

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of LINDA K. NICKLE and U.S. POSTAL SERVICE,  
POST OFFICE, Catlin, IL

*Docket No. 03-391; Submitted on the Record;  
Issued September 16, 2003*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
MICHAEL E. GROOM

The issues are: (1) whether appellant has met her burden of proof to establish that she sustained any disability after July 7, 1999, causally related to her accepted employment-related back injury; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for an oral hearing.

This is the third appeal in this case. In an October 13, 1999 decision,<sup>1</sup> the Board affirmed November 20 and June 25, 1997 decisions of the Office, which denied appellant's claim for continuation of pay on the grounds that she failed to give written notice of injury within 30 days of its occurrence as specified by the Federal Employees' Compensation Act.<sup>2</sup> The Board also found that the Office properly denied appellant's request for a review of the written record pursuant to section 8124(b) of the Act. In a November 16, 2001 decision,<sup>3</sup> the Board affirmed the Office's August 9, 1999 decision which found that appellant failed to establish that she had any employment-related disability after July 7, 1999. The complete facts of this case are set forth in the Board's October 13, 1999 and November 16, 2001 decisions and are herein incorporated by reference.

Subsequent to the Board's November 16, 2001 decision, by letter dated February 23, 2002, appellant enclosed a copy of a notice of overpayment she received from the Office of Personnel Management (OPM) regarding Civil Service Retirement System (CSRS) payments made to her. Appellant objected to the overpayment notice and requested assistance from the Office. On May 3, 2002 the Office received from appellant a copy of an election form sent

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<sup>1</sup> Docket No. 98-820 (issued October 13, 1999).

<sup>2</sup> 5 U.S.C. § 8118.

<sup>3</sup> Docket No. 00-560 (issued November 16, 2001).

previously to her, asking her to select benefits under the Act<sup>4</sup> or CSRS benefits. On the form appellant had penned an inquiry regarding the ramifications of signing the form.

By letter dated April 17, 2002 and received by the Office on May 6, 2002, appellant indicated that she was seeking further review of her claim for disability benefits after July 7, 1999 and was enclosing additional information for review. In support of her request, appellant submitted copies of a November 26, 2001 letter, stating that she intended to file an appeal of a recent decision,<sup>5</sup> her February 23, 2002 letter, an April 28, 1999 favorable decision from OPM approving her claim for disability retirement, a January 10, 2000 Social Security Administration's (SSA) decision, finding that appellant had been disabled since November 12, 1997 and the Board's November 16, 2001 decision.

By letter dated April 25, 2002 and received by the Office on May 6, 2002, appellant stated that she had recently reviewed the Board's November 16, 2001 decision and that she believed she retained the right to ask for reconsideration or an oral hearing or a review of the written record with respect to the Board's decision. Appellant noted that she was in the process of asking to be restored to her former job and was having additional medical tests performed to determine if this was feasible. Appellant noted that she had sent new medical evidence, together with copies of a favorable social security disability decision and CSRS disability decision to the Office for review.

On May 6, 2002 appellant also submitted a copy of a prior February 4, 2000 letter from the Office, which referenced correspondence from appellant dated January 14, 2000 and asked her to clarify whether she was requesting reconsideration. She underlined the words "requesting reconsideration" and dated her annotation November 26, 2001.<sup>6</sup>

The record also contains a memorandum from the Office dated May 13, 2002, indicating that the Office telephoned appellant on that date with respect to her OPM debt and job restoration right issues. The Office noted that appellant indicated that, since November 2001, she had learned that the Office was the wrong body to handle these issues and was pursuing these matters through the appropriate channels. The Office further indicated that it would issue a decision on appellant's reconsideration request shortly.

In a decision dated May 13, 2002, the Office found that appellant had submitted insufficient evidence to establish that she had any employment-related disability after July 7, 1999 and, therefore, denied modification of the prior decision. The Office noted that appellant had originally requested reconsideration on November 26, 2001 and that because of the Office's delay in processing her request, it reviewed appellant's request on the merits.

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<sup>4</sup> 5 U.S.C. §§ 8101-8193.

<sup>5</sup> This letter does not indicate to whom it was addressed, nor is it clear from the letter exactly which decision is being appealed. Appellant opened her letter stating: "I am now or will be filing an appeal of your recent decision."

<sup>6</sup> While the letter also has a copy of a postal receipt dated November 26, 2001 superimposed on it, it is unclear when the Office actually received appellant's request, as the only copies of this annotated letter contained in the record are date stamped received by the Office on May 6 and 9, 2002.

In a decision dated June 17, 2002, the Office's Branch of Hearings and Review denied appellant's April 25, 2002 request for an oral hearing of the Board's November 16, 2001 decision.

The Board finds that appellant failed to meet her burden of proof to establish that she sustained any disability after July 7, 1999 causally related to her accepted employment-related back injury.

