

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

S.C., Appellant)

and)

DEPARTMENT OF VETERANS AFFAIRS,)
WESTSIDE MEDICAL CENTER, Chicago, IL,)
Employer)

Docket No. 15-146
Issued: March 9, 2015

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 20, 2014 appellant filed a timely appeal from a July 23, 2014 merit decision and a September 18, 2014 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 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 sustained a recurrence on April 24, 2014 of a medical condition causally related to her accepted February 13, 1989 injury; and (2) whether OWCP properly denied her request for an oral hearing as untimely under 5 U.S.C. § 8124.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

Appellant, then a 34-year old biological laboratory technician serving in a term appointment, filed a claim for benefits on February 13, 1989 when her friend's shoe got caught in the escalator and, while trying to free her friend's shoe, her fingers were caught in the escalator resulting in the amputations of the third, fourth, and fifth fingers of her right hand. OWCP accepted the claim for amputations of her third, fourth, and fifth fingers of the right hand. Appellant was paid daily compensation payments until September 9, 1989 when she was placed on the periodic rolls.

Appellant received a schedule award for 55 percent permanent impairment of her right hand. The schedule award payments were from December 1, 1989 through June 27, 1992. Appellant was then returned to the periodic rolls.

OWCP referred appellant to vocational rehabilitation in 1990 and again in 1996 but in each case the constructed wage-earning capacity decisions were reversed by hearing representatives.² Appellant was returned to the periodic rolls.

The employing establishment advised OWCP they had a file clerk position with a term appointment available for appellant. Appellant accepted this full-time term appointment on July 30, 2001. This position expired on July 9, 2004.

In a November 6, 2001 decision, OWCP found that appellant's actual earnings as a file clerk effective July 30, 2001 fairly and reasonably represented her wage-earning capacity. It noted that she had worked in the position for over 60 days. OWCP indicated that appellant's current, adjusted pay rate for her job on the date of injury was \$584.73, and that her actual wages as a biological laboratory technician were \$602.44 per week. It reduced appellant's compensation to zero as her actual earnings exceeded the current wages of her date-of-injury position.

Appellant filed a Form CA-2 notice of recurrence on January 28, 2008 for medical treatment only effective July 29, 2001 which was accepted by decision dated March 26, 2008.

A Form CA-7 was filed by appellant on April 7, 2008 claiming disability from July 9, 2004 to the present. Although OWCP sent a development letter to appellant on July 28, 2008, no formal decision was ever issued on this claim.

Appellant also requested an additional schedule award which was denied by OWCP on October 8, 2008. She requested a hearing with the Branch of Hearings and Review and by decision dated May 13, 2009 the hearing representative affirmed the October 8, 2008 decision. Appellant requested another schedule award on April 3, 2014 but OWCP, by letter dated

² On July 28, 1995 an OWCP hearing representative vacated a September 15, 1994 constructed wage-earning capacity based on a food laboratory technician and by decision dated July 13, 1998, an OWCP hearing representative vacated a February 18, 1998 wage-earning capacity based on a constructed position of tester and inspector.

April 17, 2014, referred appellant to the May 13, 2009 decision and to follow any appeal rights therein.

The employing establishment requested, by letter dated August 23, 2012, that OWCP close appellant's case because there had been no medical bills since approximately 2010. OWCP closed appellant's case administratively effective September 13, 2012.

On April 24, 2014 appellant filed a Form CA-2 notice of recurrence alleging an ongoing recurrence of medical condition as of April 24, 2014, causally related to her accepted employment injury. She noted that the claim was for medical treatment only. Appellant explained that "the illness is still recurring" and that "the condition never resolved."

By letter dated May 14, 2014, OWCP advised appellant that it required additional factual and medical evidence, including a medical report, to support her claim that her condition/or disability as of April 24, 2014 was causally related to her accepted conditions. It was noted that according to the medical records on file, she last received medical care for her work-related condition on September 22, 2009.

