

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of AUSTRALIA K. DAVIDSON and U.S. POSTAL SERVICE,
ATLANTA BULK MAIL CENTER, Atlanta, GA

*Docket No. 03-276; Submitted on the Record;
Issued April 23, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO,
DAVID S. GERSON

The issues are: (1) whether appellant met her burden of proof in establishing that she sustained an aggravation of her lumbar stenosis and spondylolisthesis as a result of her employment duties; (2) whether appellant met her burden of proof in establishing that she developed carpal tunnel syndrome due to her federal employment; and (3) whether the Branch of Hearings and Review properly denied her requests for oral hearings as untimely.

Appellant, a 51-year-old supervisor of distributions operations, filed a notice of occupational disease on April 2, 2002 alleging that she sustained an aggravation of her back condition of lumbar stenosis and spondylolisthesis due her employment duties.¹ The Office requested additional factual and medical evidence by letter dated May 10, 2002. By decision dated July 17, 2002, the Office denied appellant's claim finding that she failed to submit supportive medical evidence establishing a causal relationship between her current condition and her employment.

Appellant filed a second claim on April 2, 2002 alleging that she developed carpal tunnel syndrome due to her employment duties.² The Office requested additional factual and medical evidence by letter dated May 10, 2002. By decision dated July 17, 2002, the Office denied this claim finding that appellant failed to submit the necessary medical opinion evidence to establish a causal relationship between her diagnosed condition and her employment.³

¹ The Office of Workers' Compensation Programs numbered this case file as 06-2057660.

² The Office numbered this claim as 06-2057664.

³ Following the Office's July 17, 2002 decisions, appellant submitted additional new evidence on each of her claims. As the Office did not consider this evidence in reaching a final decision, the Board may not review it for the first time on appeal. 20 C.F.R. § 501.2(c).

In a letter postmarked August 24, 2002, appellant requested an oral hearing on each of her claims. Appellant explained that she had been hospitalized for depression. By decisions dated October 4, 2002, the Branch of Hearings and Review denied appellant's requests for oral hearings as untimely filed.

The Board finds that appellant failed to meet her burden of proof in establishing that she sustained an aggravation of her lumbar stenosis and spondylolisthesis due to duties of her federal employment.

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 evidence required to establish causal relationship is rationalized medical opinion evidence, based upon a complete factual and medical background, showing a causal relationship between the claimed condition and identified factors. The belief of a claimant that a condition was caused or aggravated by the employment is insufficient to establish causal relation.⁴

The Office accepted that appellant's assignment of having to walk the entire length of the building as an employment factor contributing to her current condition. However, the Office found that appellant had not submitted sufficient medical evidence to establish a causal relationship between her current condition and her employment factor.

In support of her claim, appellant submitted a report dated April 3, 2002 from Dr. Lee A. Kelley, a Board-certified orthopedic surgeon, diagnosing lumbar stenosis and spondylolisthesis. Dr. Kelley recommended surgery and stated that appellant was totally disabled. On May 18, 1998 Dr. Stephen Gould, an anesthesiologist, completed a form report and diagnosed failed back syndrome. He noted that appellant had previously undergone a lumbar laminectomy discectomy with continued pain resulting in significant disability. Dr. Gould provided work restrictions. Dr. Andrea L. Allyn, a Board-certified internist, completed a report on June 18, 2002 and stated that appellant had low back pain due to degenerative disc disease, made worse by constant walking and standing. Dr. Allyn also diagnosed carpal tunnel syndrome.

These reports are insufficient to meet appellant's burden of proof as none of the physicians attributed appellant's current condition to her employment. Dr. Kelley did not provide any history of injury and did not explain how appellant developed her current condition of lumbar stenosis and spondylolisthesis, nor did he provide any opinion that appellant's back condition was caused or aggravated by her employment duties. Dr. Gould noted that appellant had previously undergone back surgery and had continuing pain and disability. He did not address any other cause of appellant's current back condition and did not attribute her current condition to her employment duties. As these reports did not provide a detailed history of injury,

⁴ *Lourdes Harris*, 45 ECAB 545, 547 (1994).

including the accepted employment factors and did not offer a reasoned medical opinion that appellant's current condition was caused or aggravated by her employment factors, these reports are insufficient to meet appellant's burden of proof.

