U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GAI T. TRANPHAM and U.S. POSTAL SERVICE,
POST OFFICE, Santa Ana, CA

Docket No. 02-2195; Submitted on the Record;
Issued February 28, 2003

DECISION and ORDER

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

The issues are: (1) whether appellant's June 22, 1999 employment injury caused more than approximately two weeks of disability for work; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for a subpoena.

On June 22, 1999 appellant, then a 44-year-old mail processor, sustained an injury in the performance of duty, when a coworker bumped an all-purpose container (APC) cart into the rest bar on which she was sitting.[1] Dr. Randy Jones saw her that day at the employing establishment's health unit. Appellant reported complaints of increased pain to the right thoracic paraspinal muscles, as well as spasm and pain on walking. Dr. Jones diagnosed thoracic sprain and released appellant to modified duties.

The following day appellant went to her personal physician, Dr. Phong H. Tran, a specialist in pain management. He reported that appellant's upper extremities, including her wrists, were within normal limits; range of motion was normal; edema was negative; there was no muscle atrophy; skin was warm and nails were normal. Appellant's cervical spine was also within normal limits. Dr. Tran diagnosed chronic low back pain, acute exacerbation and excused appellant from work through June 29, 1999.

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[1] The history on the claim form that appellant signed stated: "APC hit the rest bar that [appellant] was sitting on." At some point, someone crossed through this history with a marker. The coworker involved stated that he bumped the back of appellant's rest bar with an empty APC: "It was a *slight* tap that at most may have startled her. The APC was almost directly behind her when I started to pull it out, so it did not roll very far. Appellant did not cry out in agony, although she did say that I hit her rest bar, to which I replied 'sorry.' [Appellant] continued to work and talk with her friends for at least a half-hour or more after the incident. [She] made no further mention of the incident and showed no ill effects. [Appellant] was not hit in the hip or any other part of her body with the APC. Her rest bar was hit, but only very slightly. There is no way that anyone could be injured in the 'incident.'" (Emphasis in the original.)

On June 30, 1999 appellant complained of right wrist pain with range of motion for one week. Dr. Tran diagnosed chronic low back pain with possible radiculopathy on the right side and right wrist pain, probably tenosynovitis. He excused appellant from work through July 15, 1999.

On July 6, 1999 Dr. Jones related the following:

> "[Appellant] was seen by us on June 22, 1999. [She] states that an APC had hit her in the mid-back area. [Appellant] was complaining of pain to the thoracic area.
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> "[Appellant's] physical examination revealed only subjective signs. There was no evidence of bruising or swelling. There was no evidence of any neurological abnormalities or motor or sensory problems. [Appellant's] subjective complaints were completely out of line with objective findings. [Her] subjective complaints were far exaggerated compared to objective physical examination. Objective physical examination was basically negative.
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> "Based on her subjective complaints only, she was released to modified work instead of regular work. However, she was possibly capable of returning to full work by the next day. [Appellant] was instructed to see us on June 24, 1999 for follow up.
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> "[Appellant] never returned for follow up and I am not aware of her present condition."

On July 29, 1999 the Office accepted appellant's claim for thoracic contusion. The Office advised appellant that, if the injury caused her to lose time from work, the employing establishment would cover that absence through continuation of pay for a period not to exceed 45 days.[2] The Office further advised that, if appellant's absence from work due to the effects of the injury exceeded 45 days, she could claim compensation for wage loss on Form CA-7. The Office requested that appellant provide a detailed narrative report from her physician including a history of injury and an opinion on the relationship of any disability to the accepted injury.

The Office advised the employing establishment to continue appellant's pay for the period of disability not to exceed 45 days.

Dr. Tran's office continued to excuse appellant from work. In a narrative report dated September 3, 1999, he stated that appellant claimed to have had an injury to her low back after being hit by a 200-pound metal container at work. He related appellant's medical care through August 4, 1999, the last time his clinic saw her. Dr. Tran reported that appellant continued to be off work on temporary total disability.

[2] 5 U.S.C. § 8118.

The Office referred appellant, together with the medical record and a statement of accepted facts, to Dr. Thomas R. Dorsey, a Board-certified orthopedic surgeon, for a second opinion on the extent of injury-related disability.

