United States Department of Labor
Employees' Compensation Appeals Board

KAREN RAYMER, Appellant	)	
	)	**Docket No. 05-1066**
and	)	**Issued: August 15, 2005**
U.S. POSTAL SERVICE, POST OFFICE, Laurens, IA, Employer	)	

Appearances:
William M. Alexander, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On April 12, 2005 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated May 24, 2004, which denied appellant's claim for a recurrence of disability, and a decision dated January 11, 2005 denying her request for an oral hearing as untimely. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUES

The issues are: (1) whether appellant met her burden of proof to establish that she sustained a recurrence of disability on February 13, 2004 causally related to the accepted employment injury of September 6, 2003; and (2) whether the Office properly denied appellant's request for a hearing.

FACTUAL HISTORY

On September 6, 2003 appellant, then a 58-year-old city carrier filed a claim for traumatic injury alleging that on that date she pulled a muscle in her left knee while walking. The Office accepted that appellant sustained a left knee strain and later expanded this to include

left medial and lateral meniscus tears and authorized left knee arthroscopy. Appellant stopped work on September 6, 2003 and returned to light duty on September 24, 2003 and continued to work light duty until December 2, 2003 when she was returned to regular duty.

Appellant was treated by Dr. Eugene Mullins, Board-certified in internal medicine, who noted in a report dated September 8, 2003 that she injured her left knee while delivering mail. He diagnosed a knee strain and advised that appellant would be able to return to her regular duties in a week. Also submitted were reports from Dr. James P. Slattery, a Board-certified family practitioner, who treated appellant from September 12 to 23, 2003 for a left knee injury. He diagnosed internal derangement of the knee. A magnetic resonance imaging (MRI) scan of the left knee dated September 1, 2003 revealed a horizontal tear of the posterior horn of the medial meniscus and a tear of the inferior surface of the posterior horn of the lateral meniscus. Dr. Slattery referred appellant to Dr. Philip A. Deffer, Jr., a Board-certified orthopedist, who noted on September 30, 2003 that appellant sustained a left knee injury while working as a letter carrier. He diagnosed left knee medial meniscal tear and recommended arthroscopic surgery. On October 7, 2003 the physician performed a left knee arthroscopy, debridement of the anterior horn of medial meniscal tear and diagnosed left knee medial meniscal tear. In reports dated October 14 to November 18, 2003, Dr. Deffer noted that appellant was improving postoperatively and could return to light duty on November 7, 2003 with restrictions on carrying mail. He noted in a report dated November 18, 2003 that appellant could return to regular duty for four hours per day and increase two hours per week until she reached full-time duty.

On February 3, 2004 appellant filed a claim for a schedule award. In a decision dated March 8, 2004, the Office granted a schedule award for two percent permanent impairment of the left lower extremity. The period of the award was from October 7 to November 16, 2003.

Appellant submitted a report and a work capacity evaluation from Dr. Deffer dated January 6, 2004 who noted that she had reached maximum medical improvement and could return to regular duty. He advised that appellant had injured her right groin and was not working due to that injury. In a field nurse report dated January 6, 2004, it was noted that appellant stopped working on December 8, 2003 for a right groin strain which was not work related. The nurse noted that appellant returned to light duty with restrictions due to her right groin strain on January 3, 2004. On February 13, 2004 Dr. Deffer noted that appellant was experiencing severe pain in the lateral aspect of her left knee and appellant believed that her pain was caused by being forced to return to work too soon. Upon physical examination, he noted no effusion, full range of motion and he indicated that appellant was ligamentously stable without any focal tenderness except over the lateral joint. Dr. Deffer diagnosed left knee pain and returned appellant to limited duty restricting her walking to two hours per day. In a report dated March 9, 2004, he noted that the MRI scan of the left knee revealed postoperative changes from the meniscectomy. Dr. Deffer noted a possible lateral meniscal tear; however, advised that appellant was not symptomatic for this injury. He returned appellant to work full time with restrictions of two hours of walking inside and two hours working outside.