In a May 20, 2014 medical note, received by OWCP on February 12, 2013, Dr. Catherine S. Park, a specialist in internal medicine, diagnosed bilateral wrist tendinitis and ordered bilateral wrist splints.

On June 5, 2014 Dr. Jonathan Lester, a specialist in pain medicine, noted appellant's history of traumatic amputation of her fingers in the late 1980's. He related that appellant currently complained of bilateral wrist pain, greater on the right side, than the left. In addition appellant had continuing complaints regarding the flexion contracture of her small finger on the right hand. After conducting a physical examination, Dr. Lester diagnosed carpal tunnel syndrome in her right hand. Regarding appellant's ring finger, he stated that he would schedule her to undergo a magnetic resonance imaging (MRI) scan, as there was a possibility that she had some motion left and had a central slip injury.

OWCP received a completed questionnaire from appellant on June 10, 2014 wherein she related that her index finger was more curved and her small finger was bent, with scar tissue. Appellant stated that she needed additional medical care because it was the same problem she experienced from the accepted injury and now it was affecting her wrist.

By decision dated July 23, 2014, OWCP denied the claim for a recurrence of medical condition.

OWCP continued to receive medical reports. On August 5, 2014 it received a report indicating that appellant underwent MRI scan examination of the right hand on June 22, 2014. This MRI scan was interpreted by Dr. Ejaz Shamin, an internist, as revealing right fifth digit evidence of rupture of the central slip of the extensor tendon, probably chronic.

On August 11, 2014 OWCP received a report from Dr. Guilherme Giusti, an orthopedic surgeon, regarding a July 3, 2014 consultation. Dr. Giusti noted that appellant would undergo electromyography testing for her bilateral carpal tunnel symptoms, and that an MRI scan would be scheduled for her small finger injury to determine whether she had central slip of the small

finger. On August 11, 2014 OWCP also received a report from Dr. Alfonso Mejia, a Board-certified hand surgeon, regarding a July 24, 2014 evaluation. Dr. Mejia reported that appellant had bilateral carpal tunnel and rupture of the central slip of extensor tendon and A2 pulley injury causing bowstring deformity of the flexor tendon. He opined that the right fifth digit injury was a sequela of a traumatic event to the right hand 25 years ago. Dr. Mejia noted that appellant was to undergo a two-step surgery to repair the extensor and pulley tendons.

In a letter postmarked August 23, 2014, appellant requested an oral hearing.

By decision dated September 18, 2014, OWCP denied appellant's request for an oral hearing as untimely.

LEGAL PRECEDENT -- ISSUE 1

A recurrence of a medical condition is defined under OWCP's implementing federal regulations as a documented need for further medical treatment after release from treatment for the accepted condition or injury when there is no accompanying work stoppage.³ Continuous treatment for the original condition or injury is not considered a need for further medical treatment after release from treatment, nor is an examination without treatment.⁴

A claimant has the burden of establishing that he or she sustained a recurrence of a medical condition that is causally related to his or her accepted employment injury.⁵ To meet this burden, the employee must submit medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, supports that the condition is causally related and supports his or her conclusion with sound medical rationale.⁶

ANALYSIS -- ISSUE 1

In the instant case, appellant has failed to submit any medical opinion containing a rationalized, probative report which relates her claimed recurrence of medical condition as of April 24, 2014 to her February 13, 1989 work injury.

In support of her claim, appellant submitted reports from Drs. Park and Lester. Dr. Park advised in her May 20, 2014 medical note that appellant had bilateral wrist tendinitis and ordered bilateral wrist splints. In his June 5, 2014 medical note, Dr. Lester, a specialist in pain medicine, diagnosed right-sided carpal tunnel syndrome and scheduled appellant for an MRI scan of her right hand.

The reports from Drs. Park and Lester did not provide an opinion regarding whether appellant's accepted right finger amputations would have caused a recurrence as of April 24,

³ 20 C.F.R. § 10.5(y). *See also R.B.*, Docket No. 13-1663 (issued July 29, 2014).

⁴ *Id.*

⁵ *See S.S.*, Docket No. 14-211 (issued May 1, 2014).