An employee seeking benefits under the Act<sup>7</sup> has the burden of establishing the essential elements of his or her claim including the fact that the individual is an employee of the United States within the meaning of the Act, that the claim was filed within the applicable time limitation of the Act, that an injury was sustained in the performance of duty as alleged and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.<sup>8</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.<sup>9</sup> As part of this burden the claimant must present rationalized medical evidence based upon a complete factual and medical background showing causal relationship.<sup>10</sup>

In support of her claim for compensation benefits for periods of disability after July 7, 1999, appellant submitted copies of a November 26, 2001 letter stating that she intended to file an appeal of a recent decision, her February 23, 2002 letter, an April 28, 1999 favorable decision from OPM approving her claim for disability retirement, a January 10, 2000 SSA's decision, finding that appellant had been disabled since November 12, 1997 and the Board's November 16, 2001 decision. However, appellant did not submit any medical evidence in support of her claim for continuing disability benefits. While she noted that she had sent new medical evidence to the Office for review, no additional medical evidence was received prior to the issuance of the Office's June 17, 2002 decision. Furthermore, the Board has held that the findings or decisions of other administrative agencies with respect to whether or not an employee is disabled are not binding with respect to whether that individual is disabled under the FECA.<sup>11</sup> As appellant did not provide the necessary medical evidence to establish that she sustained any disability after July 7, 1999 causally related to her accepted employment-related back injury and the Office properly denied her claim.

The Board further finds that the Office properly denied appellant's request for an oral hearing.

Following the issuance of the Board's November 16, 2001 decision, by letter to the Office's Branch of Hearings and Review dated April 25, 2002, appellant advised the Office that

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<sup>7</sup> 5 U.S.C. §§ 8101-8193.

<sup>8</sup> *Charles E. Evans*, 48 ECAB 692 (1997); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>9</sup> *Charles E. Evans*, *supra* note 8.

<sup>10</sup> *Katherine J. Friday*, 47 ECAB 591 (1996).

<sup>11</sup> *Constance G. Mills*, 40 ECAB 317 (1988).

she disagreed with the Board's decision and referenced the right to an oral hearing she believed attached to that decision. The Office responded in a letter dated May 21, 2002 and informed appellant that her case was assigned to the Branch of Hearings and Review.

By decision dated June 17, 2002, the Branch of Hearings and Review found that the Board had issued a decision dated November 16, 2001 on the issue of whether appellant sustained any disability after July 7, 1999, causally related to her accepted back injury. The Office noted it did not have jurisdiction to review decisions of the Board. The Branch of Hearings and Review stated that appellant could request reconsideration from the Office or request review of its decision by the Board.<sup>12</sup>

Section 8124(b) of the Act,<sup>13</sup> concerning a claimant's entitlement to a hearing before an Office representative, states: "Before review under section 8128(a) of this title, a claimant ... not satisfied with a decision of the Secretary ... is entitled, on request made within 30 days after the date of issuance of the decision, to a hearing on his claim before a representative of the Secretary."<sup>14</sup> Under this provision of the Act, an appellant is entitled to a timely requested hearing under section 8124(b) only before the Office has reviewed his claim under section 8128.<sup>15</sup> In addition, the Act also provides that decisions of the Board on appeal taken from claims of employees are final.<sup>16</sup>

As to appellant's request for a hearing, the Branch of Hearings and Review properly informed appellant that the decisions of the Board are final and that the Office may not review such decisions. Therefore, the Office properly found that the case was not in posture for a hearing since the Board had previously rendered a decision regarding the issue of whether appellant established any periods of disability after July 7, 1999 and appellant had not requested reconsideration before the Office following the issuance of the Board's decision.<sup>17</sup> To the extent that appellant's request for an oral hearing is interpreted as having been received after she requested reconsideration, the Board notes that, in that instance, appellant would also not be entitled to a hearing as a matter of right, as under the Act appellant is entitled to a timely requested hearing under section 8124(b) only before the Office has reviewed his claim under

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<sup>12</sup> Appellant continued to submit new evidence to the Office and, by letter dated July 1, 2002, requested reconsideration. As the Office had not yet issued a final decision on appellant's request and as the Office did not consider the newly submitted evidence in reaching the final decision before the Board, the Board may not consider it for the first time on appeal; *see* 20 C.F.R. § 501.2(c).

<sup>13</sup> 5 U.S.C. §§ 8101-8193.

<sup>14</sup> 5 U.S.C. § 8124(b)(1).

<sup>15</sup> *Mary G. Allen*, 40 ECAB 190, 194 (1988); 20 C.F.R. § 10.131(a).

<sup>16</sup> 5 U.S.C. § 8149.

<sup>17</sup> *Albert Zerega*, 45 ECAB 860, 863 (1994).

section 8128.<sup>18</sup> In either case, however, the Office retains discretionary authority in the administration of the Act to hold hearings in certain circumstances where no legal provision was made for such hearings and the Office must exercise its discretionary authority in deciding whether to grant a hearing. The Office's procedures, which require the Office to exercise its discretion to grant or deny a hearing when a hearing request is untimely or made after reconsideration under section 8128(a), are a proper interpretation of the Act and Board precedent.<sup>19</sup> The Office, in its June 17, 2002 decision, having found that appellant was not entitled to a hearing as a matter of right, considered appellant's request for a hearing and concluded that the issue in appellant's claim was one which could be addressed by the submission of further evidence and a request for reconsideration.

The June 17 and May 13, 2002 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC  
September 16, 2003

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member

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<sup>18</sup> 5 U.S.C. § 8124(b)(1); *Joseph F. McHale*, 45 ECAB 669 (1994). The Board notes that section 8124 provides that a claimant is entitled to a hearing prior to review under section 8128 and does not indicate that this review must only be through a request for reconsideration from appellant. Therefore, even if appellant had not requested reconsideration and the Office had reconsidered her claim on its own motion, she still would not be entitled to a hearing as a matter of right.

<sup>19</sup> *Henry Moreno*, 39 ECAB 475 (1988).