

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

B.S., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Cincinnati, OH, Employer**

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**Docket No. 06-1990
Issued: December 11, 2006**

Appearances:

*Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 4, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' July 28, 2006 decision denying her request for an oral hearing as untimely and a May 25, 2006 merit decision denying her claim for an occupational disease. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issues are: (1) whether appellant has met her burden of proof in establishing that she sustained an occupational disease in the performance of her duties; and (2) whether the Office properly denied appellant's request for an oral hearing as untimely filed.

FACTUAL HISTORY

On February 14, 2006 appellant, then a 55-year-old PARS waste clerk, filed an occupational disease claim alleging that she was diagnosed with a lumbar spine condition, specifically a diffuse disc bulge with central herniation and annular tear at L5-S1 and a diffuse

disc bulge at L1-2 extending bilaterally and flattening the thecal sac to a mild degree. She first became aware of the condition on September 13, 2005.

Appellant submitted additional information to the Office on March 1, 2006 including a detailed note describing her employment duties, a magnetic resonance imaging (MRI) scan report, a letter from Dr. George Griffin, III, Board-certified in orthopedics, dated February 14, 2006 and his progress notes from February 21, 2006.

In a letter dated March 3, 2006, the Office advised appellant that additional factual and medical evidence was needed. Appellant was requested to provide a supplemental report from her doctor providing a definitive opinion clearly stating whether appellant's employment duties caused her condition. A supplemental statement of factual information was also requested.

The Office received additional information from appellant on March 20, 2006, consisting of Dr. Griffin's January 4, 2006 progress notes and the same information submitted on March 1, 2006. On March 28, 2006 the Office received Dr. Griffin's December 7, 2005 progress notes. On April 4, 2006 the Office received additional information consisting of an examination description from Dr. Ferhan Asghar, self-designated in orthopedic surgery, dated January 13, 2006, an MRI scan by Dr. Gavin Udstuen, Board-certified in diagnostic radiology, and a letter from appellant to Dr. Asghar requesting a medical narrative.

By decision dated May 25, 2006, the Office denied appellant's claim, finding insufficient medical evidence to establish that her lumbar spine condition was related to her work activities.

On July 5, 2006 the Office received, via counsel, appellant's request for an oral hearing, postmarked June 28, 2006.

By decision dated July 28, 2006, the Office denied appellant's request for an oral hearing, finding that it was not made within 30 days of the May 25, 2006 decision. The Branch of Hearings and Review further denied the request finding that the issue could equally well be addressed through the reconsideration process.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act¹ 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.² 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.³

¹ 5 U.S.C. §§ 8101-8193.

² *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

³ *Victor J. Woodhams*, 41 ECAB 345 (1989).

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.⁴

ANALYSIS -- ISSUE 1

Appellant alleged that her lumbar spine condition was caused by factors of her federal employment involving moving large hampers of mail. The Office denied the claim finding that the medical evidence did not demonstrate that the condition was related to her work. The Board finds that appellant has failed to submit sufficient medical evidence providing a rationalized opinion which relates her claimed lumbar spine condition to factors of her federal employment. For this reason, she has not discharged her burden of proof to establish her claim.

Appellant submitted progress notes from Dr. Griffin who provided a diagnosis but did not address the 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.⁵

Diagnostic results were also received from Dr. Griffin in the form of an MRI scan. However, these reports merely noted findings and did not contain an opinion regarding the cause of the reported condition. Medical reports not containing rationale on causal relation are of little probative value and generally insufficient to meet an employee's burden of proof.⁶ The causal relationship between appellant's condition and her employment must be evidenced by a reasoned medical opinion, which is appellant's responsibility to obtain from her doctor and submit to the Office.

There is no medical evidence addressing how appellant's lumbar spine condition was caused or aggravated by factors of her employment; therefore, appellant has not met her burden

⁴ *Id.*

⁵ *Michael E. Smith*, 50 ECAB 313 (1999).

⁶ *Lois E. Culver (Clair L. Culver)*, 53 ECAB 412 (2002).

of proof to establish that she sustained a medical condition in the performance of her duties related to factors of employment

LEGAL PRECEDENT -- ISSUE 2

Section 8124 of the 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.⁷

Section 10.616(a) of Title 20 of the Code of Federal Regulations 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.

The Board has held that the Office, in its broad discretionary authority to administer the Act, has the power to hold hearings in certain circumstances where no legal provision was made for such hearings, including when the request is made after the 30-day period for requesting a hearing, and that the Office must exercise the discretionary authority in deciding whether to grant a hearing.⁸

ANALYSIS -- ISSUE 2

Appellant's request for an oral hearing was postmarked June 28, 2006, more than 30 days after the May 25, 2006 decision. Therefore, appellant is not entitled to an oral hearing as a matter of right. The Office properly exercised its discretion in denying an oral hearing upon appellant's untimely request by determining that the issue could be equally well addressed by requesting reconsideration and submitting additional evidence to the Office.

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 deductions from known facts.⁹ There is no evidence in the case record to establish that the Office abused its discretion in refusing to grant appellants hearing request.

CONCLUSION

The Board finds that the Office properly found that appellant failed to meet her burden of proof to establish that she sustained an occupational disease caused by factors of her federal employment. The Board also finds that the Office properly exercised its discretion in denying appellant's request for hearing.

⁷ 5 U.S.C. § 8124(b)(1).

⁸ *Johnny S. Henderson*, 34 ECAB 216, 219 (1982).

⁹ *Daniel J. Perea*, 42 ECAB 214 (1990).

ORDER

IT IS HEREBY ORDERED THAT the July 28 and May 25, 2006 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Issued: December 11, 2006
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board