In a report dated September 7, 1999, Dr. Dorsey related appellant's history and current complaints. He reviewed medical records, including a June 30, 1999 computerized tomography (CT) scan, which revealed the following: mild right facet joint hypertrophy causing neural foraminal encroachment on the right at L3-4; moderate bilateral facet joint hypertrophy at L4-5 associated with a two-millimeter posterior disc protrusion; moderate encroachment on the right and left; severe bilateral facet joint hypertrophy at L5-S1 causing moderate encroachment on the right foramen and mild encroachment on the left foramen. Dr. Dorsey described his findings on examination and diagnosed (1) lumbar degenerative joint disease and (2) lumbar strain, resolved. On the issue of injury-related residuals and disability, Dr. Dorsey reported the following:

> "There is no ongoing diagnosis at this time which is related to the work injury by any mechanism, including causation, aggravation, precipitation and acceleration. At most, [appellant] would have had a minimal musculoligamentous sprain/strain, based on the evidence given in the [s]tatement of [a]ccepted [f]acts. A lumbar musculoligamentous sprain/strain is known to resolve with[in] 30 days. There is no basis on which to believe that this minimal injury would have any material aggravation effect, precipitation effect or acceleration effect on her underlying degenerative condition."
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> "There are no work-related factors of disability. There is no basis on which to believe that [appellant's] condition is the result of the events of June 22, 1999. There are no objective findings or subjective complaints which, in my opinion, are medically related to the events of June 22, 1999."
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> "I do not believe [appellant] would have required this period of total disability [through July 28, 1999]. At most, [she] would require two weeks of total disability, following which she should be able to return to modified duty."

On October 11, 1999 appellant filed a claim for wage loss on Form CA-7 for the period June 22, 1999 and continuing.

On October 18, 1999 Dr. Tran diagnosed lower back pain with radiculitis, right wrist pain and neck pain.[3] He indicated that appellant's condition was a result of an employment activity: "[Appellant] reported being hit by a 200-pound metal container while working at the post office."

[3] This is the first indication in the medical record of a neck complaint.

The employing establishment contested the history of injury reported by Dr. Tran and advised the Office to see the statements from witnesses on file.

On November 15, 1999 the Office issued a notice of proposed termination of compensation on the grounds that the weight of the medical evidence established that appellant had no residuals of her work injury.

In a supplemental report dated December 8, 1999, Dr. Tran related continuing complaints of severe lower back pain with radiation to the right lower extremity. Dr. Tran described his findings on examination and diagnosed lower back pain with radiculopathy right lower extremity; sciatica. He reported that appellant remained temporarily totally disabled and stated:

> "[Appellant] was first seen in this office on June 23, 1999. She reported no previous injuries, illness or any other prior complaints pertaining to her lower back pain that radiates to the right leg. Therefore, this injury is accepted as the direct cause of her radiculopathy. It is an accepted fact that [appellant] sustained a work-related injury on June 22, 1999. Based on a history, with prolonged sitting, that is required for her work, which I believe exerted a lot of weight and pressure on the lumbar facet joint and naturally progressed to cause hypertrophy. Hypertrophy and irritation of facet joint that did not reach a threshold of which [appellant] would have perceived as pain, until the accident of June 22, 1999, which brought the aggravated irritation or hypertrophy above the threshold where [she] now perceives as pain. I, therefore, believe that the injury has caused her to be disabled and further treatment is warranted."

On December 10, 1999 Dr. Wayne K. Baybrook, an orthopedic surgeon, reported that he examined appellant on November 30, 1999. He indicated that he had reviewed the Office's statement of accepted facts and appellant's medical records, including the second opinion report of Dr. Dorsey. Dr. Baybrook reported the following history of injury:

> "[Appellant] is a 44-year-old right-handed female who states that, in the course of her work on June 22, 1999, she was sitting on a stool, sorting mail. Another worker was pushing a large APC cart, weighing approximately 200 pounds, while he pulled another one. As he did so, the cart he was pushing struck her in the back. This caused her to strike her right wrist against the cage as she reached to prevent herself from falling over."

