

**United States Department of Labor
Employees' Compensation Appeals Board**

ROGER A. STULTZ, Appellant

and

**U.S. POSTAL SERVICE, WANAMAKEYA
BRANCH, Indianapolis, IN, Employer**

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**Docket No. 03-1237
Issued: December 19, 2003**

Appearances:
Roger A. Stultz, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chairman
COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member

JURISDICTION

On April 14, 2003 appellant filed a timely appeal from the Office of Workers' Compensation Programs' decision dated October 1, 2002, which denied his claim for a recurrence of his accepted condition of aggravation of arthritis of the left hip. Appellant also appealed the decision dated January 7, 2003, wherein the Office denied his request for review of the written record. Pursuant to 20 C.F.R. § 501.2(c) and 501.3, the Board has *de novo* jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant has established that he sustained a recurrence of disability on June 24, 2002 causally related to his accepted injury of aggravation of arthritis of the left hip; and (2) whether the Office properly denied appellant's request for review of the record.

FACTUAL HISTORY

Appellant, then a 46-year-old rural carrier, filed an occupational disease claim on December 17, 2001 alleging that he developed lumbar spondylosis and arthritis in his left hip as a result of the duties of his federal employment. By letter dated February 21, 2002, the Office accepted appellant's claim for aggravation of arthritis of the left hip.

On July 16, 2002 appellant filed a recurrence claim (Form CA-2a), alleging a recurrence of the accepted injury on June 24, 2002. He stopped work on June 24, 2002. Appellant noted that the chronic pain in his left hip increased over a period of months and eventually became unbearable. In support thereof, appellant submitted an attending physician's report dated July 18, 2002 (Form CA-20), wherein Dr. Thomas Ambrose, a Board-certified orthopedic surgeon, indicated that he had osteoarthritis in his left hip, painful range of motion and bursitis. He noted that he believed that the condition was aggravated by an employment activity and noted that appellant's period of total disability was from June 24 to July 16, 2002. Dr. Ambrose further indicated that appellant needed to limit stooping, squatting, getting in and out of the car and that he needed to minimize impact and lifting activities. Appellant also submitted a duty status report dated July 12, 2002 and cosigned by Dr. Ambrose.

By letter dated July 23, 2002, the Office requested that appellant submit further information. In response, he submitted further notes by Dr. Ambrose. In a July 8, 2002 progress note cosigned by Dr. Ambrose, it was noted that appellant's pain in his left hip had increased over the last couple of months. An August 14, 2002 report, cosigned by Dr. Ambrose, indicated:

“[Appellant] is a patient of ours who is being treated for a two-year history of intermittent [left] hip pain of insidious onset. His x-rays are consistent with early osteoarthritis and his clinical exam[ination] supports this finding. Appellant also has greater trochanteric bursitis. He is currently being treated conservatively with medication, activity modification and physical therapy. The natural course of osteoarthritis is to gradually worsen. [Appellant] may need future surgical intervention if current measures of pain control are not effective.”

In a note dated August 18, 2002, appellant indicated that the pain in his hip had decreased and that he had been working a limited-duty assignment. He also noted that he had not sustained any other injuries.

By decision dated October 1, 2002, the Office found that the evidence failed to establish a recurrence of the accepted injury. The Office noted that the medical evidence failed to provide a well-reasoned opinion on the issue of causal relationship and how the injury was related to the accepted work factors or the prior injury of October 1, 2000.

By letter dated and postmarked November 2, 2002, appellant requested review of the written record. This request was denied by the Office in a decision dated January 7, 2003, as it was not timely filed and the Office determined that the case could be equally well addressed by requesting reconsideration.

LEGAL PRECEDENT -- ISSUE 1

An employee who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which he claims compensation is causally related to the accepted injury. This burden of proof requires that a claimant furnish medical evidence from a physician who, on the basis of a complete, accurate and factual medical history, concludes that the condition is causally related to the employment injury supports that conclusion with sound medical reasoning.¹

ANALYSIS -- ISSUE 1

Appellant alleged a recurrence of his accepted condition of aggravation of arthritis of the left hip as of June 24, 2002. However, none of the medical evidence submitted by him indicates that there is a causal relationship between his condition in the hip and his disability after June 24, 2002 and his accepted work injury. Although Dr. Ambrose, in the attending physicians' report dated July 18, 2002, indicated that he believed that appellant's osteoarthritis in the left hip, painful range of motion and bursitis were aggravated by an employment activity, he provided no further details as to how these conditions were related to appellant's work activity. Specifically, Dr. Ambrose does not mention a causal connection between his current hip condition and the accepted aggravation of arthritis in left hip. Although in his August 14, 2002 report, Dr. Ambrose indicated that the natural course of osteoarthritis was to continue to worsen, he again did not link this to the accepted work injury. Therefore, appellant has failed to meet his burden of proof in establishing that he had a recurrence of disability due to his accepted work injury.

LEGAL PRECEDENT -- ISSUE 2

Section 8124(b)(1) of the Federal Employees' Compensation Act provides that, before review under 8128(a), a claimant not satisfied with a decision of the Office is entitled, on request made within 30 days of the date of the issuance of the decision, to a hearing on his claim.²

A request for either an oral hearing or a review of the written record must be submitted, in writing within 30 days of the date of the decision for which a hearing is sought. A claimant is not entitled to a hearing or a review of the written record if the request is not made within 30 days of the date of the decision for which a hearing or written record review is sought as determined by the postmark of the request.³ The Office has discretion; however, to grant or deny a request that is made after this 30 day period.⁴ The function of the Board is to determine

¹ *Helen K. Holt*, 50 ECAB 279, 282 (1999); *Dennis J. Lasanen*, 43 ECAB 549 (1992).

² 5 U.S.C. § 8124(b)(1).

³ 20 C.F.R. § 10.131(a).

⁴ *Herbert C. Holley*, 33 ECAB 140 (1981).

whether there has been an abuse of discretion. Abuse of discretion is generally shown through proof of manifest error, a clearly unreasonable exercise of judgment or actions taken that are clearly contrary to logic and probable deductions from established facts.⁵

ANALYSIS -- ISSUE 2

The Office issued its decision in this case on October 1, 2002. Attached to the decision was a notice of appeal rights informing appellant to read his rights carefully and to clearly specify the procedure he wished to request. The attachment notified appellant that he had 30 days from the date of the Office's decision to request a review of the written record. His letter requesting review of the written record was postmarked November 2, 2002. As appellant's request for review was postmarked November 2, 2002, over 30 days after the October 1, 2002 decision, the Board finds that the Office properly found his request to be untimely.

The Office proceeded to exercise its discretionary authority in considering appellant's request for review of the written record. In its January 7, 2003 decision, the Office denied appellant's request under its discretionary authority. The Office properly noted that his request could be equally well addressed by requesting reconsideration from the district office and submitting evidence not previously considered. The Board finds that the Office acted within its discretion in denying appellant's request for review of the written record.

CONCLUSION

The Board finds that the Office properly denied appellant's claim for a recurrence of the accepted condition of aggravation of arthritis of the left hip. The Board further finds that the Office acted within its discretionary authority when it denied his request for review of the written record.

⁵ *Dorothy Bernard*, 37 ECAB 124 (1985).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated January 7, 2003 and October 1, 2002 are affirmed.

Issued: December 19, 2003
Washington, DC

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member