United States Department of Labor
Employees' Compensation Appeals Board

VICKI C. KINARD, Appellant	)	
and	)	**Docket No. 05-1599**
	)	**Issued: April 19, 2006**
U.S. POSTAL SERVICE, POST OFFICE, Atlanta, GA, Employer	)	

Appearances:
Vicki C. Kinard, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On July 25, 2005 appellant filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs dated March 3, 2005 denying her traumatic injury claim and a nonmerit decision dated June 22, 2005 denying her request for a hearing. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case and over the June 22, 2005 nonmerit decision.

ISSUES

The issues are: (1) whether appellant has established that she sustained an injury on May 14, 2004 in the performance of duty; and (2) whether the Office properly denied her request for a hearing as untimely under section 8124.

FACTUAL HISTORY

On June 28, 2004 appellant, then a 46-year-old custodian, filed a claim for a traumatic injury occurring on May 14, 2004 when she hit the back of her head on a time clock. A witness

provided a statement on the claim form supporting that appellant hit the back of her head on the time clock on May 14, 2004. She did not stop work.

In a report dated June 29, 2004, Dr. Rodger Chapman, who is Board-certified in emergency medicine, diagnosed a scalp contusion and found that she could resume work. He referred her for a computerized tomography (CT) scan. In a duty status report of the same date, Dr. Chapman diagnosed a head contusion and checked "yes" that the history given by appellant corresponded to that on the form of her striking her head on a time clock. He found that she could work without restrictions.

By letter dated July 1, 2004, the employing establishment controverted appellant's claim as she did not file a claim or seek medical treatment for more than a month following the alleged employment incident.

In a form report dated July 7, 2004, Dr. Chapman listed the history of injury as appellant striking her head on an object at work. He diagnosed a scalp contusion and noted that a CT scan of the brain was normal. Dr. Chapman checked "no" in response to the question of whether the diagnosed condition was caused or aggravated by the described employment activity and found that she could resume her usual employment.[1]

Appellant submitted a statement dated May 14, 2001 in which she indicated that she struck her head on the time clock "while picking up paper off of the floor." She noted that she continued to experience head pain.

By letter dated January 10, 2005, the Office informed appellant that the evidence currently of record was insufficient to establish her claim. The Office requested that she submit additional factual and medical information, including a comprehensive medical report from her attending physician addressing causal relationship and the extent of any disability.

In response to the Office's request, appellant resubmitted clinic notes from Dr. Chapman dated June 28 and July 7, 2004.

By decision dated March 3, 2005, the Office denied appellant's claim on the grounds that the medical evidence was insufficient to establish that she sustained a medical condition due to the accepted employment incident.

On a form dated April 6, 2005 and postmarked April 5, 2005, appellant requested an oral hearing.

By decision dated June 22, 2005, the Office denied appellant's request for a hearing as untimely.

[1] In an accompanying clinic note of the same date, Dr. Chapman noted that she could return to work on that date.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act[2] 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; that an injury was sustained while 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 on a traumatic injury or an occupational disease.[4]

To determine whether an employee sustained a traumatic injury in the performance of duty, the Office must determine whether "fact of injury" is established. First, an employee has the burden of demonstrating the occurrence of an injury at the time, place and in the manner alleged, by a preponderance of the reliable, probative and substantial evidence.[5] Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish a causal relationship between the employment incident and the alleged disability and/or condition for which compensation is claimed.[6] An employee may establish that the employment incident occurred as alleged, but fail to show that his or her disability and/or condition relates to the employment incident.[7]

In order to satisfy his burden of proof, an employee must submit a physician's rationalized medical opinion on the issue of whether the employment incident caused the alleged injury.[8] 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 employee's alleged injury and the employment incident.[9] The physician's opinion must be based on a complete factual and medical history of the employee, must be of reasonable certainty and must rationally explain the relationship between the diagnosed injury and the employment incident as alleged by the employee.[10]

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[2] 5 U.S.C. §§ 8101-8193.

[3] *Caroline Thomas*, 51 ECAB 451 (2000); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[4] *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

[5] *Delphyne L. Glover*, 51 ECAB 146 (1999).

[6] *Gary J. Watling*, 52 ECAB 278 (2001); *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

[7] *Id.*

[8] *Gary L. Fowler*, 45 ECAB 365, 371 (1994).

[9] *Gary J. Watling*, *supra* note 6.

[10] *See John W. Montoya*, 54 ECAB 306 (2003); *Shirley R. Haywood*, 48 ECAB 404 (1997).

ANALYSIS -- ISSUE 1

Appellant alleged that she sustained an injury to her head on May 14, 2004 when she hit the back of her head on a time clock. She provided a statement from a coworker confirming that she struck her head on the time clock on that date. Appellant has established that the May 14, 2004 incident occurred at the time, place and in the manner alleged. The issue, consequently, is whether the medical evidence establishes that she sustained a compensable injury as a result of the incident.

