

**United States Department of Labor
Employees' Compensation Appeals Board**

MAGGIE THOMPSON, Appellant)
and) Docket No. 04-606
U.S. POSTAL SERVICE, POST OFFICE,) Issued: April 22, 2004
Lakeland, FL, Employer)
Lakeland, FL, Employer)

)

Appearances:
Maggie Thompson, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chairman
WILLIE T.C. THOMAS, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On January 6, 2004 appellant filed a timely appeal from Office of Workers' Compensation Programs' decisions dated August 13 and October 6, 2003. Under 20 C.F.R. §§ 501(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant sustained a recurrence of disability as of March 7, 2003 causally related to her accepted bilateral carpal tunnel condition; and (2) whether the Office properly denied her request for an oral hearing on her claim by an Office hearing representative.

FACTUAL HISTORY

Appellant, a 41-year-old postal distribution clerk, filed an occupational disease claim on September 28, 1987, alleging bilateral carpal tunnel syndrome causally related to factors of her federal employment. The Office accepted the claim for bilateral carpal tunnel syndrome.

On March 7, 2003 appellant filed a Form CA-2a notice of recurrence of disability, alleging that she sustained a recurrence of disability on March 7, 2003 which was causally related to her accepted carpal tunnel syndrome. Appellant submitted an April 25, 2003 report from Dr. Jeanne McGregor, Board-certified in preventive medicine, who stated:

“[Appellant] was seen by me ... on March 26, 2003 for aggravation of her carpal tunnel syndrome. This was due to a work routine change with increased keying that started the end of February. I adjusted her treatment regimen, and rewrote her work restrictions. On today’s visit, she is a little better with the increased use of her splints and less keying. Please continue to honor her permanent restrictions for carpal tunnel, so that she won’t have worsening of her condition.”

Appellant also submitted a March 26, 2003 work restriction report which indicated that she had been working on modified duty since the onset of carpal tunnel syndrome in 1987. This modified duty entailed restrictions on repetitive movement of her wrists and hands and on increased keyboarding.

By letter dated July 9, 2003, the Office advised appellant that it required additional factual and medical evidence, including a medical report, to support her claim that her current condition/or disability as of March 7, 2003 was causally related to her accepted bilateral carpal tunnel condition.

By decision dated August 13, 2003, the Office denied appellant compensation for a recurrence of her accepted bilateral carpal tunnel condition. The Office found that appellant failed to submit medical evidence sufficient to establish that the claimed condition or disability as of March 7, 2003 was caused or aggravated by the accepted bilateral carpal tunnel condition.

On September 15, 2003 appellant requested an oral hearing. By decision dated October 6, 2003, the Office found that appellant’s request for an oral hearing was untimely filed. The Office noted that appellant’s request was postmarked September 15, 2003, which was more than 30 days after the issuance of the Office’s August 13, 2003 decision, and that she was therefore not entitled to a hearing as a matter of right. The Office nonetheless considered the matter in relation to the issue involved and denied appellant’s request on the grounds that the issue was factual and medical in nature and could be addressed through the reconsideration process by submitting additional evidence.

LEGAL PRECEDENT -- ISSUE 1

When an employee, who is disabled from the job she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that light duty can be performed, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence a recurrence of total disability. As part of this burden, the employee must show either a change in the nature and extent of the injury-related condition, or a change in the nature and extent of the light-duty requirements.¹

¹ *Terry Hedman*, 38 ECAB 222 (1986).

ANALYSIS -- ISSUE 1

In the instant case, the record does not contain any medical opinion showing a change in the nature and extent of appellant's injury-related condition. Indeed, appellant has failed to submit any medical opinion containing a rationalized, probative report which relates her condition or disability as of March 7, 2003 to her accepted bilateral carpal condition. For this reason, she has not discharged her burden of proof to establish her claim that she sustained a recurrence of disability as a result of her accepted employment condition.

