

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DEBORAH E. BEATTY and U.S. POSTAL SERVICE,
GENERAL MAIL FACILITY, Southeastern, PA

*Docket No. 02-191; Submitted on the Record;
Issued July 9, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO,
A. PETER KANJORSKI

The issues are: (1) whether appellant established that she was disabled from December 30, 2000 to January 9, 2001 and February 21 to March 17, 2001, due to her accepted employment injury; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for a review of the written record as untimely.

On May 29, 1991 appellant, then a 31-year-old distribution clerk, filed a notice of occupational disease alleging that she developed carpal tunnel syndrome as a result of her federal employment. The Office accepted appellant's claim for bilateral carpal tunnel syndrome and carpal tunnel release. Appellant stopped work on February 4, 1991 and was intermittently on and off work until 1993. She returned to full-time limited duty and continued with physical therapy. The last medical report received from appellant was dated August 6, 1997.

On April 3, 2001 appellant filed a notice of recurrence of disability. She stated that she has had pain in her hands since February 1991 and has recently missed work due to an increase in pain. In support of her claim, appellant submitted a March 1, 2001 report from Dr. Scott M. Fried, a Board-certified psychologist and neurologist, who indicated that appellant still had symptoms of carpal tunnel syndrome and had occasional "flares" due to changes in her daily activities. Dr. Fried noted that appellant's job at the employing establishment was varied and light duty in nature but involved repetitive hand, wrist and arm activity. He indicated that appellant had been off work but did not indicate when. In a March 30, 2001 attending physician's report, Dr. Fried noted "N/A" for the period of total disability and "February 1991 to present" for the period of partial disability.

Appellant also filed a claim for compensation on March 27, 2001 claiming compensation for the periods December 30, 2000 to January 9, 2001 and February 21 to March 17, 2001.

By decision dated May 14, 2001, the Office accepted appellant's claim for recurrence of disability for continuing medical care and physical therapy only. The Office informed appellant that it was her burden to submit medical evidence to support any periods of claimed disability.¹

By decision dated July 3, 2001, the Office denied appellant's claim for compensation for the periods December 30, 2000 to January 9, 2001 and February 21 to March 17, 2001, as the medical evidence was insufficient to establish appellant was disabled.

By letter dated July 22, 2001, but postmarked August 10, 2001, appellant requested a review of the written record. She explained that due to a recent "flare up" of her carpal tunnel syndrome she had missed several days of work. Appellant indicated that she contacted her physician in October 2000 when her symptoms began, but was unable to see her physician until March 1, 2001.

By decision dated September 25, 2001, the Office denied appellant's request for a review of the written record as untimely.

The Board finds that appellant has not met her burden of proof to establish that she was disabled from December 30, 2000 to January 9, 2001 and February 21 to March 17, 2001, causally related to her accepted employment injury.

A claimant seeking benefits under the Federal Employee's Compensation Act² has the burden of proof to establish the essential elements of her claim by the weight of the evidence,³ including that she sustained an injury in the performance of duty and that any specific condition or disability for work for which she claims compensation is causally related to that employment injury.⁴

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

In this case, appellant established that she sustained bilateral carpal tunnel syndrome as a result of her federal employment. She claims that she was disabled from December 30, 2000 to

¹ Appellant also submitted claims for compensation for the periods April 2, May 1 and 2, 2001, May 5, 7, 14 and 16, 2001, but the Office did not render a decision regarding these dates.

² 5 U.S.C. §§ 8101-8193.

³ *Nathaniel Milton*, 37 ECAB 712 (1986).

⁴ *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁵ *Delores C. Ellyett*, 41 ECAB 992, 994 (1990).

January 9, 2001 and February 21 to March 17, 2001, due to a recent increase in pain and symptoms of her carpal tunnel syndrome. It is appellant's burden of proof in this case to show that her claimed periods of disability are causally related to her accepted employment injury by submitting a rationalized medical opinion.⁶

The only medical evidence of record which address the periods in question are the March 1, 2001 narrative report and the March 30, 2001 attending physician's report from Dr. Fried. The evidence from Dr. Fried is the only contemporaneous medical evidence of record, as all other medical reports are dated prior to 1998. Dr. Fried stated in his March 1, 2001 report that appellant has been in a "hiatus" but that her carpal tunnel syndrome symptoms have recently returned, due to the repetitive hand and wrist motions involved with her work. He stated: "[Appellant] has actually been out of work this past week due to her increased symptomatology" and later noted that appellant was also currently not working. Dr. Fried only generally refers to appellant's time off work in his reports and does not address the specific periods of disability in question. It is appellant's burden to provide a rationalized medical opinion report establishing a causal relationship between the specific periods of alleged disability and the accepted employment injury. Dr. Fried's statements are too vague to establish causal relationship. In his attending physician's report, Dr. Fried indicates "N/A" for the period of total disability and "February 1991 to present" for the period of partial disability. The Board maintains that a form report without any explanation or rationale is conclusory and of little probative value.⁷ Appellant's burden includes providing an affirmative opinion from a physician who supports his conclusion with sound medical reasoning.⁸ As Dr. Fried did no more than fill in a question on a form, his opinion on causal relationship is of little probative value and is insufficient to discharge appellant's burden of proof. Dr. Fried's reports are insufficient to establish that appellant was disabled from December 30, 2000 to January 9, 2001 and from February 21 to March 17, 2001.

The Board also finds that the Office properly denied appellant's request for a review of the written record as untimely.

Section 8124(b)(1) of the Act provides that "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."⁹ Section 10.616 of the federal regulations implementing this section of the Act provides that a claimant shall be afforded a choice of an oral hearing or a review of the written record by a representative of the Secretary.¹⁰

In the present case, appellant requested a review of the written record by an Office representative in a letter dated July 22, 2001 and postmarked August 10, 2001. Section

⁶ *Kathryn Haggerty*, 45 ECAB 383 (1994).

⁷ *Leon Harris Ford*, 31 ECAB 514 (1980).

⁸ *Barry R. Keckler*, Docket No. 99-1800 (issued February 2001).

⁹ 5 U.S.C. § 8124(b)(1).

¹⁰ 20 C.F.R. § 10.616.

10.616(a) of the federal regulations provides: “A claimant is not entitled to a review of the written record if the request is not made within 30 days of the date of the issuance of the decision as determined by the postmark of the request.” As the postmark date of the request was more than 30 days after issuance of the July 3, 2001 Office decision, appellant’s request for a review of the written record was untimely.

While the Office also has the discretionary power to grant a review request when a claimant is not entitled to a review as a matter of right, in its July 3, 2001 decision, the Office properly exercised its discretion by stating that it had considered the matter in relation to the issue involved and had denied appellant’s request on the basis that appellant’s claim could be addressed through a reconsideration application.

The decisions of the Office of Workers’ Compensation Programs dated September 25, July 3 and May 14, 2001 are hereby affirmed.

Dated, Washington, DC
July 9, 2002

Alec J. Koromilas
Member

Colleen Duffy Kiko
Member

A. Peter Kanjorski
Alternate Member