The Board finds that appellant has not established that the May 14, 2004 employment incident resulted in an injury. The determination of whether an employment incident caused an injury is generally established by medical evidence.[11] Appellant submitted a report dated June 29, 2004 from Dr. Chapman, who diagnosed a scalp contusion and found that she could return to work. He did not, however, address the cause of the diagnosed condition. The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship.[12]

In a duty status report dated June 29, 2004, Dr. Chapman diagnosed a head contusion and checked "yes" that the history given by appellant corresponded to that on the form of her striking her head on a time clock. He found that she could work without restrictions. The Board has held, however, that an opinion on causal relationship which consists only of a physician checking "yes" to a medical form question on whether the claimant's condition was related to the history given is of little probative value. Without any explanation or rationale for the conclusion reached, such report is insufficient to establish causal relationship.[13]

In a form report dated July 7, 2004, Dr. Chapman listed the history of injury as appellant striking her head on an object at work. He diagnosed a scalp contusion and checked "no" in response to the question of whether the diagnosed condition was caused or aggravated by the described employment activity. As Dr. Chapman found that the diagnosed condition of a scalp contusion did not arise from appellant striking her head at work, his opinion is not supportive of her claim.

Appellant has not submitted a well-reasoned medical opinion explaining how the incident that occurred on May 14, 2004 caused or contributed to her diagnosed medical condition, and thus she has failed to meet her burden of proof to establish that she sustained an injury on May 14, 2004.

LEGAL PRECEDENT -- ISSUE 2

Section 8124(b) of the Act, concerning a claimant's entitlement to a hearing, states that: "Before review under section 8128(a) of this title, a claimant for compensation not satisfied with

[11] *Lois E. Culver (Clair L. Culver)*, 53 ECAB 412 (2002).

[12] *Donald T. Pippin*, 54 ECAB 631 (2003).

[13] *Deborah L. Beatty*, 54 ECAB 334 (2003) (the checking of a box "yes" in a form report, without additional explanation or rationale, is insufficient to establish causal relationship).

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."[14] As section 8124(b)(1) is unequivocal in setting forth the time limitation for requesting a hearing, a claimant is not entitled to a hearing as a matter of right unless the request is made within the requisite 30 days.[15]

Section 10.615 of Title 20 of the Code of Federal Regulations provides, "A hearing is a review of an adverse decision by a hearing representative. Initially, the claimant can choose between two formats: An oral hearing or a review of the written record."[16]

Section 10.616(a) further provides, "A claimant injured on or after July 4, 1966, who had received a final adverse decision by the district Office may obtain a hearing by writing to the address specified in the decision. 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 sought."[17]

The Office, in its broad discretionary authority in the administration of the Act, has the power to hold hearings in certain circumstances where no legal provision was made for such hearings, and the Office must exercise this discretionary authority in deciding whether to grant a hearing. Specifically, the Board has held that the Office has the discretion to grant or deny a hearing request on a claim involving an injury sustained prior to the enactment of the 1966 amendments to the Act which provided the right to a hearing, when the request is made after the 30-day period established for requesting a hearing, or when the request is for a second hearing on the same issue.[18] 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.[19]

ANALYSIS -- ISSUE 2

The Office issued a decision on March 3, 2005 denying appellant's claim for an injury on May 14, 2004 in the performance of duty. Appellant sought an oral hearing on a form postmarked April 5, 2005. The Office denied appellant's hearing request as untimely by decision dated June 22, 2005. As appellant's request for a hearing was postmarked April 5, 2005, more than 30 days after the Office issued its March 3, 2005 decision, she was not entitled to a hearing as a matter of right.

[14] 5 U.S.C. § 8124(b)(1).

[15] *Frederick D. Richardson*, 45 ECAB 454 (1994).

[16] 20 C.F.R. § 10.615.

[17] 20 C.F.R. § 10.616(a).

[18] *See Andre´ Thyratron*, 54 ECAB 257 (2002).

[19] *Sandra F. Powell*, 45 ECAB 877 (1994).

The Office has the discretionary power to grant a hearing or review of the written record when a claimant is not entitled to a hearing or review as a matter or right.[20] The Office properly exercised its discretion by stating that it had considered the matter in relation to the issue involved and denied appellant's request for an oral hearing on the basis that the case could be resolved by submitting additional evidence to the Office in a reconsideration request. The Board has held that the only limitation on the Office's discretionary authority is reasonableness. An 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.[21] In this case, the evidence of record does not establish that the Office committed any action in connection with its denial of appellant's request for an oral hearing which could be found to be an abuse of discretion. For these reasons, the Office properly denied her request for an oral hearing as untimely under section 8124 of the Act.[22]

CONCLUSION

The Board finds that appellant has not established that she sustained an injury on May 14, 2004 in the performance of duty. The Board further finds that the Office properly denied her request for a hearing as untimely.

[20] *Afegalai L. Boone*, 53 ECAB 533 (2002).

[21] *See Andre´ Thyratron*, *supra* note 18.

[22] Appellant submitted new evidence with her appeal. The Board has no jurisdiction to review evidence for the first time on appeal that was not before the Office at the time of its decision; *see* 20 C.F.R. § 501.2(c).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated June 22 and March 3, 2005 are affirmed.

Issued: April 19, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

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