U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JEROME DRAKE and U.S. POSTAL SERVICE,
POST OFFICE, Tuscaloosa, AL

Docket No. 02-1477; Submitted on the Record;
Issued November 13, 2002

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issues are: (1) whether appellant's condition in his right hand was causally related to factors of employment; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for an oral hearing.

On July 17, 2001 appellant, then a 47-year-old letter carrier, filed a claim for an occupational injury alleging that on May 15, 2001 he experienced numbness in his right hand. In an attachment to his claim, appellant described his work history, stating that as a marine he was required to type for long hours, that as an "LSM" operator he had to type 45 minutes without a break and as a carrier he placed mail in slots. Appellant stated that since "DPS" the time casing mail had decreased from approximately five to three hours daily. He explained that his right finger started going numb about two months ago.

Appellant submitted medical evidence to support his claim. In a report dated July 26, 2001, his treating physician, Dr. Alexandre B. Todorov, a Board-certified psychiatrist and neurologist, stated that appellant had been complaining of numbness in his fingers, mainly in the first three fingers of his right hand, for the last two to three months. Dr. Todorov considered appellant's medical history, performed a physical examination and diagnosed, *inter alia*, carpal tunnel syndrome of the right arm. He recommended that a nerve conduction study be performed. Dr. Todorov interpreted the electromyography and nerve conduction study performed on July 26, 2001 as showing severe bilateral carpal tunnel syndrome. In a report dated July 31, 2001, he reiterated his diagnosis of severe bilateral carpal tunnel syndrome and recommended surgery.

By letter dated August 16, 2001, the Office requested additional information from appellant including a narrative report from a treating physician explaining how his physical condition is causally related to his federal employment.

The employing establishment submitted a description of a letter carrier's duties, which included carrying mail in shoulder satchels, loading and unloading sacks of mail and routing or casing all classes of mail in sequence of delivery along an established route. On September 10,

2001 the delivery supervisor, James Bond, stated that appellant worked as a carrier since November 6, 1979, that his job required him to stand for three to four hours, five to six days a week and to place mail in a carrier case prior to going out on a route for delivery. Mr. Bond explained that appellant picked up mail off a ledge from the center case ledge that was 32 inches high and placed the mail in designated slots in five to six rows with maximum row height of approximately 72 inches. He stated that appellant repeated that action hundreds to thousands of times (based on mail volume) daily until that day's mail was cased.

By letter dated September 11, 2001, appellant explained that he manually cased letters that were to be delivered and the task required constant movement of his hand and wrists. He stated that his symptoms first became severe in May 2001.

By decision dated October 2, 2001, the Office denied appellant's claim, stating that he did not meet the requirements for establishing that his condition was caused by an employment factor.

By letter dated November 1, 2001, which was postmarked November 2, 2001, appellant requested an oral hearing before an Office hearing representative.

By decision dated January 15, 2002, the Office's Branch of Hearings and Review denied appellant's request for a hearing, stating that his letter requesting a hearing was postmarked November 2, 2001, more than 30 days after the Office issued the October 2, 2001 decision and that, therefore, appellant's request was untimely. The Branch of Hearings and Review informed appellant that he could request reconsideration by the Office and submit additional evidence.

The Board finds that the Office properly denied appellant's request for an oral hearing.

Section 8124(b)(1) of the Federal Employees' Compensation Act provides that "a claimant ... 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."[1] Section 10.615 of the Office's federal regulations implementing this section of the Act, provides that a claimant can choose between an oral hearing or a review of the written record.[2] The regulation also provides that in addition to the evidence of record, the employee may submit new evidence to the hearing representative.[3]

Section 10.616(a) of the Office's regulations[4] provides in pertinent part that:

> "[A] claimant, injured on or after July 4, 1966, who has received a final adverse decision by the district office may obtain a hearing by writing to the address specified in the decision. The hearing request must be sent within 30 days (as

[1] 5 U.S.C. § 8124(b)(1).

