United States Department of Labor
Employees' Compensation Appeals Board

DORIS L. CLARK-HUSSEY, Appellant	)	
and	)	**Docket No. 04-340**
	)	**Issued: May 12, 2004**
U.S. POSTAL SERVICE, POST OFFICE, Atlanta, GA, Employer	)	

Appearances:
Edward Jackson, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On November 21, 2003 appellant filed a timely appeal of a decision of the Office of Workers' Compensation Programs dated June 23, 2003, which denied her claim for a recurrence of disability. Appellant also appealed an Office decision dated October 2, 2003, denying her request for an oral hearing. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[1]

ISSUES

The issues are: (1) whether appellant established that she sustained a recurrence of disability causally related to her accepted work injury; and (2) whether the Office properly denied appellant's request for an oral hearing.

[1] Subsequent to the Office's June 23, 2003 decision, appellant submitted additional evidence. The Board may not consider evidence for the first time on appeal that was not before the Office at the time it issued its final decision. 20 C.F.R. § 501.2(c).

FACTUAL HISTORY

The Office accepted that on or before January 18, 1996 appellant, then a 33-year-old letter carrier, sustained cervical and thoracic strains due to work factors. She was off work from January 4 to 9, 1996. On April 26, 1996 appellant accepted a limited-duty assignment as a modified carrier consistent with medical restrictions as prescribed by Dr. William B. Booker, an attending Board-certified internist.[2] On February 20, 2002 appellant accepted a limited-duty assignment as a modified distribution clerk.

On June 20, 2002 appellant filed a notice of recurrence of disability beginning June 7, 2002 with a work absence from June 10 to 17, 2002. She alleged that she experienced headaches and back and shoulder soreness after covering the duties of a coworker as well as her own. She also noted that a "car accident" on an unspecified date in 2000 "aggravated the original injury."[3] On December 14, 2002 appellant submitted a second notice of a recurrence of disability, reiterating that she performed her assigned duties and those of a coworker for two weeks, and that the car accident in 2000 "(hit from behind) … again gave an onset of [her] original injury."[4]

Appellant submitted billing records and treatment slips dated from January 3, 1996 to June 11, 2002 regarding treatment for thoracic and cervical strains.[5] While a June 11, 2002 treatment note stated that appellant was unable to work from June 10 to 14, 2002, the provider's signature is illegible. In June 11 and July 10, 2002 forms, Dr. Booker restricted appellant from keyboarding, lifting above the shoulder or more than 20 pounds, pushing or pulling for more than 2 hours and standing or walking more than 4 hours a day. He recommended that appellant use a low chair or stool to avoid bending and squatting.[6]

By decision dated June 23, 2003, the Office denied appellant's claim for a recurrence of disability on the grounds that causal relationship was not established, as she attributed her condition on and after June 7, 2002 to new work factors and a 2000 motor vehicle accident. In a form dated August 18 and postmarked August 28, 2003, appellant requested an oral hearing. By

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[2] Appellant was restricted from lifting or carrying over 10 pounds, reaching above the shoulder, kneeling and driving. Walking was limited to three to five hours a day and sitting and standing to no more than two to four hours a day.

[3] Appellant did not submit medical evidence regarding any medical treatment received for the 2000 motor vehicle accident. The only medical evidence of record from the year 2000 is an October 26, 2000 slip in which Dr. Booker noted treating appellant for neck and back symptoms related to a work injury.

[4] In a March 25, 2003 letter, the Office advised appellant to file an occupational disease or traumatic injury claim if she maintained that work activities had aggravated her condition. On May 20, 2003 in response to the Office's letter, appellant filed a notice of occupational disease alleging spasms and soreness in her back and shoulders beginning June 7, 2002 and continuing, due to performing her own duties and those of a coworker for two weeks. As there is no final decision of record regarding the May 20, 2003 occupational disease claim, it is not before the Board on the present appeal.

[5] Appellant also resubmitted evidence previously of record pertaining to her original claim.

[6] On August 12, 2002 the employing establishment offered appellant a limited-duty position consistent with the medical restrictions as stated by Dr. Booker's June 11, 2002 report. Appellant accepted the job offer on August 23, 2002.

decision dated October 2, 2003, the Office denied appellant's request for an oral hearing, finding that the request was not timely filed within 30 days of the Office's June 23, 2000 decision. The Office further denied appellant's request on the grounds that the issues in the case could be addressed equally well through submission of new, relevant evidence accompanying a valid request for reconsideration.

LEGAL PRECEDENT -- ISSUE 1

A recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.[7] If the disability results from new exposure to work factors, the legal chain of causation from the accepted injury is broken, and an appropriate new claim should be filed.[8]

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that the employee can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence, a recurrence of total disability and to show that he or she cannot perform such light duty. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.[9]

ANALYSIS -- ISSUE 1

Appellant filed June 20 and December 14, 2002 claims alleging a recurrence of disability commencing June 7, 2002. To meet her burden of proof, appellant must demonstrate either a worsening of the accepted cervical and thoracic strains or a change in the requirements of her light-duty position.

