U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CURTIS ELAM, III and U.S. POSTAL SERVICE,
POST OFFICE, Pittsburg, CA

Docket No. 02-2037; Submitted on the Record;
Issued December 5, 2002

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issues are: (1) whether appellant met his burden of proof to establish that he sustained a right knee condition in the performance of duty; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for a hearing under 5 U.S.C. § 8124.

On March 20, 2001 appellant, then a 56-year-old modified mail carrier, filed an occupational disease claim alleging that he sustained "damage, weakness and pain" in his right knee which he attributed to repeatedly striking his right knee on a drawer while casing mail.[1] Appellant did not stop work.

In support of his claim, appellant submitted a report dated June 4, 2001 from his attending physician, Dr. Robert A. Buckley, a Board-certified orthopedic surgeon, who noted that he was treating appellant for employment-related degenerative joint disease of the left knee. He stated:

> "[Appellant] reports to me that he is having increasing right knee pain. He reports to me that he has sustained injuries to his right knee by striking it against his case while at work. In addition, because of his degenerative joint disease of his left knee and awkward gait, he has increasing pain in his right knee."

Dr. Buckley diagnosed "degenerative joint disease of [appellant's] right knee that could be secondary to the injuries that occurred while striking his case with his right knee as he has described."

By letter dated August 13, 2001, the Office informed appellant that Dr. Buckely's June 4, 2001 medical report was insufficient to establish his claim as it was speculative in nature. The

[1] Appellant related that he was working limited duty due to a work-related injury to his left knee.

Office provided appellant approximately 30 days within which to submit rationalized medical evidence in support of his claim.

Appellant did not respond within the time allotted.

By decision dated October 20, 2001, the Office denied appellant's claim on the grounds that he did not establish fact of injury.

By letter dated March 13, 2002, addressed to the Branch of Hearings and Review, appellant requested either an oral hearing or reconsideration of his claim. In a decision dated May 31, 2001, the Office denied appellant's request for a hearing as untimely.

The Board finds that appellant has not met his burden of proof to establish that he sustained a right knee condition in the performance of duty

An employee seeking benefits under the Federal Employees' Compensation Act[2] has the burden of establishing the essential elements of his or her claim, including that 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.[3]

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 the 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.[4] The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence.[5] 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,[6] must be one of reasonable medical certainty,[7] and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the

[2] 5 U.S.C. §§ 8101-8193.

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

[4] *Jerry D. Osterman*, 46 ECAB 500 (1995); *see also Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[5] The Board has held that in certain cases, where the causal connection is so obvious, expert medical testimony may be dispensed with to establish a claim; *see Naomi A. Lilly*, 10 ECAB 560, 572-73 (1959). The instant case, however, is not a case of obvious causal connection.

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

[7] *See Morris Scanlon*, 11 ECAB 384-85 (1960).

specific employment factors identified by the claimant.[8] 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. Neither the fact that the condition became apparent during a period of employment, nor the belief of appellant that the condition was caused by or aggravated by employment conditions is sufficient to establish causal relation.[9]

In this case, appellant submitted a report dated June 4, 2001 from Dr. Buckley, who diagnosed degenerative joint disease of the right knee which "could be secondary" to the history of injury related by appellant of repeatedly striking his knee on his case while working. However, Dr. Buckley's opinion that appellant's condition "could be" related to his employment is speculative and equivocal in nature and therefore of little probative value.[10] Dr. Buckley also indicated that appellant's degenerative joint disease of the left knee caused right knee pain but provided no medical rationale in support of his opinion. Thus his opinion is insufficient to meet appellant's burden of proof.[11]

An award of compensation may not be based upon surmise, conjecture or speculation or upon appellant's belief that there is a causal relationship between his condition and his employment.[12] To establish causal relationship, appellant must submit a physician's report in which the physician reviews that factors of employment identified by appellant as causing his condition and, taking these factors into consideration as well as findings upon examination of appellant and appellant's medical history, state whether these employment factors caused or aggravated appellant's diagnosed condition.[13] Appellant failed to submit such evidence and therefore failed to discharge his burden of proof.[14]

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

Section 8124(b) of the Act, concerning a claimant's entitlement to a hearing, states: "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

[8] *See William E. Enright*, 31 ECAB 426, 430 (1980).

[9] *Manuel Garcia*, 37 ECAB 767, 773 (1986); *Juanita C. Rogers*, 34 ECAB 544, 546 (1983).

[10] *Vaheh Mokhtarians*, 51 ECAB 190 (1999) (medical opinions which are speculative or equivocal in character have little probative value).

[11] *Caroline Thomas*, 51 ECAB 451 (2000) (a medical opinion not fortified by medical rationale is of little probative value).

[12] *Willliam S. Wright*, 45 ECAB 498 (1993).

[13] *Id.*

[14] Appellant submitted additional evidence subsequent to the Office's October 20, 2001 decision; however, the Board has no jurisdiction to review this evidence for the first time on appeal; *see* 20 C.F.R. § 501.2(c). Appellant can submit this evidence to the Office with a request for reconsideration under section 8128.

issuance of the decision, to a hearing on his claim before a representative of the Secretary."[15] 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.[16]

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,[17] when the request is made after the 30-day period established for requesting a hearing,[18] or when the request is for a second hearing on the same issue.[19] 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.[20]

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 October 20, 2001 and, thus, appellant was not entitled to a hearing as a matter of right. Appellant requested a hearing in a letter dated March 13, 2002. Hence, the Office was correct in stating in its May 31, 2002 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 October 20, 2001 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 May 31, 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 case could be resolved by appellant requesting reconsideration and submitting additional evidence to establish that his condition was due to his employment. 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.[21] In this case, the evidence of record does not indicate that the Office committed any act in connection with its denial of appellant's

[15] 5 U.S.C. § 8124(b)(1).

[16] *Frederick D. Richardson*, 45 ECAB 454 (1994).

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

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

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

[20] *Sandra F. Powell*, 45 ECAB 877 (1994).

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

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.

The decisions of the Office of Workers' Compensation Programs dated May 31, 2002 and October 20, 2001 are affirmed.

Dated, Washington, DC
December 5, 2002

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member