U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JERRY L. DOGAN and U.S. POSTAL SERVICE,
CAVE SPRING BRANCH, Roanoke, VA

Docket No. 02-1649; Submitted on the Record;
Issued June 10, 2003

DECISION and ORDER

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

The issues are: (1) whether the medical treatment appellant received beginning January 8, 2001 is causally related to his employment; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for a review of the written record on the basis that his request was not timely filed.

On May 18, 2001 appellant, then a 38-year-old carrier, filed a claim for a recurrence of disability due to a December 17, 1999 employment injury. Appellant listed the date of the recurrence as January 8, 2001, indicated that he did not stop work, and described the circumstances of the recurrence as experiencing pain and soreness in his elbows due to carrying two bundles of mail, one cradled in his arm and the other gripped in his hand.

By letter dated June 22, 2001, the Office advised appellant that it needed: "Medical records, including clinical notes, of all treatment you have received for your elbow and wrist condition since you were released to return to full duty without medical restrictions on May 17, 2000. You must also have your physician submit a narrative medical report, which includes … physician's opinion, with supporting explanation, as to the causal relationship between your current disability/condition and the original injury."

Appellant submitted medical reports from Dr. Brian A. Torre, a Board-certified orthopedic surgeon. In a report dated January 8, 2001, he stated that appellant "has been complaining of some discomfort in his right elbow, especially when he carries mail and holds it with his right arm." On examination Dr. Torre found slight tenderness over the excisions at both elbows; he diagnosed "Status post ulnar neuropathy, both elbows," and noted that appellant "would like to be allowed to carry his mail with a one-bundle system that would relieve a little bit of the stress on his elbows." In a report dated June 4, 2001, Dr. Torre again noted that appellant had no numbness or tingling in his arms, but that he "does have some elbow discomfort

with a lot of use and still feels he is only able to hold/carry mail one bundle at a time." He stated:

> "[Appellant] is given a permanent restriction to carry mail in one bundle except for mounted delivery. He can do all other aspects of his regular job.… He is released from routine care at this time and will follow up p.r.n. [as needed] if he has any other problems. There is no evidence of residual impairment in his upper extremities."

In a report dated July 11, 2001, Dr. Torre stated that appellant "was changed to a limited-duty status because of restrictions imposed on his elbows. He subsequently developed more pain and swelling in his elbows." Dr. Torre diagnosed "Status post ulnar neurolysis, elbow and carpal tunnel release both upper extremities." He stated that appellant's only restriction was to carry one bundle at a time, and that appellant would follow up if other problems arose.

On August 2, 2001 the employing establishment offered and appellant accepted a limited-duty position as a city carrier, with a restriction of carrying mail in one bundle.

By letter dated August 23, 2001, the Office advised appellant that, after reviewing the history provided on his claim for a recurrence of disability, it appeared that the injury sustained on January 8, 2001 was not a recurrence, but instead a new injury, since it appeared that he was exposed to new work factors. The Office stated that appellant's claim for a recurrence would be converted into a claim for an occupational disease and developed as a new injury.

By letter dated September 10, 2001, the Office advised appellant that the medical evidence he submitted did not establish that he sustained an employment injury on January 8, 2001. The Office requested that appellant further describe the work factors to which he attributed his condition, and that he provide a comprehensive medical report from his physician including an explanation of how work exposures contributed to his condition.

By decision dated October 23, 2001, the Office found that the initial evidence supported that appellant actually experienced the claimed accident, but that the medical evidence was not sufficient because it was not detailed and did not provide an explanation on how appellant's injury was employment related. The Office found that appellant had not established he sustained an injury as alleged and refused to authorize medical treatment at its expense.

By letter dated November 21, 2001, postmarked November 24, 2001, appellant requested a written review of the record, and further described the work factors to which he attributed his condition. Appellant submitted additional reports from Dr. Torre.

By decision dated February 26, 2002, the Office found that appellant's request for a review of the written record was postmarked November 24, 2001, and was not timely filed within 30 days of the Office's October 23, 2001 decision.

The Board finds that appellant has not established that the medical treatment appellant received on January 8, June 4 and July 11, 2001 is causally related to his employment.

In its October 23, 2001 decision, the Office framed the issue as whether appellant sustained an injury due to the claimed January 8, 2001 accident, and refused to authorize medical treatment at the Office's expense. As appellant did not stop work, file a claim for a traumatic injury, or file a claim for compensation for disability from work, the only question raised by his May 18, 2001 claim for a recurrence of disability is whether the medical treatment he received beginning January 8, 2001 is causally related to his employment.

In order to be entitled to medical expenses, appellant must establish that the expenditures were incurred for treatment of the effects of an employment-related injury. Proof of causal relation in a case such as this must include supporting rationalized medical evidence.[1] Neither the fact that the condition became apparent during a period of employment nor the belief of the employee that the condition was caused, precipitated or aggravated by a job-related injury is sufficient to establish causal relation.[2]

Dr. Torre reported that appellant complained of "discomfort in his right elbow, especially when he carries mail and holds it with his right arm" and that he had "some elbow discomfort with a lot of use." These statements indicate that appellant experienced an employment-related worsening of his symptoms, which can result in entitlement to compensation, if the symptoms necessitated medical treatment.[3] Dr. Torre's reports, however, are insufficient to meet appellant's burden of proof because they do not clearly indicate what condition was aggravated by appellant's employment activities or explain how his condition was related to his employment.

The Board finds that appellant's request for a review of the written record was not timely filed.

Section 8124(b)(1) of the Federal Employees' Compensation Act,[4] concerning a claimant's entitlement to a hearing before an Office hearing representative, states: "Before review under section 8128(a) of this title, a claimant for compensation not satisfied with a decision of the Secretary under subsection (a) of this section 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." The Board has held that section 8124(b)(1) is "unequivocal" in setting forth the time limitation for requesting hearings. A claimant is entitled to a hearing as a matter of right only if the request is filed within the requisite 30 days.[5]

Section 10.615 of Title 20 of the Code of Federal Regulations defines a hearing as "a review of an adverse decision by a hearing representative," and states that "the claimant can

[1] *Dorothy J. Bell*, 47 ECAB 624 (1996).

[2] *Gail Bardis*, 36 ECAB 282 (1984).

[3] *Thomas N. Martinez*, 41 ECAB 1006 (1990) (the Board found that appellant was entitled to compensation for an employment-related aggravation of heel pain).

[4] 5 U.S.C. § 8124(b)(1).

[5] *Tammy J. Kenow*, 44 ECAB 619 (1993); *Ella M. Garner*, 36 ECAB 238 (1984).

choose between two formats: An oral hearing or a review of the written record." Thus, to be entitled to a review of the written record, such a review must be requested within 30 days after the issuance of the Office's decision.

Section 10.616(a) of Title 20 of the Code of Federal Regulations states, in pertinent part: "The hearing request must be sent within 30 days (as determined by postmark or other carrier's date marking) of the date of the decision for which a hearing is sought." In the present case, appellant's letter requesting reconsideration of the Office's October 23, 2001 decision was dated November 21, 2001 but this letter was sent on November 24, 2001, as shown by the postmark. The 30th day after October 23, 2001 fell on November 22, 2001, which was a holiday, but this extended the 30-day period only to the next business day, November 23, 2001.[6] Appellant's request for a review of the written record was not timely filed. The Office also found that the issue in appellant's case could equally well be addressed by requesting reconsideration and submitting evidence not previously considered by the Office.

The February 26, 2002 and October 23, 2001 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, DC
June 10, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

[6] *See Donna A. Christley*, 41 ECAB 90 (1989) for a discussion of how time is computed.