

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

CHARLIE S. GASCA, Appellant)

and)

DEPARTMENT OF VETERANS AFFAIRS,)
VETERANS ADMINISTRATION MEDICAL)
CENTER, San Antonio, TX, Employer)

Docket No. 04-60

Issued: September 23, 2005

Appearances:

Charlie S. Gasca, pro se

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge

WILLIE T.C. THOMAS, Alternate Judge

MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On October 6, 2003 appellant filed a timely appeal from the Office of Workers' Compensation Programs' decision dated June 25, 2003 which denied his request for a hearing. Appellant also appealed a November 7, 2002 decision finding that he failed to establish that he sustained an injury as alleged. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over these issues.

ISSUES

The issues are: (1) whether appellant has met his burden of proof in establishing that he sustained an injury in the performance of duty; and (2) whether the Office properly denied appellant's request for a hearing under 5 U.S.C. § 8124(b)(1) on the grounds that it was untimely filed.

FACTUAL HISTORY

On June 10, 2002 appellant, then a 51-year-old housekeeping aid, filed an occupational disease claim alleging that in 1991, he was pricked by a used needle when taking out the trash. He indicated that, at that time, there was no test for hepatitis C and alleged that in 2002 he tested

positive for hepatitis C. Appellant indicated that he first became aware of the injury and its relation to his work on February 13, 2002. He did not stop work. Accompanying appellant's claim were a position description, a job qualifications statement and a notification of personnel action.

By letters dated July 16, 2002, the Office advised appellant and the employing establishment that additional factual and medical evidence was needed. The Office explained that the physician's opinion on causal relationship was crucial to his claim and allotted appellant 30 days within which to submit the requested information.

In an undated response, received by the Office on July 30, 2002, the employing establishment confirmed that appellant was pricked by a needle while emptying trash in February 1991. It also submitted a copy of the traumatic injury claim form dated February 7, 1991, concerning the incident and controverted the claim.

Appellant submitted a statement dated August 1, 2002 in which he described the needle prick incident and explained that testing was not available until 1993 and that he did not need to be tested until January 2002 when he tested positive for hepatitis C. He also included a witness statement from a housekeeping aide who confirmed that appellant was stuck by a needle.

The Office subsequently received a laboratory report dated February 13, 2002 which indicated that appellant had tested positive for hepatitis C.

In an August 14, 2002 report, Dr. Russell Havranek, Board-certified in internal medicine, noted that appellant had been recently diagnosed with hepatitis C. Appellant also submitted several treatment notes from Dr. Havranek, who indicated that appellant had a needle prick incident in 1991 and several tattoos; however, they did not contain any discussion regarding the cause of appellant's condition.

By decision dated November 7, 2002, the Office denied appellant's claim for compensation. The Office found that appellant had not submitted sufficient medical evidence to establish a causal relationship between the 1991 needle prick incident and his current condition.

Subsequent to the decision, appellant submitted a January 30, 2003 report from Dr. Amy Webb, a Board-certified internist, who opined that appellant's condition was "most likely secondary to this needle stick." She also indicated that appellant "had no other risk factors for contracting hepatitis C, other than a tattoo, and the risk would be minimal."

By letter dated March 6, 2003, the Office advised appellant that he needed to follow the appeal rights that had accompanied the November 7, 2002 decision.

By letter dated March 11, 2003, appellant wrote to the Office regarding the status of his claim. He also submitted two reports from Dr. Webb dated November 21, 2002 and February 24, 2003, which were identical to her January 30, 2003 report.

By letter dated April 16, 2003, appellant requested reconsideration.

On May 1, 2003 appellant requested an oral hearing.

By decision dated June 25, 2003, the Office denied appellant's request for an oral hearing as untimely. The Office noted that appellant was thus not entitled to a hearing as a matter of right. The Office further denied the request after exercising its discretion and determining that appellant's concerns could be addressed in a request for reconsideration.¹

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act² 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 timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.³ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

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 employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish causal relationship, generally, is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized 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

¹ Appellant filed an appeal to the Board and requested an oral argument which was scheduled for August 2, 2005. Appellant did not appear for the scheduled oral argument.

² 5 U.S.C. §§ 8101-8193.

