

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of HANLIN LI and U.S. POSTAL SERVICE, PROCESSING
& DISTRIBUTION CENTER, Brooklyn, NY

*Docket No. 03-403; Submitted on the Record;
Issued March 27, 2003*

DECISION and ORDER

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

The issues are: (1) whether appellant has established that he sustained a recurrence of disability from October 3 to November 27, 2001, due to his January 29, 2000 employment injury; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for a hearing.

On January 29, 2000 appellant, then a 34-year-old distribution clerk, filed a claim for a traumatic injury to the right side of his body sustained on that date when he fell in the employing establishment's parking lot. Appellant did not stop work.

The Office accepted that appellant's January 29, 2000 employment injury, resulted in a right shoulder contusion and a lumbosacral strain.

On February 19, 2000 he accepted an offer of limited duty, manually casing letter size mail. On August 28, 2001 appellant returned to his regular work as a distribution clerk.

On October 13, 2001 appellant filed a claim for a recurrence of disability due to his January 29, 2000 employment injury. Appellant stopped work on October 3, 2001. He stated that his right shoulder was improved and that he believed his present condition was related to his original injury because his low back was injured on January 29, 2000.

By letter dated November 2, 2001, the Office advised appellant that it needed "a detailed description as to what happened on [October 3, 2001]," a detailed description of the progress of his condition from the date he returned to work to the date of the recurrence and a medical report from his physician including a history of the recurrence, a detailed description of medical findings before and after the date of recurrence, a firm diagnosis and an opinion, supported by medical rationale, explaining whether and how his present condition was causally related to the January 29, 2000 injury.

Appellant submitted a report dated October 6, 2001 from Dr. Jing Deng, a Board-certified physiatrist, who first examined him on that day. Dr. Deng set forth a history that appellant sustained a January 29, 2000 employment injury, that his lower back pain remained the same despite a long course of physical therapy and that “he reinjured his back on [October 3, 2001] while he was lifting heavy objects at work.” After describing his findings on examination, Dr. Deng diagnosed lumbar disc displacement, lumbar radiculopathy, lower back pain syndrome and right shoulder rotator cuff tendinitis and recommended a nerve conduction study and electromyogram and physical therapy and acupuncture. He stated: “Based on the history and medical data provided by the patient, it is my professional opinion that the above clinical impressions are a direct result of the injury on [January 29, 2000]. The extent and degree of disability will be determined when diagnostic studies have been performed and patient has completed treatment program.” In a form report dated October 6, 2001, Dr. Deng indicated that appellant was partially disabled and recommended rest at home for one week.

In a report dated October 15, 2001 on an Office form, Dr. Lihua Mo, an internist and associate of Dr. Deng, set forth a history that appellant fell on the ice at work on January 29, 2000 and diagnosed low back pain, rule out lumbar radiculopathy and right shoulder rotator cuff tendinitis. Dr. Mo answered “yes” to the form’s question of whether the condition found was caused or aggravated by an employment activity, adding “pain will increase with prolonged sitting/standing/bend forward.”

Dr. Deng stated that an electromyogram and nerve conduction study he performed on November 14, 2001 were consistent with L5 radiculopathy on the left side. In a report dated November 26, 2001, Dr. Mo indicated that appellant was totally disabled from October 6 to 26, 2001.

Appellant returned to limited-duty work on November 27, 2001.

By decision dated February 21, 2001, the Office found that appellant had not demonstrated that his recurrence of disability on October 3, 2001 was causally related to his January 29, 2000 employment injury.

By letter dated April 2, 2002, appellant requested a hearing before an Office hearing representative.

By decision dated August 20, 2002, the Office found that appellant was not entitled to a hearing as a matter of right because he did not request one within 30 days of the Office’s decision. The Office denied appellant’s request for a hearing for the reason that the issue in his case could equally well be addressed by requesting reconsideration and submitting new evidence.

The Board finds that appellant has not established that he sustained a recurrence of disability from October 3 to November 27, 2001, due to his January 29, 2000 employment injury.

Where appellant claims a recurrence of disability due to an accepted employment-related injury, he has the burden of establishing by the weight of the substantial, reliable and probative evidence that the subsequent disability, for which he claims compensation is causally related to

the accepted injury.¹ This burden includes the necessity of furnishing evidence from a qualified physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.²

The reports appellant submitted are insufficient to meet his burden of proof. Not only do they contain no rationale explaining how appellant's disability beginning October 3, 2001 is causally related to his January 29, 2000 employment injury, but Dr. Deng's October 6, 2001 report contains a history that appellant reinjured his low back on October 3, 2001 lifting heavy objects at work. This would indicate that appellant sustained a new injury, not a recurrence of disability due to his January 29, 2000 injury. Although Dr. Deng stated that appellant's condition on October 6, 2001 was a "direct result" of his January 29, 2000 injury, Dr. Deng does not address the significance, if any, of the reinjury of October 3, 2001. Appellant has not met his burden of proof.

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

Section 8124(b)(1) of the Federal Employees' Compensation Act,³ 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.⁴

As appellant's April 2, 2002 request for a hearing was not filed within 30 days of the Office's February 21, 2002 decision, appellant was not entitled to a hearing as a matter of right. The Office nonetheless considered appellant's request for a hearing and properly denied it on the basis that the issue in his case could be equally well addressed by submitting new evidence with a request for reconsideration.

¹ *John E. Blount*, 30 ECAB 1374 (1974).

² *Frances B. Evans*, 32 ECAB 60 (1980).

³ 5 U.S.C. § 8124(b)(1).

⁴ *Tammy J. Kenow*, 44 ECAB 619 (1993); *Ella M. Garner*, 36 ECAB 238 (1984).

The August 20 and February 21, 2002 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
March 27, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member