⁶ *See Ronald A. Eldridge*, 53 ECAB 218 (2001).

2014 condition, requiring further medical treatment. These physicians did not explain why the amputation of appellant's third, fourth, and fifth fingers on her right hand would have caused the bilateral carpal tunnel conditions or necessitate medical treatment as of April 24, 2014 for any other right hand condition. As noted, appellant has the burden of proof to submit rationalized medical evidence establishing the relationship of the claimed recurrence to the original injury. The weight of the medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of a physician's knowledge of the facts of the case, the medical history provided, the care of analysis manifested, and the medical rationale expressed in support of stated conclusions.⁷ The Board finds that the medical evidence is insufficient to establish a recurrence of a medical condition causally related to the accepted right finger amputation conditions. The Board will affirm OWCP's July 23, 2014 decision.⁸

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

LEGAL PRECEDENT -- ISSUE 2

Section 8124(b)(1) of FECA 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 or her claim before a representative of the Secretary.⁹ Section 10.615 of the federal regulations implementing this section of FECA provides that a claimant shall be afforded a choice of an oral hearing or a review of the written record.¹⁰ The request must be sent within 30 days (as determined by postmark or other carriers' date marking) of the date of the decision for which a hearing is sought.¹¹ A hearing is a review of an adverse decision by an OWCP hearing representative. Initially, the claimant can choose between two formats: an oral hearing or a review of the written record. In addition to the evidence of record, the claimant may submit new evidence to the hearing representative.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 the hearing is sought.¹³ A claimant is not entitled to a hearing if the request is not made within 30 days of the date of the decision.¹⁴ OWCP has discretion, however, to grant or deny a request that is made after this

⁷ See *Ann C. Leanza*, 48 ECAB 115 (1996).

⁸ OWCP continued to receive medical evidence. The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal. 20 C.F.R. § 501.2(c)(1).

⁹ 5 U.S.C. § 8124(b)(1).

¹⁰ 20 C.F.R. § 10.615.

¹¹ *Id.* at § 10.616(a).

¹² *Id.* at § 10.615.

¹³ *Id.* at § 10.616(a).

¹⁴ *James Smith*, 53 ECAB 188 (2001).

30-day period.¹⁵ In such a case, it will determine whether a discretionary hearing should be granted and, if not, will so advise the claimant with reasons.¹⁶

While a claimant may not be entitled to a hearing as a matter of right if the request is untimely, OWCP has the discretionary authority to grant the request and must properly exercise such discretion.¹⁷

ANALYSIS -- ISSUE 2

Appellant requested an oral hearing by form dated July 31, 2014, postmarked on August 23, 2014, and received by the Branch of Hearings and Review on August 26, 2014. A request for oral hearing must be sent within 30 days of the date of the decision for which hearing is sought.¹⁸ The 30th day following the July 23, 2014 OWCP decision was Friday, August 22, 2014. Because appellant did not request the hearing within 30 days of the July 23, 2014 decision she was not entitled to a hearing as a matter of right under section 8124(b)(1). OWCP exercised its discretion and determined that the issue in the case could be resolved equally well through a request for reconsideration and the submission of additional evidence. The Board finds that OWCP did not abuse its discretion in denying appellant's request for an oral hearing in its September 18, 2014 decision.

CONCLUSION

The Board finds that appellant has failed to establish a recurrence of a medical condition as of April 24, 2014 causally related to her accepted injury. The Board finds that OWCP properly denied her request for an oral hearing as untimely under 5 U.S.C. § 8124.

¹⁵ 20 C.F.R. § 10.616(b).

¹⁶ *Supra* note 14.

¹⁷ *See id.*; *Cora L. Falcon*, 43 ECAB 915 (1992); *Mary B. Moss*; 40 ECAB 640 (1989); *Rudolph Bermann*, 26 ECAB 354 (1975).

¹⁸ *Supra* note 11.

ORDER

IT IS HEREBY ORDERED THAT the September 18 and July 23, 2014 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: March 9, 2015
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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