U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of LITTIE M. DAYE and U.S. POSTAL SERVICE,
POST OFFICE, Chicago, IL

*Docket No. 03-25; Submitted on the Record;*
*Issued June 10, 2003*

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DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
A. PETER KANJORSKI

The issues are: (1) whether appellant met her burden of proof to establish that she sustained a recurrence of disability on or after January 2, 2002 due to her December 23, 2001 employment injury; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for a review of the written record as untimely.

On December 23, 2001 appellant, then a 66-year-old mailhandler, sustained a lumbosacral strain due to a fall at work. Appellant returned to her regular work for the employing establishment shortly after her injury. In February 2002, she claimed that she sustained a recurrence of disability on January 2, 2002 due to her December 23, 2001 employment injury. By decision dated May 20, 2002, the Office denied appellant's claim on the grounds that she did not submit sufficient medical evidence to establish that she sustained a recurrence of disability on or after January 2, 2002 due to her December 23, 2001 employment injury. By letter dated March 14, 2002, the Office requested that appellant submit additional evidence in support of her claim. By decision dated August 6, 2002, the Office denied appellant's request for a review of the written record as untimely.

The Board finds that appellant did not meet her burden of proof to establish that she sustained a recurrence of total disability on or after January 2, 2002 due to her December 23, 2001 employment injury.

An individual 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 compensation is claimed is causally related to the accepted injury.[1] This burden includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that

[1] *Charles H. Tomaszewski*, 39 ECAB 461, 467 (1988); *Dominic M. DeScala*, 37 ECAB 369, 372 (1986).

conclusion with sound medical rationale.[2] Where no such rationale is present, medical evidence is of diminished probative value.[3]

Appellant did not submit sufficient medical evidence to establish that she sustained an employment-related recurrence of total disability on or after January 2, 2002. In support of her recurrence of disability claim, appellant submitted an undated form report in which Dr. Percy C. May, Jr., an attending physician specializing in family practice, indicated that she had sustained an injury on December 23, 2001 because she "fell at work on coccyx." Dr. May diagnosed coccyxynia, checked a "yes" box indicating that the condition was employment related, and stated that appellant was totally disabled from January 2, 2002 until an undetermined date.

The Board has held, however, that when a physician's opinion on causal relationship consists only of checking "yes" to a form question, that opinion has little probative value and is insufficient to establish causal relationship.[4] Appellant's burden includes the necessity of furnishing an affirmative opinion from a physician who supports his conclusion with sound medical reasoning. As Dr. May did no more than check "yes" to a form question, his opinion on causal relationship is of little probative value and is insufficient to discharge appellant's burden of proof. Dr. May did not provide any notable description of appellant's employment injury and did not explain how it could have caused her to have disability on or after January 2, 2002. The record contains other reports in which Dr. May indicated that appellant had partial or total disability for periods on or after January 2, 2002. These reports, however, are of limited probative value on the relevant issue of the present case in that they do not contain an opinion on causal relationship.[5]

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's claimed condition became apparent during a period of employment nor her belief that her condition was aggravated by her employment is sufficient to establish causal relationship.[6] Appellant failed to submit rationalized medical evidence establishing that her claimed recurrence of disability is causally related to the accepted employment injury and, therefore, the Office properly denied her claim for compensation.[7]

The Board further finds that the Office properly denied appellant's request for a review of the written record as untimely.

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[2] *Mary S. Brock*, 40 ECAB 461, 471-72 (1989); *Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

[3] *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988).

[4] *Lillian M. Jones*, 34 ECAB 379, 381 (1982).

[5] *See Charles H. Tomaszewski*, *supra* note 1 (finding that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

[6] *See Walter D. Morehead*, 31 ECAB 188, 194-95 (1986).

[7] Appellant submitted additional evidence after the Office's May 20, 2002 decision, but the Board cannot consider such evidence for the first time on appeal; *see* 20 C.F.R. § 501.2(c).

Section 8124 of the Act provides that a claimant is entitled to a hearing before an Office representative when a request is made within 30 days after issuance of an Office final decision. The Office's regulations have expanded section 8124 to provide the opportunity for a "review of the written record" before an Office hearing representative in lieu of an "oral hearing." The Office has provided that such review of the written record is also subject to the same requirement that the request be made within 30 days of the Office's final decision.[8]

The Board has held that the Office, in its broad discretionary authority in the administration of the Act, 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.[9] The principles underlying the Office's authority to grant or deny a written review of the record are analogous to the principles underlying its authority to grant or deny a hearing. The Office's procedures, which require the Office to exercise its discretion to grant or deny a request for a review of the written record when such a request is untimely or made after reconsideration or an oral hearing, are a proper interpretation of the Act and Board precedent.[10]

In the present case, appellant's June 26, 2002 request for a review of the written record was made more than 30 days after the date of issuance of the Office's prior decision dated May 20, 2002 and, thus, appellant was not entitled to a review of the written record as a matter of right. Appellant requested a review of the written record in an undated letter which was postmarked June 26, 2002. Hence, the Office was correct in stating in its August 6, 2002 decision that appellant was not entitled to a review of the written record as a matter of right because her request for a review of the written record was not made within 30 days of the Office's decision.

While the Office also has the discretionary power to grant a review of the written record when a claimant is not entitled to a review of the written record as a matter of right, the Office, in its 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 for a review of the written record on the basis that her claim 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.[11] 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 request for a review of the written record which could be found to be an abuse of discretion.

[8] 20 C.F.R. § 10.616(a); *see Michael J. Welsh*, 40 ECAB 994, 996 (1989).

[9] *Henry Moreno*, 39 ECAB 475, 482 (1988).

[10] *See Welsh, supra* note 8 at 996-97.

[11] *Daniel J. Perea,* 42 ECAB 214, 221 (1990).

The August 6 and May 20, 2002 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, DC
June 10, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member