U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHARLES M. WHEELER and U.S. POSTAL SERVICE,
POST OFFICE, Canton, OH

Docket No. 03-40; Submitted on the Record;
Issued March 12, 2003

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issues are: (1) whether the Office of Workers' Compensation Programs properly denied appellant's request for an oral hearing as untimely filed; and (2) whether appellant sustained an injury while in the performance of duty.

On April 12, 2002 appellant, then a 62-year-old manual distribution clerk, filed a traumatic injury claim, alleging that on March 8, 2002 he was in the restroom and felt a lump on the right side of his pelvis and was unsure how he got it. The employing establishment controverted the claim questioning how he received the lump on his pelvis.

Along with his claim, appellant submitted several reports dating from March 7 to 29, 2002, which included emergency room records and treatment notes.

On May 2, 2002 the Office requested that appellant submit further information and medical evidence regarding his injury. Appellant was allotted 30 days to submit the requested evidence. No additional evidence followed the request.

On June 6, 2002 the Office denied appellant's claim on the grounds that he had failed to establish that he sustained an injury in the performance of duty.

On July 15, 2002 appellant requested an oral hearing.

On August 29, 2002 the Office denied appellant's request for a hearing as untimely filed.[1]

[1] The Office noted that the issue in his case could be equally well addressed by requesting reconsideration and submitting evidence not previously considered which establishes that appellant experienced the incident as alleged.

The Board finds that the Office properly denied appellant's request for a hearing as untimely filed.

Section 8124(b)(1) of the Federal Employees' Compensation Act[2] provides:

> "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."[3]

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.[4] The Office's procedures, which require the Office to exercise its discretion to grant or deny a hearing request when such a request is untimely or made after reconsideration or an oral hearing, are a proper interpretation of the Act and Board precedent.[5]

In this case, appellant's request for a hearing was dated July 15, 2002, which was beyond the 30-day limitation of section 8124(b)(1) and its implementing regulation.[6] Because appellant failed to request an oral hearing within 30 days of the Office's June 6, 2002 decision, he is not entitled to an oral hearing as a matter of right.

While the Office has the discretionary power to grant a hearing when a claimant is not entitled to a hearing as a matter of right, the Office, in its August 29, 2002 decision, stated that it had reviewed appellant's request and determined that the issue could be resolved with a request for reconsideration and evidence showing that he sustained an injury while in the performance of duty.

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.[7] The record does not indicate that the Office acted in any manner in denying appellant's request for a hearing that could be found to be an abuse of discretion. Therefore, the Office properly denied appellant's request for a hearing as untimely.

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[2] 5 U.S.C. §§ 8101-8193.

[3] 5 U.S.C. § 8124(b)(1).

[4] *Bonnie Goodman*, 50 ECAB 139, 145 (1998).

[5] *Martha A. McConnell*, 50 ECAB 129-30 (1998); *Michael J. Welsh*, 40 ECAB 994, 997 (1989).

[6] 5 U.S.C. § 8124(b)(1); 20 C.F.R. § 10.616(a).

[7] *Linda J. Reeves*, 48 ECAB 373, 377 (1997).

The Board also finds that appellant failed to meet his burden of proof in establishing that he sustained an injury while in the performance of duty.

A person who claims benefits under the Act[8] has the burden of establishing the essential elements of his claim, including that he sustained an injury while in the performance of duty and that he had disability as a result.[9] In accordance with the Federal (FECA) Procedure Manual, in order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with the analysis of whether "fact of injury" has been established. Generally, "fact of injury" consists of two components, which must be considered one in conjunction with the other.

The first component to be established is that the employee actually experienced the employment incident or exposure, which is alleged to have occurred.[10] In order to meet his burden of proof to establish the fact that he sustained an injury in the performance of duty, an employee must submit sufficient evidence to establish that he actually experienced the employment incident or exposure at the time, place and in the manner alleged.

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.[11] The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon complete factual and medical background, showing a causal relationship between the claimed condition and the identified factors.[12] The belief of claimant that a condition was caused or aggravated by the employment is not sufficient to establish a causal relationship.[13]

In this case, appellant has not submitted sufficient factual information to establish that he was injured in the course of his federal employment. In this case, the record reflects that appellant stated on his Form CA-1 that he felt a lump on the right side of his pelvis and he was not sure how he received it. When the Office requested clarification, no additional evidence was provided.[14] The record is unclear with respect to how, when or where the bump occurred, or what appellant was doing when it appeared. The employing established denied that this was due to his employment. In a letter dated May 2, 2002, the Office requested that appellant submit

[8] 5 U.S.C. §§ 8101-8193.

[9] *Daniel R. Hickman*, 34 ECAB 1220 (1983); *see* 20 C.F.R. § 10.110(a).

[10] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803(2)(a) (June 1995).

[11] *John C. Carlone*, 41 ECAB 354 (1989); *see* 5 U.S.C. § 8101(5) ("injury" defined); 20 C.F.R. §§ 10.5(a)(15), 10.5(a)(16) ("traumatic injury" and " occupational disease" defined).

[12] *Lourdes Harris*, 45 ECAB 545 (1994); *see Walter D. Morehead*, 31 ECAB 188 (1979).

[13] *Manuel Garcia*, 37 ECAB 767 (1986).

[14] The Board notes that, subsequent to the Office's June 6, 2002 decision, appellant provided additional evidence, however, the Board cannot review that for the first time on appeal. Appellant can submit the new evidence to the Office and request reconsideration pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606(b)(2) (1999); *see* 20 C.F.R. § 501.2(c).

both factual and medical evidence to establish that his employment duties resulted in an injury; however, appellant did not submit any factual evidence or provide a statement of work events, which he felt contributed to or aggravated his condition. Because the record is devoid of any factual evidence to establish that appellant's federal employment contributed to or aggravated his condition, the first prong of the fact-of-injury test has not been established. Appellant has not met his burden of proof.[15]

The August 29 and June 6, 2002 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
March 12, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

[15] As appellant has not established the first prong, the second prong need not be addressed.