back and neck pain after lifting mail but he did not diagnose a specific medical condition. Because Dr. Jingo did not provide a diagnosis of a specific medical condition, his reports are not sufficient to establish that appellant sustained an injury in the performance of duty causally related to factors of her employment. The record also contains a copy of Dr. Jingo's July 18, 2001 report with a notation added to the bottom that appellant's neck and back pain were due to degenerative disc and joint disease. However, he did not explain how these degenerative conditions were affected by the May 9, 2001 work incident. Therefore, this report is not sufficient to discharge appellant's burden of proof.[7]

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

Section 8124(b) of the 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 his claim on a request made within 30 days after the date of issuance of the decision before a

[6] 5 U.S.C. § 8101(2). *See Jack B. Wood*, 40 ECAB 95, 109 (1988).

[7] Appellant submitted additional medical evidence subsequent to the Office decision of August 7, 2001; however, the jurisdiction of the Board is limited to the evidence that was before the Office at the time it issued its final decision; *see* 20 C.F.R. § 501.2(c). This decision does not preclude appellant from submitting additional evidence to the Office along with a request for reconsideration.

representative of the Secretary.[8] 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.[9] As appellant's request for a hearing was dated September 19, 2001, more than 30 days after the Office's August 7, 2001 decision, appellant was not entitled to a hearing as a matter of right. The Office then exercised its discretion and determined that the issue in the case could be resolved through a request for reconsideration and the submission of additional evidence. The Board finds no evidence to indicate that the Office abused its discretion in denying appellant's untimely request for a hearing.

The decisions of the Office of Workers' Compensation Programs dated October 29 and August 7, 2001 are affirmed.

Dated, Washington, DC
August 8, 2002

Michael J. Walsh
Chairman

Colleen Duffy Kiko
Member

A. Peter Kanjorski
Alternate Member

[8] *See* 5 U.S.C. § 8124(a).

[9] *See Charles J. Prudencio*, 41 ECAB 499, 501 (1990); *see also* 20 C.F.R. § 10.616(a).