Dr. Baybrook related appellant's complaints and findings on examination. He diagnosed cervical sprain/strain, improving; thoracic contusion, resolved; contusion and sprain, right wrist, improved; facet arthropathy, lumbar spine, preexistent to the June 22, 1999, injury but, in his professional opinion, secondary to continuous trauma of work; aggravation of degenerative joint disease of lumbar spine by injury of June 22, 1999; lumbar sprain/strain, improving; a two-millimeter disc protrusion at L4-5, in his professional opinion, secondary to June 22, 1999, injury; and radiculopathy, right lower extremity, in his professional opinion secondary to appellant's facet arthropathy.

Dr. Baybrook noted the following:

"The statement of accepted facts provides information to the effect that [appellant] was struck on the back by an APC cart that was being pushed by a coworker on June 22, 1999. This resulted in a contusion to her back, especially in the thoracic area, but since the thoracic and lumbar regions are so closely associated, in all likelihood, the lumbar spine was struck as well. Even if the lumbar spine was not struck directly, the striking of the thoracic spine certainly would have adversely affected the condition of the lumbar spine. Since the APC cart was quite heavy, reportedly weighing approximately 200 pounds, the momentum of such a cart in motion would be considerable. Thus, it is not surprising that [appellant] states that she was thrown forward and had to reach quickly with her right hand, striking her right wrist on the cage, to prevent falling. This resulted in a contusion and sprain of the right wrist. The fact that she continues to have some tenderness on the small finger edge or ulnar border is completely consistent with the history of injury.

"The startle reaction which is brought on by unexpected events such as this results in very violent contracture of the self-righting muscles as the individual attempts to regain balance and position. When this is combined with the force of the impact, it is common for the forces exerted through the musculature to exceed the 'design strength' and, at the very least, a sprain/strain injury occurs, not only in the muscles but also in the ligaments which are tethering the bones to prevent joint motion beyond physiologic limits. The violent muscle contracture would also be sufficient to result in a small disc protrusion such as is evident at the L4-5 level. Since there is no radiologic finding mentioned by the radiologist of degenerative change associated with the disc protrusion, *i.e.*, bony ridges, this is a recent injury. There is, therefore, every reason to find that the disc protrusion is, in fact, a result of the June 22, 1999, injury. This is especially true since [appellant] did not have a history of prior back symptoms.

"Cervical sprain/strain occurred in a like manner to the cause of the sprain/strain in the lumbar area. In effect, the incident was highly similar to a rear-end type of motor vehicle accident in the manner in which the forces were transmitted. Where there is the padding of the seat back and a headrest and the inertia of the motor vehicle one is in, with an APC bin striking [appellant], all of the protective aspects were lacking.

"The arthritic changes in the lumbar spine, which involve the facet joints, truly was preexistent to the June 22, 1999 injury, but with no history of prior injury to her low back, it is this examiner's professional opinion that these changes are due to the continuous trauma that she has suffered in the 15 years that she has worked as a postal clerk.

"The sensory changes in the right lower extremity are consistent with the greater degree of facet arthropathy on the right side of the lumbar area and thus the

subjective complaints are supported by the objective findings of the magnetic resonance imaging (MRI) scan."

Dr. Baybrook offered a critique of Dr. Dorsey's report and stated that Dr. Dorsey's comment that a lumbar musculoligamentous sprain/strain is known to resolve within 30 days was a "very conservative" estimate with no application to specific individuals. He continued:

"It is not uncommon for individuals to have to develop arthritic degeneration in a joint or joints and be completely unaware of it until such time as a traumatic incident lights it up or makes it symptomatic. [Appellant] had an asymptomatic latent condition of the lumbar spine which became severely symptomatic as a direct result of the trauma of the accident in which her back was struck by the APC."

Dr. Baybrook reported that appellant was totally disabled for work.

The Office found a conflict in medical opinion between Dr. Dorsey, the second opinion physician and Drs. Tran and Baybrook, appellant's physicians. To resolve the conflict, the Office referred appellant, together with the medical record and a statement of accepted facts, to Dr. Michael J. Einbund, a Board-certified orthopedic surgeon.