The only medical evidence which appellant submitted consisted of Dr. McGregor's April 25, 2003 report which stated that appellant had been treated for aggravation of her carpal tunnel syndrome due to a work routine change involving increased keying. Dr. McGregor advised that she adjusted appellant's treatment regimen and rewrote her work restrictions. She recommended that the employing establishment continue to observe appellant's permanent restrictions in order to prevent any future aggravation of carpal tunnel syndrome. Dr. McGregor's report provided a history of injury and a diagnosis of her current condition and indicated generally that appellant complained of disabling pain as of March 7, 2003, but did not constitute a probative, rationalized medical opinion sufficient to establish that appellant's disability as of March 7, 2003 was causally related to her accepted bilateral carpal tunnel condition.

Dr. McGregor's report does not constitute sufficient medical evidence demonstrating a causal connection between appellant's employment-related condition and her alleged recurrence of disability. Causal relationship must be established by rationalized medical opinion evidence. The report submitted by appellant failed to provide an explanation in support of her claim that she was totally disabled as of March 7, 2003. Thus, Dr. McGregor's report did not establish a worsening of appellant's condition, and therefore does not constitute probative, rationalized evidence demonstrating that a change occurred in the nature and extent of the injury-related condition.²

In addition, the Board finds that the evidence fails to establish that there was a change in the nature and extent of appellant's limited-duty assignment such that she no longer was physically able to perform the requirements of her light-duty job. The record demonstrates that appellant returned to work in 1987 on light duty. Although Dr. McGregor addressed a work routine change in 2004, implicating new employment exposure at work, rather than a spontaneous change in appellant's accepted condition. Appellant submitted no additional factual evidence to support a claim that a change occurred in the nature and extent of her limited-duty assignment during the period claimed.

Accordingly, as appellant has not submitted any factual or medical evidence supporting her claim that she was totally disabled from performing her light-duty assignment on March 7, 2003 as a result of her employment, appellant failed to meet her burden of proof. Thus, the Office properly found in its August 13, 2003 decision that appellant was not entitled to compensation based on a recurrence of her employment-related disability.

² *William C. Thomas*, 45 ECAB 591 (1994).

LEGAL PRECEDENT -- ISSUE 2

Section 8124(b)(1) of the Federal Employees' Compensation 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.³ A claimant is not entitled to a hearing if the request is not made within 30 days of the date of issuance of the decision as determined by the postmark of the request.⁴ The Office has discretion, however, to grant or deny a request that is made after this 30-day period.⁵ In such a case, the Office will determine whether a discretionary hearing should be granted or, if not, will so advise the claimant with reasons.⁶

ANALYSIS -- ISSUE 2

In the present case, because appellant's September 15, 2003 request for a hearing was postmarked more than 30 days after the Office's August 13, 2003 decision, she is not entitled to a hearing as a matter of right. The Office considered whether to grant a discretionary hearing and correctly advised appellant that she could pursue her claim through the reconsideration process. As appellant may address the issue in this case by submitting to the Office new and relevant evidence with a request for reconsideration, the Board finds that the Office properly exercised its discretion in denying appellant's request for a hearing.⁷

CONCLUSION

The Board finds that appellant has not met her burden to establish that she was entitled to compensation for a recurrence of disability as of March 7, 2003 causally related to her accepted bilateral carpal tunnel condition. The Board finds that the Office properly denied appellant's request for an oral hearing on her claim by an Office hearing representative.

³ 5 U.S.C. § 8124(b)(1).

⁴ 20 C.F.R. § 10.131(a)(b).

⁵ *William E. Seare*, 47 ECAB 663 (1996).

⁶ *Id.*

⁷ The Board has held that the denial of a hearing on these grounds is a proper exercise of the Office's discretion. *E.g., Jeff Micono*, 39 ECAB 617 (1988).

ORDER

IT IS HEREBY ORDERED THAT the October 6 and August 13, 2003 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: April 22, 2004
Washington, DC

Alec J. Koromilas
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member