³ *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁴ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁵ *Id.*

ANALYSIS -- ISSUE 1

Appellant alleged that his hepatitis C was caused by a needle prick at work in 1991. The Office denied the claim, finding that the medical evidence did not relate appellant's condition to the 1991 incident. The Board finds that the needle prick at work in 1991 occurred in the performance of duty; however, appellant has submitted insufficient medical evidence to establish that his hepatitis C was caused by this incident or any other factors of his federal employment.

Appellant submitted several treatment notes and an August 14, 2002 report from Dr. Havranek. However, no opinion was provided as to causation. Although Dr. Havranek noted the 1991 needle prick incident, he also noted that appellant had four tattoos. He did not provide any explanation as to the cause of appellant's hepatitis C. These reports are of limited probative value on the relevant issue in that they do not contain an opinion on causal relationship. Medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.⁶

The mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.⁷ Neither the fact that the condition became apparent during a period of employment nor the belief that the condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.⁸ Causal relationship must be substantiated by reasoned medical opinion evidence, which is appellant's responsibility to submit.

As there is no probative, rationalized medical evidence addressing and explaining why appellant's hepatitis C was caused and/or aggravated by factors of his employment, appellant has not met his burden of proof in establishing that he sustained a medical condition in the performance of duty causally related to factors of employment.⁹

LEGAL PRECEDENT -- ISSUE 2

Section 8124(b)(1) of the Act provides that a claimant for compensation not satisfied with the decision of the Office 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 Director.¹⁰ The Board has noted that this section of the Act is unequivocal in setting forth the time

⁶ *Michael E. Smith*, 50 ECAB 313 (1999).

⁷ *See Joe T. Williams*, 44 ECAB 518, 521 (1993).

⁸ *Id.*

⁹ Following the issuance of the Office's November 7, 2002 merit decision, appellant submitted additional evidence. However, the Board may not consider this evidence as its review of the case is limited to the evidence of record which was before the Office at the time of its final merit decision. *See* 20 C.F.R. § 501.2(c).

¹⁰ *See* 5 U.S.C. § 8124(b)(1).

limitations for requesting a hearing.¹¹ A claimant is not entitled to a hearing as a matter of right unless the request is made within the requisite 30 days.

The implementing federal regulations provide that 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 by the Branch of Hearings and Review.¹² 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.¹³ A claimant is not entitled to a hearing or review of the written record if the request is not made within 30 days of the date of the decision for which review is sought.¹⁴ The Office has the discretion to grant or deny a hearing request that is made after the 30-day period. In such a case, the Office will determine whether a discretionary hearing should be granted and, if not, will so advise the claimant with reasons.¹⁵

ANALYSIS -- ISSUE 2

Pursuant to the Office's November 7, 2002 decision which denied appellant's claim, appellant requested an oral hearing by letter dated May 1, 2003. This was more than 30 days after the decision denying his claim. Thus, appellant's request for a hearing was not timely filed.

As appellant did not request a hearing within 30 days of the November 7, 2002 decision, he is not entitled to a hearing as a matter of right. The Office must then exercise its discretion to determine whether appellant's request for a review of the written record should be granted. In its June 25, 2003 decision, the Office considered the issue involved and found that appellant could pursue it equally well through submitting new, relevant evidence on reconsideration. Therefore, the Board finds that the Office properly exercised its discretion in denying appellant's request for a hearing.

CONCLUSION

The Board finds that appellant has not met his burden of proof in establishing that he sustained an injury in the performance of duty. The Board also finds that the Office properly denied appellant's request for an oral hearing under section 8124(b)(1).

¹¹ See *Delmont L. Thompson*, 51 ECAB 155, 157 (1999).

¹² 20 C.F.R. § 10.615.

¹³ 20 C.F.R. § 10.616(a).

¹⁴ See *James Smith*, 53 ECAB 188, 192 (2001).

¹⁵ 20 C.F.R. § 10.616(b). See *Herbert C. Holley*, 33 ECAB 140 (1981); *Rudolf Bermann*, 26 ECAB 354 (1975).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated June 25, 2003 and November 7, 2002 are affirmed.

Issued: September 23, 2005
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Willie T.C. Thomas, Alternate Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board