

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

ZETTIE M. HUNTER, Appellant

and

**U.S. POSTAL SERVICE, MARTECH STATION,
Atlanta, GA, Employer**

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**Docket No. 04-1467
Issued: October 18, 2004**

Appearances:
Zettie M. Hunter, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

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

JURISDICTION

On May 13, 2004 appellant filed a timely appeal from a December 5, 2003 merit decision of the Office of Workers' Compensation Programs which denied her claim and a March 25, 2004 decision in which the Office denied her request for a hearing. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant met her burden of proof to establish that she sustained an injury causally related to factors of employment; and (2) whether the Office properly denied appellant's request for a hearing. Appellant contends on appeal that the Office did not consider the medical evidence of record.

FACTUAL HISTORY

On October 9, 2003 appellant, then a 57-year-old modified distribution clerk, submitted a Form CA-1, occupational disease claim, alleging that factors of employment caused left carpal tunnel syndrome. She noted that she was on permanent light duty due to employment-related

carpal tunnel syndrome on the right. The employing establishment controverted the claim and submitted a November 16, 1999 job offer that was accepted by appellant, “under protest,” on November 18, 1999.

By letter dated October 30, 2003, the Office notified appellant of the type evidence needed to support her claim, to include a comprehensive medical report from her treating physician. She was given approximately 30 days to respond.¹ In a decision dated December 5, 2003, the Office denied the claim, noting that appellant had not responded to the October 30, 2003 letter.

In a letter dated November 30, 2003, that was stamped received by the Office on December 8, 2003, appellant asked for an extension to obtain evidence. On January 27, 2004 she requested a hearing² and submitted a statement describing factors she contended caused her condition and medical evidence. By decision dated March 25, 2004, the Office denied appellant’s hearing request on the grounds that it was untimely filed.

LEGAL PRECEDENT -- ISSUE 1

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical opinion must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.³

Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.⁴ Rationalized medical evidence is medical evidence which includes a physician’s rationalized medical opinion on the issue of whether there is a causal relationship between the claimant’s diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁵ Neither the mere fact

¹ The Office noted that appellant’s accepted right carpal tunnel syndrome claim was adjudicated under file number 060701294 and the instant claim under 062098542.

² It is unclear from the request form whether appellant was requesting a hearing or a review of the written record. The record also indicates that this request was initially submitted to the Board.

³ *Solomon Polen*, 51 ECAB 341 (2000).

⁴ *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

⁵ *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.⁶

ANALYSIS -- ISSUE 1

The Board finds that appellant failed to meet her burden of proof. As stated above, in order to establish entitlement, a claimant must submit medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed, a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition and medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.⁷ The record before the Board contains neither a description of employment factors which appellant identified as causing her condition or any medical evidence diagnosing the claimed condition. By letter dated October 30, 2003, the Office informed appellant of the type evidence needed to support her claim. She submitted nothing within the 30 days allotted and, by decision dated December 5, 2003, the Office denied the claim. While she subsequently submitted a factual statement and medical evidence and requested a hearing, the Board cannot consider this evidence as its review of the record is limited to that evidence which was before the Office at the time of its final merit decision,⁸ which in this case was December 5, 2003. As there is no evidence either identifying implicated factors of employment or medical evidence diagnosing a condition caused by an employment factor, appellant failed to establish that her claimed left carpal tunnel syndrome was causally related to factors of employment.

LEGAL PRECEDENT -- ISSUE 2

Any claimant dissatisfied with a decision of the Office shall be afforded an opportunity for an oral hearing or, in lieu thereof, a review of the written record. A request for either an oral hearing or a review of the written record must be submitted, in writing, within 30 days of the date of the decision for which a hearing is sought. If the request is not made within 30 days, a claimant is not entitled to a hearing or a review of the written record as a matter of right.⁹ The Board has held that the Office, in its broad discretionary authority in the administration of the Federal Employees' Compensation Act,¹⁰ 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.¹¹

⁶ *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

⁷ *Solomon Polen*, *supra* note 3.

⁸ 20 C.F.R. § 501.2(c).

⁹ *Marilyn F. Wilson*, 52 ECAB 347 (2001).

¹⁰ 5 U.S.C. §§ 8101-8193.

¹¹ *Marilyn F. Wilson*, *supra* note 9.

ANALYSIS -- ISSUE 2

In this case, the Office denied appellant's request for a hearing on the grounds that it was untimely filed. In its March 25, 2004 decision, the Office stated that appellant was not, as a matter of right, entitled to a hearing since her request, postmarked January 27, 2004, had not been made within 30 days of its December 5, 2003 decision. The Office noted that it had considered the matter in relation to the issue involved and indicated that appellant's request was denied on the basis that the issue in the instant case could be addressed through a reconsideration application.

The Board initially notes that the envelope in which appellant submitted her request is not contained in the case record. It also appears that the request was initially forwarded to the Board. Nonetheless, as it is clearly dated January 27, 2004, more than 30 days after the date of issuance of the Office's prior decision dated December 5, 2003, the Office was correct in stating in its March 25, 2004 decision that appellant was not entitled to a hearing as a matter of right as her request was untimely filed.

While the Office also has the discretionary power to grant a hearing request when a claimant is not entitled to a hearing as a matter of right, the Office in its March 25, 2004 decision properly exercised its discretion by stating that it had considered the matter in relation to the issue involved and had denied appellant's request on the basis that the issue of whether she established her claim could be addressed through a reconsideration application. 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 probable deduction from established facts.¹² In the present case, the evidence of record does not indicate that the Office committed any act in connection with its denial of appellant's hearing request which could be found to be an abuse of discretion.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that she sustained left carpal tunnel syndrome causally related to factors of employment. The Board further finds that the Office did not abuse its discretion in denying her request for a hearing.¹³

¹² See *Claudio Vazquez*, 52 ECAB 496 (2001); *Daniel J. Perea*, 42 ECAB 214, 221 (1990).

¹³ The Board notes that appellant submitted medical evidence subsequent to the March 25, 2004 Office decision and with her appeal to the Board. The Board cannot consider this evidence, however, as its review of the record is limited to the evidence of record which was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c). Appellant retains the right to submit this evidence with an appropriate reconsideration request to the Office.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated March 25, 2004 and December 5, 2003 be affirmed.

Issued: October 18, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member