

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JOHN W. JAMES and DEPARTMENT OF THE ARMY,  
Fort Benning, GA

*Docket No. 02-1034; Submitted on the Record;  
Issued April 3, 2003*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

The issues are: (1) whether appellant met his burden of proof to establish that he sustained a back strain causally related to factors of employment; and (2) whether the Office of Workers' Compensation Programs abused its discretion in denying appellant's request for a hearing.

On July 16, 2001 appellant, then a 57-year-old target system repairer, filed a traumatic injury claim, alleging that on July 11, 2001 he injured his back while replacing a target lifter. By letter dated August 13, 2001, the Office informed appellant of the type of evidence needed to support his claim and gave him 30 days to respond. Hearing nothing further, in a decision dated September 17, 2001, the Office found the lifting incident of July 11, 2001 occurred but denied the claim on the grounds that appellant failed to establish that he sustained a medical condition causally related to the July 11, 2001 incident. Medical evidence was received by the Office on October 11, 2001.

In a letter postmarked November 20, 2001, appellant requested a hearing and submitted additional medical evidence. By decision dated January 7, 2002, an Office hearing representative denied appellant's hearing request on the grounds that it was untimely filed. The instant appeal follows.

The Board finds that appellant failed to establish that he sustained an injury causally related to the July 11, 2001 employment incident.

An employee seeking benefits under the Federal Employees' Compensation Act<sup>1</sup> has the burden of establishing the essential elements of his or her claim<sup>2</sup> including the fact that the

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> See *Daniel R. Hickman*, 34 ECAB 1220 (1983).

individual is an “employee of the United States” within the meaning of the Act,<sup>3</sup> that the claim was timely filed within the applicable time limitation period of the Act,<sup>4</sup> 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.<sup>5</sup> These are essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>6</sup> However, an employee’s statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong and persuasive evidence.<sup>7</sup>

Causal relationship is a medical issue<sup>8</sup> and the medical evidence required to establish a causal relationship is rationalized medical evidence. Rationalized medical evidence is medical evidence, which includes a physician’s rationalized medical 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.<sup>9</sup> Moreover, neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.<sup>10</sup>

The Board finds that, while the Office properly found the employment incident of July 11, 2001 occurred as alleged, appellant did not meet his burden of proof to establish that he sustained an employment-related injury inasmuch as the record that was before the Office at the time of the September 17, 2001 decision contains no medical evidence that relates a medical condition to the July 11, 2001 employment incident.

The Board further finds that the Office did not abuse its discretion in denying appellant’s request for a hearing.

In the instant case, the Office denied appellant’s request for a hearing on the grounds that it was untimely filed. In its January 7, 2002 decision, the Office stated that appellant was not, as a matter of right, entitled to a hearing since his request, postmarked November 20, 2001, had not been made within 30 days of its September 17, 2001 decision. The Office noted that it had

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<sup>3</sup> See *James A. Lynch*, 32 ECAB 216 (1980); see also 5 U.S.C. § 8101(1).

<sup>4</sup> 5 U.S.C. § 8122.

<sup>5</sup> See *Melinda C. Epperly*, 45 ECAB 196 (1993).

<sup>6</sup> See *Delores C. Ellyett*, 41 ECAB 992 (1990); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>7</sup> See *Robert A. Gregory*, 40 ECAB 478 (1989).

<sup>8</sup> *Mary J. Briggs*, 37 ECAB 578 (1986).

<sup>9</sup> *Gary L. Fowler*, 45 ECAB 365 (1994); *Victor J. Woodhams*, *supra* note 6.

<sup>10</sup> *Minnie L. Bryson*, 44 ECAB 713 (1993); *Froilan Negron Marrero*, 33 ECAB 796 (1982).

considered the matter in relation to the issue involved and indicated that appellant's request was denied on the basis that the issue in the instant case could be addressed through a reconsideration application.

The Board has held that the Office, in its broad discretionary authority in the administration of the Act,<sup>11</sup> 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.<sup>12</sup> In the present case, appellant's request for a hearing was postmarked November 20, 2001 and was thus made more than 30 days after the date of issuance of the Office's prior decision, dated September 17, 2001. The Office was, therefore, correct in stating in its January 7, 2002 decision that appellant was not entitled to a hearing as a matter of right.

While the Office also has the discretionary power to grant a hearing request when a claimant is not entitled to a hearing as a matter of right, the Office, in its January 7, 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 request on the basis that the issue of whether the Office properly denied appellant's compensation benefits could be addressed through a reconsideration application. 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.<sup>13</sup> 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.<sup>14</sup>

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<sup>11</sup> 5 U.S.C. §§ 8101-8193.

<sup>12</sup> *Henry Moreno*, 39 ECAB 475 (1988).

<sup>13</sup> *See Daniel J. Perea*, 42 ECAB 214, 221 (1990).

<sup>14</sup> The Board notes that appellant submitted medical evidence to the Office subsequent to the September 17, 2001 decision and with his appeal to the Board. The Board cannot consider this evidence, however, as its review of the case is limited to the evidence of record, which was before the Office at the time of its September 17, 2001 decision. 20 C.F.R. § 501.2(c). Appellant, however, retains the right to submit this evidence to the Office with a valid request for reconsideration.

The decisions of the Office of Workers' Compensation Programs dated January 7, 2002 and September 17, 2001 are hereby affirmed.

Dated, Washington, DC  
April 3, 2003

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member