On April 18, 2000 Dr. Einbund reported the history of injury as related by appellant:

"This 45-year-old female states that on June 22, 1999, while employed by the [employing establishment] as a postal clerk, she was sitting down while doing her work. Her low back was struck by a big metal container that was being pushed by a coworker. She was pushed off the seat and, in trying to catch herself, she struck her right wrist area on a mail cage holder. [Appellant] did not fall to the ground and denied loss of consciousness, but states she immediately experienced pain in her low back and right wrist."

Dr. Einbund related appellant's complaints and findings on examination. He diagnosed cervical spine strain; lumbosacral spine strain; and complaints of pain, right wrist. Dr. Einbund reviewed appellant's medical records, including the reports of Drs. Jones, Dorsey, Tran and Baybrook. He offered the following opinion:

"Based on the medical records, there appears to be no documentation of an injury involving [appellant's] cervical spine. When she was initially seen after the June 22, 1999 incident, there is no documentation of a right wrist injury at that time.

"It is my opinion that [appellant's] cervical symptoms are not related to the alleged injury of June 22, 1999. It is unlikely that her right wrist symptoms are secondary to the June 22, 1999 incident. It is possible that her low back symptoms are secondary to the soft tissue injury on June 22, 1999.

"In all probability, it is my opinion that [appellant's] current low back symptoms are temporary. Subjectively, she still complains of pain. In the majority of

patients who have this type of injury, their symptoms do resolve within three months. However, every patient is different and I am unable to estimate when [appellant] will stop having subjective complaints of pain.

"With regard to [appellant's] low back, objectively, she has a slight positive CT scan. There is no clinical evidence of any disc herniation. I can give no explanation for the slightly positive straight leg raising or for the decreased sensation over the right lateral thigh and calf.

"With regard to [appellant's] right upper extremity, she also complains of decreased sensation and I can give no physiological explanation.

"There appears to be no evidence of any nonindustrial or preexisting disability.

"With regard to prognosis, I do feel that [appellant's] subjective complaints will eventually resolve. I cannot estimate when this will occur.

"[Appellant] has had a great deal of treatment. I do feel she should have the opportunity to take over-the-counter anti-inflammatory medications.

"It is my opinion that a reasonable amount of total disability for this injury would not have exceeded approximately two weeks or thereabouts.

"I do not feel [appellant] requires any functional disability as a result of the June 22, 1999 injury.

"There did appear to be some exaggeration of [appellant's] symptoms. Despite the fact that the CT scan was clinically not significant, [she] had complaints of paresthesias in the lateral aspect of her right leg and thigh. This is not consistent with the CT findings. I can give no explanation for the decreased sensation over the right lateral forearm and the ulnar two fingers of her right hand. This is inconsistent with a contusion to the right wrist. It appears that there was some symptom magnification on today's examination."

The Office requested a supplemental report from Dr. Einbund. The Office asked him to indicate whether objective medical findings established that appellant was currently suffering from residuals of her industrial injury and to provide rationale for his opinion.

On November 9, 2000 Dr. Einbund reported: "As I indicated in my previous report, there were no objective findings when I evaluated [appellant] on April 18, 2000. She did have multiple subjective complaints; however, there were no objective findings that would account for her subjective complaints."

The Office received a November 6, 2000 report from Dr. Baybrook. He referenced his November 30, 1999 report for details of the history of injury. He related his findings on examination, reviewed Dr. Einbund's report and reported diagnoses similar to those he previously found with the addition of allergic rhinitis, allergic conjunctivitis and sinusitis. He reported that his opinions remained unchanged. Dr. Baybrook offered a critique of

Dr. Einbund's report. Disagreeing with the period of total disability reported by Dr. Einbund, Dr. Baybrook stated:

> "There is no question that [appellant] was struck in the back by a heavy wheeled vehicle operated by a coworker. Dr. Einbund's opinion that [her] time of total disability should not have exceeded approximately two weeks would have been appropriate if she had suffered a mere contusion. However, [appellant] has, in fact, suffered a much more serious condition as a result of the injury of June 22, 1999, causing total disability to continue from the date of injury through to the present."