Appellant did allege a worsening of her accepted condition, but attributed this change to a motor vehicle accident on an unspecified date in 2000 and to performing a coworker's duties as well as her own for an unspecified two-week period. Rather than asserting that the recurrence of disability was due to the accepted cervical and thoracic strains, appellant implicated two new intervening causes.[10] Both the exposure to new work factors and the motor vehicle accident break the legal chain of causation between the accepted cervical and thoracic strains and

[7] 20 C.F.R. § 10.5(x).

[8] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3 (May 1997); *Donald T. Pippin*, 54 ECAB ___ (Docket No. 03-205, issued June 19, 2003).

[9] *Carl C. Graci*, 50 ECAB 557 (1999); *Mary G. Allen*, 50 ECAB 103 (1998); *see also Terry R. Hedman*, 38 ECAB 222 (1986).

[10] Recurrence of disability is defined to mean the inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which resulted from a previous injury or illness without an intervening injury or new exposure to the work environment. 20 C.F.R. § 10.5(x).

appellant's medical condition on and after the intervening events.[11] Therefore, the claimed recurrence of disability cannot be deemed to have arisen out of appellant's federal employment.

Appellant asserted a change in the nature and extent of her light-duty job requirements, alleging that she was required to assume the duties of a coworker as well as her own. However, she did not describe the additional duties performed, submit evidence corroborating this change or indicate the dates during which she performed the additional duties. Also, appellant did not submit sufficient medical evidence substantiating any period of total disability for work on and after June 7, 2002. While a June 11, 2002 treatment note held appellant off work from June 10 to 14, 2002, as the provider signature is illegible, this note does not constitute probative medical evidence.[12] The Office's June 23, 2003 decision denying appellant's claim for a recurrence of disability was proper under the facts and the circumstances of this case, as appellant attributed the claimed recurrence of disability to intervening causes and submitted insufficient evidence to establish a change in the nature and extent of her light-duty job requirements.

LEGAL PRECEDENT -- ISSUE 2

Section 8124(b)(1) of the Federal Employees' Compensation Act provides that "a claimant for compensation not satisfied with a decision of the Secretary … 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."[13] Sections 10.617 and 10.618 of the federal regulations implementing this section of the Act provide that a claimant shall be afforded a choice of an oral hearing or a review of the written record by a representative of the Secretary.[14] Although there is no right to a review of the written record or an oral hearing if not requested within the 30-day time period, the Office may within its discretionary powers grant or deny appellant's request and must exercise its discretion.[15]

ANALYSIS -- ISSUE 2

In the present case, appellant requested an oral hearing in an appeal request form dated August 18 and postmarked August 28, 2003. Section 10.616 of the Act's implementing regulation provides: "The hearing request must be sent within 30 days (as determined by postmark or other carrier's date marking) of the date of the decision, for which a hearing is

[11] *See Carlos A. Marrero*, 50 ECAB 117, 119-20 (1998) (the Board found that the claimant's use of an exercise machine constituted an intervening cause of appellant's disability and thus the Office properly denied appellant's claim for recurrence of disability); *Clement Jay After Buffalo*, 45 ECAB 707, 715 (1994) (the Board found that the claimant's knee injury sustained while playing basketball broke the legal chain of causation from an accepted knee injury sustained in the performance of his duties as a firefighter).

[12] *Vickey C. Randall*, 51 ECAB 357 (2000); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

[13] 5 U.S.C. § 8124(b)(1).

[14] 20 C.F.R. §§ 10.616, 10.617.

[15] *Delmont L. Thompson*, 51 ECAB 155 (1999); *Eddie Franklin*, 51 ECAB 223 (1999); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.4(b)(3) (October 1992).

sought."[16] The postmark of appellant's request is clearly more than 30 days after issuance of the Office's June 23, 2003 decision. Accordingly, the Office properly determined that appellant's request for an oral hearing was untimely.

The Office proceeded to exercise its discretionary authority in considering appellant's hearing request. The function of the Board on appeal is to determine whether there has been an abuse of discretion.[17] In its October 2, 2003 decision, the Office properly determined that the issue of recurrence of disability could be addressed equally well by submitting additional relevant evidence through the reconsideration process. The Board finds that the Office acted within its discretion in denying appellant's request for an oral hearing.

CONCLUSION

The Board finds that the Office properly denied appellant's claim for a recurrence of disability on the grounds that she submitted insufficient evidence of a change in her medical condition or in the nature and extent of her light-duty job requirements. The Board further finds that the Office properly denied appellant's request for an oral hearing.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated October 2 and June 23, 2003 are affirmed.

Issued: May 12, 2004
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

[16] 20 C.F.R. § 10.616.

[17] 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 probably deduction from established facts. *Daniel J. Perea*, 42 ECAB 214 (1990).