[2] 20 C.F.R. § 10.615.

[3] *Id*.

[4] 20 C.F.R. § 10.616(a).

determined by postmark or other carrier's date marking) of the date of the decision for which a hearing is sought."

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.[5] 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,[6] when the request is made after the 30-day period for requesting a hearing[7] and when the request is for a second hearing on the same issue.[8]

The 30-day time period for determining the timeliness of appellant's request for an oral hearing commences on the first day following the issuance of the Office's decision.[9] In this case, the 30-day period for filing the request commenced on October 3, 2001 the day after the issuance of the October 2, 2001 decision and appellant had 30 days from October 3, 2001 or through November 1, 2001, to file his request. Since the postmark date of appellant's letter requesting an oral hearing is November 2, 2001, which is 31 days after the October 2, 2001 decision, appellant's letter requesting an oral hearing is untimely.[10] The Branch of Hearings and Review, therefore, properly denied appellant's request.

The Board finds that the case is not in posture for decision regarding whether appellant's right hand condition is causally related to factors of federal employment.

To establish that an injury was sustained in the performance of duty, appellant must submit the following: (1) medical evidence establishing the presence or existence of the condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the 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 claimant. The medical evidence required to establish causal relationship, generally, is 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 appellant'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

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

[6] *Rudolph Bremen*, 26 ECAB 354, 360 (1975).

[7] *Herbert C. Holly*, 33 ECAB 140, 142 (1981).

[8] *Frederick Richardson*, 45 ECAB 454, 466 (1994); *Johnny S. Henderson*, 34 ECAB 216, 219 (1982).

[9] *See Donna A. Christley*, 41 ECAB 90-91 (1989).

[10] *See James Smith*, 52 ECAB __ (Docket No. 00-1103, issued October 25, 2001).

rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by appellant.[11]

The mere fact that a disease 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 disease became apparent during a period of employment, nor the belief of appellant that the disease was caused or aggravated by employment conditions, is sufficient to establish causal relation.[12]

However, it is well established that proceedings under the Act are not adversarial in nature and, while the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.[13] The Office has an obligation to see that justice is done.[14]

In this case, the contemporaneous medical evidence appellant submitted consisted of Dr. Todorov's July 26 and 31, 2001 reports, in which Dr. Todorov diagnosed severe bilateral carpal tunnel syndrome. Appellant also submitted the results of the July 26, 2001 electromyography and nerve conduction study on which Dr. Todorov relied. There is no evidence contrary to Dr. Todorov's findings in the record. In the September 10, 2001 memorandum, appellant's supervisor stated that he picked up mail and placed it in slots hundreds to thousands of times a day depending on the mail volume indicating that appellant's job involved repetitive motion. In his September 11, 2001 letter, appellant stated that he manually cased letters and the task required constant movement of his hand and wrists.

The Board finds that although the reports of Dr. Todorov are insufficiently rationalized to establish that appellant has carpal tunnel syndrome causally related to his employment, they provide enough support for appellant's claim to require further development by the Office.

The Office should prepare a statement of accepted facts and refer appellant, along with the statement of accepted facts and the medical record, to an appropriate specialist for an examination of appellant and for him or her to provide a rationalized medical opinion addressing whether appellant's right hand condition is work-related. After such development as it may deem necessary, the Office shall issue a *de novo* decision.

[11] *See Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[12] *Lucrecia M. Nielsen*, 42 ECAB 583, 593 (1991); *Joseph T. Gulla*, 36 ECAB 516, 519 (1985).

[13] *Mark A. Cacchione*, 46 ECAB 148, 152 (!994); *Udella Billups*, 40 ECAB 260, 269 (1989).

[14] *John J. Carlone*, 41 ECAB 354, 360 (1989).

The January 15, 2002 decision of the Office of Workers' Compensation Programs is affirmed. The Office's October 2, 2001 decision is vacated and the case remanded for further action consistent with this decision.

Dated, Washington, DC
November 13, 2002

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member