In a decision dated February 12, 2001, the Office terminated appellant's compensation benefits on the grounds that the weight of the medical evidence, as represented by the opinion of the referee medical specialist, established that appellant no longer had residuals of her work injury. Further medical treatment at Office expense was not authorized and prior authorization, if any, was thereby terminated.

In a decision dated February 13, 2001, the Office found that the weight of the medical evidence, again resting with the opinion of the referee medical specialist, established that disability from the June 22, 1999 injury would not have exceeded two weeks. Because continuation of pay would have been payable for up to 45 days from the date of injury, appellant was due no compensation for wage loss.

On September 26, 2002 an Office hearing representative denied appellant's request to subpoena individuals who are knowledgeable with the frequency with which Dr. Einbund performed fitness-for-duty examinations for the employing establishment. The hearing representative noted that he could not know who these unnamed individuals were and, therefore, could not identify them. The hearing representative also noted that appellant had not explained how the testimony of such individuals would be relevant to the issue in her case, which was medical in nature.

In a decision dated June 26, 2002, an Office hearing representative found that appellant had no disability due to her June 22, 1999 injury beyond two weeks. The hearing representative found that the opinion of referee medical specialist represented the weight of the medical evidence.

The Board finds that the weight of the medical evidence establishes that appellant's June 22, 1999 employment injury caused no more than approximately two weeks of total disability for work.

A claimant seeking benefits under the Federal Employees' Compensation Act[4] has the burden of proof to establish the essential elements of her claim by the weight of the evidence,[5] including that she sustained an injury in the performance of duty and that any specific condition

[4] 5 U.S.C. §§ 8101-8193.

[5] *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and cases cited therein.

or disability for work for which she claims compensation is causally related to that employment injury.[6]

As used in the Act, the term "disability" means incapacity, because of employment injury, to earn the wages that the employee was receiving at the time of injury.[7] When the medical evidence establishes that the residuals of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in her employment, she is entitled to compensation for any loss of wage-earning capacity resulting from such incapacity.[8]

The Office accepted that appellant sustained an employment injury on June 22, 1999 when an APC bumped into the rest bar on which she was sitting. The Office accepted her claim for thoracic contusion.[9] On October 11, 1999 appellant filed a claim for wage loss for the period June 22, 1999 and continuing. She, therefore, has the burden of proof to establish that the disability for which she claims compensation is causally related to the June 22, 1999 employment injury.

A conflict in medical opinion arose between appellant's physicians, Drs. Tran and Baybrook, and the Office second opinion physician, Dr. Dorsey, on the extent of appellant's injury-related disability. Dr. Tran diagnosed lower back pain with radiculitis, right wrist pain and neck pain. He indicated that appellant's condition was a result of her "being hit by a 200-pound metal container while working at the [employing establishment]." Dr. Tran found that appellant remained temporarily totally disabled for work. Dr. Baybrook argued that the June 22, 1999 incident caused more injuries than the accepted thoracic contusion and reported that appellant was totally disabled for work.[10] These opinions conflicted with that of Dr. Dorsey, who on September 7, 1999 found no ongoing diagnosis related to the work injury by any mechanism, including causation, aggravation, precipitation or acceleration. At most, he reported, appellant would have had a minimal musculoligamentous sprain/strain and would have required at most two weeks of total disability, following which she should have been able to return to modified duty.

[6] *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[7] *Richard T. DeVito*, 39 ECAB 668 (1988); *Frazier V. Nichol*, 37 ECAB 528 (1986); *Elden H. Tietze*, 2 ECAB 38 (1948).

[8] *Bobby W. Hornbuckle*, 38 ECAB 626 (1987).

[9] Dr. Jones, who examined appellant at the employing establishment health clinic on the day of the incident, reported that appellant's physical examination revealed only subjective signs; there was no evidence of bruising or swelling.

[10] The history of injury reported by Drs. Tran and Baybrook that a 200-pound metal container struck appellant directly in the back with considerable momentum, as if she were rear-ended in an automobile collision but without the protection of seat padding and head rest, throwing her forward such that she had to reach quickly with her right hand to prevent falling and causing a violent contraction of muscles is simply not supported by the contemporaneous factual evidence and is not the history of injury reflected in the statement of accepted facts. As such, their opinions on causal relationship and disability, however reasoned, are based on a faulty premise.

