U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ARCH SPENCER and U.S. POSTAL SERVICE,
POST OFFICE, Omaha, NE

Docket No. 02-1382; Submitted on the Record;
Issued December 3, 2002

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
A. PETER KANJORSKI

The issues are: (1) whether appellant met his burden of proof to establish that he sustained a left hand and arm injury in the performance of duty; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for a review of the written record under section 8124 of the Federal Employees' Compensation Act.

On September 5, 2001 appellant, then a 48-year-old automation clerk - PTF, filed an occupational injury claim alleging that he sustained left hand and arm conditions due to his job duties which required repetitive motion. Appellant advised that he has been loading and sweeping mail into and out of automation machines for 3½ years working as much as 60 hours per week, six days a week.[1] By decision dated November 26, 2001, the Office denied appellant's claim on the grounds that he did not submit sufficient medical evidence to establish that his claimed conditions were sustained in the performance of duty. By decision dated March 18, 2002, the Office denied appellant's request for a review of the written record under section 8124 of the Act.

The Board finds that appellant did not meet his burden of proof to establish that he sustained a left hand and arm injury in the performance of duty.

An employee seeking benefits under the Act[2] has the burden of establishing the essential elements of his 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

[1] Appellant stated that he first realized a causal connection between his hand and arm conditions as being caused or aggravated by his employment on September 4, 2001. Appellant stopped work for a limited period and returned to limited duty on September 12, 2001.

[2] 5 U.S.C. §§ 8101-8193.

and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.[3] These are the essential elements of each 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 a causal relationship is rationalized medical opinion 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]

Appellant did not submit sufficient medical evidence to establish that he sustained a left hand and arm injury in the performance of duty. He submitted a duty status report dated September 25, 2001, describing his wrist problem and documenting an ulnar nerve neuropathy and medical examination and assessments dated November 30, 1995 and August 14, 1996. These reports, however, are of limited probative value regarding whether appellant sustained an employment-related injury in that they do not contain an opinion on causal relationship.[6] Appellant did not submit a rationalized medical report relating his claimed condition to employment factors. Appellant was advised of this by letter dated October 15, 2001, but did not provide supportive evidence within the requested 30 days.

The Board further finds that the Office properly denied appellant's request for a review of the written record under section 8124 of the Act.

Section 8124(b)(1) of the Act, concerning a claimant's entitlement to a hearing before an Office representative, provides in pertinent part: "Before review under section 8128(a) of this

[3] *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[4] *See Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

[5] *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

[6] *See Charles H. Tomaszewski*, 39 ECAB 461, 467-68 (1988) (finding that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship). Form reports that support causal relationship with a check mark are insufficient to establish the claim, as the Board has held that without further explanation or rationale, a checked box is insufficient to establish causation. *Debra S. King*, 44 ECAB 203 (1992); *Salvatore Dante Roscello*, 31 ECAB 247 (1979).

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 the issuance of the decision, to a hearing on his claim before a representative of the Secretary."[7] 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.[8]

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 for such hearings and that the Office must exercise this discretionary authority in deciding whether to grant a hearing.[9] 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,[10] when the request is made after the 30-day period for requesting a hearing,[11] and when the request is for a second hearing on the same issue.[12]

In the present case, appellant's hearing request was made more than 30 days after the date of issuance of the Office's prior decision dated November 26, 2001 and, thus, appellant was not entitled to a hearing as a matter of right. Appellant requested a hearing before an Office representative in a letter dated and also postmarked January 25, 2002. Hence, the Office was correct in stating in its decision that appellant was not entitled to a hearing as a matter of right because his hearing request was not made within 30 days of the Office's 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 March 18, 2002 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 issue in the case can be addressed through a request for reconsideration to the district Office and submitting evidence not previously considered at that time. 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.[13]

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.

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[7] 5 U.S.C. § 8124(b)(1).

[8] *Ella M. Garner*, 36 ECAB 238, 241-42 (1984).

[9] *Henry Moreno*, 39 ECAB 475, 482 (1988).

[10] *Rudolph Bermann*, 26 ECAB 354, 360 (1975).

[11] *Herbert C. Holley*, 33 ECAB 140, 142 (1981).

[12] *Johnny S. Henderson*, 34 ECAB 216, 219 (1982).

[13] *Daniel J. Perea*, 42 ECAB 214, 221 (1990).

On appeal, appellant contends that he wrote the Office in December 2001 and, thus, his request for a written review of the record was timely. The record reflects that appellant wrote letters to the Office on December 6 and December 17, 2001 and submitted additional medical evidence. However, as neither of these letters were addressed to the Branch of Hearings and Review nor specifically requested a hearing, the Board finds that they cannot be considered a request for a hearing. These letters along with the evidence submitted may be properly addressed through a request for reconsideration to the district Office.

The March 18, 2002 and November 26, 2001 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
December 3, 2002

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member