

On appeal, appellant, through counsel, addressed the weight of medical evidence in the claim.

FACTUAL HISTORY

The Office accepted that on January 12, 1995 appellant, then a 31-year-old letter carrier, sustained a left sacroiliac joint strain when she lifted trays of mail. Appellant returned to light-duty work. The Office accepted a recurrence of disability from August 18 to 28, 1995. After appellant returned to work, she remained on light duty through 2000.

In a June 2, 1997 report, Dr. R.A. Hutson, an attending Board-certified orthopedic surgeon and second opinion specialist, opined that repetitive lifting and bending at work aggravated preexisting degenerative disc disease.

On August 29, 2000 appellant claimed a schedule award for permanent impairment of the left lower extremity caused by the accepted sacroiliac joint strain. In a December 12, 2000 decision, the Office denied the claim as the medical evidence did not establish that the accepted injury caused impairment to a scheduled member of the body.

In a February 8, 2001 letter, appellant requested reconsideration. She submitted a September 2, 2000 report from Dr. J. Ralph Collip, an attending family practitioner, who advised that appellant had active residuals of the accepted sacroiliac strain. On March 5, 2001 the Office referred appellant, the medical record and a statement of accepted facts to Dr. Arthur Lorber, a Board-certified orthopedic surgeon, who found that appellant's sacroiliac joint symptoms were age related and that she no longer had residuals of the accepted injury.

By decision dated May 15, 2001, the Office affirmed its December 2, 2000 decision on the grounds that the additional evidence submitted did not establish continuing residuals of the accepted injury.

In an August 28, 2001 letter, appellant requested reconsideration. She submitted a May 21, 1996 arthrogram showing a rupture of the anterior capsule of the left sacroiliac joint.

By decision dated October 5, 2001, the Office affirmed the prior decisions, finding that the medical evidence did not establish any ratable impairment.

In an August 26, 2002 letter, appellant again requested reconsideration. In an August 26, 2002 report, Dr. Collip rated 27 percent impairment of the left lower extremity due to rupture of the interior capsule of the left sacroiliac joint.

By decision dated November 13, 2002, the Office denied modification, finding that the medical evidence did not establish continuing residuals of the accepted injury.³

³ On November 2, 2007 appellant claimed medical expenses from October 18, 2007 onward related to the January 12, 1995 injury. The Office advised her by December 10, 2007 letter that her claim was closed as of May 15, 2001.

On December 28, 2007 Dr. Anthony Mimms, an attending Board-certified physiatrist, opined that appellant had fibrotic scar tissue at the left sacroiliac joint, producing laxity and ongoing pain.

In a September 30, 2009 letter received on October 6, 2009, appellant requested an oral hearing before a representative of the Office Branch of Hearings and Review. She asserted that she continued to have residuals of the accepted injury. Counsel submitted October 2 and 20, 2009 letters asserting a conflict of medical opinion between Dr. Lorber, for the government, and Dr. Mimms, for appellant.

By decision dated December 29, 2009, the Office denied appellant's request for a hearing on the grounds that she had previously requested reconsideration. It further denied her request for a hearing on the grounds that the issue involved could be addressed equally well by submitting new, relevant evidence pursuant to a valid request for reconsideration.

LEGAL PRECEDENT

Section 8124(b)(1) of the 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."⁴ The Office's procedures, which require the Office to exercise its discretion to grant or deny a hearing when the request is untimely or made after reconsideration, are a proper interpretation of the Act and Board precedent.⁵ In such a case, it will determine whether a discretionary hearing should be granted and, if not, will so advise the claimant with reasons.⁶

ANALYSIS

On September 30, 2009 appellant requested an oral hearing. Because she previously sought reconsideration under section 8128 of the Act, she was not entitled to a hearing as a matter of right under section 8124(b)(1). Appellant previously requested reconsideration on February 8 and August 28, 2001 and August 26, 2002. The Office denied modification in decisions dated May 15 and October 5, 2001 and November 13, 2002.

The Office exercised its discretion and determined that the issues in the case could be equally raised through a request for reconsideration and the submission of additional evidence. An abuse of discretion is generally shown through proof of manifest error, a clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deductions from established facts.⁷ The Board finds that the Office properly considered the matter in relation to the issues involved. It did not abuse its discretion in denying appellant's request for an oral hearing in its December 29, 2009 decision.

⁴ 5 U.S.C. § 8124(b)(1).

⁵ *Claudio Vasquez*, 52 ECAB 496 (2002).

⁶ *James Smith*, 53 ECAB 188 (2001).

⁷ *Samuel R. Johnson*, 51 ECAB 612 (2000).

On appeal, appellant and counsel addressed the medical aspects of the claim. These arguments are not relevant to the issue of whether the Office properly denied her request for an oral hearing. The Board does not have jurisdiction in this appeal to review the medical evidence.

CONCLUSION

The Board further finds that the Office properly denied appellant's request for an oral hearing as she previously requested reconsideration.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 29, 2009 is affirmed.

Issued: March 18, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

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

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