Dr. Allyn provided a diagnosis of degenerative disc disease. However, she did not provide any history of injury, specifically, she failed to mention the prior surgery noted by Dr. Gould. Dr. Allyn also failed to include any physical findings in support of her diagnosis. She indicated that appellant's current condition of low back pain due to degenerative disc disease was made worse by constant walking and standing. Although Dr. Allyn mentioned that constant walking and standing increased appellant's low back pain, she did not indicate whether she was aware of appellant's employment duties and whether she felt that the amount of walking required by appellant's employment was sufficient to result in her increased low back pain. Furthermore, Dr. Allyn did not indicate whether "constant walking and standing" actually worsened appellant's degenerative disc disease, resulting in a permanent aggravation. Without a proper factual background, findings on physical examination and a clear opinion on the causal relationship between appellant's current condition and her employment, Dr. Allyn's report is not sufficient to meet appellant's burden of proof to establish that she sustained an aggravation of her degenerative disc disease due to factors of her federal employment.

The Board further finds that appellant has failed to meet her burden of proof in establishing that she developed carpal tunnel syndrome due to her federal employment.

As noted above, appellant has the burden of establishing through medical evidence that the employment factors she identified, typing and writing in her timekeeping duties, handwriting investigative reports and typing address changes and zip codes, were the proximate cause of the condition, for which compensation is claimed, carpal tunnel syndrome. The Office accepted that appellant's employment required repetitive movements, however, the Office found that appellant had not submitted sufficient rationalized medical opinion evidence to establish a causal relationship between her employment duties and her diagnosed condition.

Dr. Richard B. Bernstein, a Board-certified neurologist, completed a report on January 14, 2002 and diagnosed moderately severe bilateral carpal tunnel syndrome based on electrodiagnostic evaluation.⁵ Dr. Bernstein did not provide a history of injury, did not address appellant's employment duties and did not provide any opinion regarding the cause or contribution of appellant's employment duties to the diagnosed condition of carpal tunnel syndrome. As there was no medical evidence in the record at the time of the Office's July 17, 2002 decision addressing the causal relationship between appellant's carpal tunnel syndrome and her repetitive motion duties at the employing establishment, appellant has failed to meet her burden of proof in establishing that this condition was caused or aggravated by her employment and the Office properly denied her claim.

The Board further finds that the Branch of Hearings and Review properly denied her requests for oral hearings as untimely.

⁵ Appellant submitted other medical evidence to the Office, however, the Office notes and reports did not address her condition of carpal tunnel syndrome and are, therefore, not relevant to the claim before the Board.

The Office issued its decisions on both appellant's carpal tunnel syndrome and low back claims on July 17, 2002. Appellant requested oral hearings in each of her claims in a letter postmarked August 24, 2002. Appellant stated that she experienced depression and was hospitalized for this condition.

Section 8124(b) of the Federal Employees' Compensation Act,⁶ concerning a claimant's entitlement to a hearing before an Office representative, states: "Before review under section 8128(a) of this title, a claimant ... not satisfied with a decision of the Secretary ... is entitled, on request made within 30 days after the date of issuance of the decision, to a hearing on his claim before a representative of the Secretary."⁷

The Board has held that section 8124(b)(1) is "unequivocal" in setting forth the time limitation for requesting hearings.⁸ A claimant is entitled to a hearing as a matter of right only if the request is filed within the requisite 30 days.⁹ Even where the hearing request is not timely filed, the Office may within its discretion, grant a hearing and must exercise this discretion.¹⁰

In the instant case, the Office properly determined appellant's August 24, 2002 request for hearings was not timely filed as it was made more than 30 days after the issuance of the Office's July 17, 2002 decisions. The Office, therefore, properly denied appellant's hearings as a matter of right.

The Office then proceeded to exercise its discretion, in accordance with Board precedent, to determine whether to grant hearings in these cases. The Office determined that hearings were not necessary as the issues in the cases were medical and could be resolved through the submission of medical evidence in the reconsideration process. Therefore, the Office properly denied appellant's request for hearings as untimely and properly exercised its discretion in determining to deny appellant's request for hearings as she had other review options available.

⁶ 5 U.S.C. §§ 8101-8193.

⁷ 5 U.S.C. § 8124(b)(1).

⁸ Compare *Donald Jones-Booker*, 47 ECAB 785 (1996) (finding that the Office's one-year limitation on reconsideration requests was "unequivocal" and does not allow for tolling of the time period due to incompetency).

⁹ *Tammy J. Kenow*, 44 ECAB 619 (1993).

¹⁰ *Id.*

The October 4 and July 17, 2002 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
April 23, 2003

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member