Section 8123(a) of the Act provides in part: "If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination."[11]

Pursuant to section 8123(a), the Office referred appellant to Dr. Einbund to resolve the outstanding conflict. Dr. Einbund noted that there appeared to be no medical documentation of an injury involving her cervical spine or right wrist when appellant was initially seen. The record shows that appellant did not report cervical or wrist complaints when she saw Dr. Jones on the day of the incident and she mentioned no such complaints to Dr. Trans, when she saw him the following day. On June 23, 1999 Dr. Tran noted appellant's cervical spine and upper extremities, including her wrists, to be within normal limits. His clinical findings were completely negative in this regard. It was on June 30, 1999 that Dr. Tran first diagnosed left [sic] wrist hand pain and it was on October 18, 1999 that he first diagnosed neck pain. Dr. Einbund concluded that appellant's cervical symptoms were not related to the June 22, 1999 incident and that it was unlikely that her right wrist symptoms were secondary to the incident.

Dr. Einbund also concluded that it was possible that appellant's low back symptoms were secondary to the soft tissue injury she sustained on June 22, 1999, but that in all probability her symptoms were only temporary. Objectively, he noted, she had a slight positive CT scan with no clinical evidence of herniation. He could give no explanation for the slightly positive straight-leg raising or decreased sensation over the right lateral thigh and calf, but he reported that there did appear to be some symptom magnification. Dr. Einbund concluded that a reasonable amount of total disability for appellant's injury would not have exceeded approximately two weeks "or thereabouts" and that she required no functional disability as a result of the June 22, 1999 injury.

When there exist opposing medical reports of virtually equal weight and rationale and the case is referred to a referee medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.[12]

The Board finds that the opinion of Dr. Einbund, the referee medical specialist, is based on a proper factual background and is sufficiently well rationalized that it carries special weight in resolving the conflict in this case. His opinion on causal relationship appears consistent with the accepted facts of this case, namely, that another clerk bumped an APC cart into the rest bar on which appellant was sitting and his opinion on disability appears consistent with the relatively minor soft-tissue injury he allowed was possible from such an incident.

As the weight of the medical opinion evidence establishes that appellant's June 22, 1999 employment injury caused no more than approximately two weeks of total disability for work, disability that was covered by continuation of pay, the Board will affirm the denial of compensation for wage loss.

The Board also finds that the Office properly denied appellant's request for a subpoena.

[11] 5 U.S.C. § 8123(a).

[12] *Carl Epstein*, 38 ECAB 539 (1987); *James P. Roberts*, 31 ECAB 1010 (1980).

Section 8126 of the Act provides that the Secretary of Labor, on any matter within her jurisdiction under this subchapter, may issue subpoenas for and compel the attendance of witnesses within a radius of 100 miles.[13] The implementing regulation provides:

> "A claimant may request a subpoena, but the decision to grant or deny such a request is within the discretion of the hearing representative. The hearing representative may issue subpoenas for the attendance and testimony of witnesses and for the production of books, records, correspondence, papers or other relevant documents. Subpoenas are issued for documents only if they are relevant and cannot be obtained by other means and for witnesses only where oral testimony is the best way to ascertain the facts."[14]

On September 26, 2002 the Office hearing representative denied appellant's request to subpoena individuals who were described as knowledgeable of the frequency with which Dr. Einbund performed fitness-for-duty examinations for the employing establishment. The hearing representative indicated that he could not serve subpoenas on unnamed, unidentified individuals and he noted that appellant had not explained how their testimony was relevant to the issue in her case, which turned on medical evidence.

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 deductions from established facts and similar criteria. It is not enough to merely show that the evidence could be construed so as to produce a contrary factual conclusion.[15] The Board finds no abuse of discretion in the hearing representative's denial of appellant's request for a subpoena.[16]

[13] 5 U.S.C. § 8126(1).

[14] 20 C.F.R. § 10.619 (1999).

[15] *Dorothy Bernard*, 37 ECAB 124 (1985).

[16] A decision to deny a subpoena can only be appealed as part of an appeal of any adverse decision that results from the hearing. *Id*. at § 10.619(c).

The June 26, 2002 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
February 28, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member