By letter dated April 16, 2004, the Office requested detailed factual and medical evidence from appellant, stating that the information submitted was suggestive that appellant may have sustained a recurrence of disability on February 13, 2004.

Appellant submitted a statement advising that she returned to full-time duty on January 31, 2004 and was having trouble walking her route and that, on February 13, 2004, she could not walk on her left knee. She submitted a list of employees and job duties and several CA-17's, duty status reports. A CA-17 dated April 5, 2004 diagnosed left knee pain and advised that appellant could work under various restrictions including standing for no more than three hours per day. A CA-17 dated April 20, 2004 diagnosed left knee pain and advised that appellant could work full time with walking limited to four hours per day. Also submitted was a report from Dr. Deffer dated April 20, 2004 who noted treating appellant for left knee pain and advised that appellant was making slow progress and was walking three hours per day which he increased to four hours per day.

In a decision dated May 24, 2004, the Office denied appellant's claim for recurrence of disability on the grounds that the evidence submitted was insufficient to establish that appellant sustained a recurrence of disability commencing February 13, 2004 causally related to her work injury of September 6, 2003.

By an appeal request form dated June 24, 2004, appellant requested an oral hearing before an Office hearing representative. In a letter dated June 24, 2004 and received by the Office on June 28, 2004, appellant, through her attorney, noted that she was being evaluated by another physician and would submit the report for consideration. Appellant also submitted additional reports from Dr. Deffer dated March 9 to June 29, 2004 who treated her for left knee pain.

In a decision dated January 11, 2005, the Office denied appellant's hearing request. The Office found that the request was not timely filed. Appellant was informed that her case had been considered in relation to the issues involved, and that the request was further denied for the reason that the issues in this case could be addressed by requesting reconsideration from the district Office and submitting evidence not previously considered.

LEGAL PRECEDENT -- ISSUE 1

A "recurrence of disability" means an inability to work after an employee has returned to work, caused by a spontaneous change in a medial condition which resulted from a previous injury or illness without an intervening injury or a new exposure to the work environment.[1] Where appellant claims a recurrence of disability due to an accepted employment-related injury, he or she has the burden of establishing by the weight of reliable, probative and substantial evidence that the recurrence of disability is causally related to the original injury.[2] This burden includes the necessity of furnishing evidence from a qualified physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally

[1] 20 C.F.R. § 10.5(x) (2002).

[2] *Robert H. St. Onge*, 43 ECAB 1169 (1992).

related to the employment injury.[3] Moreover, the physician's conclusion must be supported by sound medical reasoning.[4]

The medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated or aggravated by the accepted injury.[5] In this regard, medical evidence of bridging symptoms between the recurrence and the accepted injury must support the physician's conclusion of a causal relationship.[6] While the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty.[7]

ANALYSIS -- ISSUE 1

The Office accepted that appellant sustained a left knee strain and left medial and lateral meniscus tears. However, the medical record lacks a well-reasoned narrative from appellant's physicians relating her disability commencing on or after February 13, 2004 to her accepted employment injury.

The Board finds that the reports from Dr. Deffer are insufficient to establish the claimed recurrence of disability. He noted on February 13, 2004 that appellant was experiencing severe pain in the lateral aspect of her left knee. However, upon physical examination, Dr. Deffer noted no abnormalities, specifically indicating that there was no effusion, appellant had full range of motion and was ligamentously stable without any focal tenderness except over the lateral joint. He diagnosed left knee pain and returned appellant to limited duty restricting her walking to two hours per day. In a report dated March 9, 2004, Dr. Deffer advised that there was a question of a lateral meniscal tear; however, appellant was not symptomatic for this injury. He advised that appellant could return to work full time with restrictions. Dr. Deffer's report dated April 20, 2004 advised that appellant was making slow progress and was walking three hours per day which would be increased to four hours per day. However, none of the medical records specifically address that appellant sustained a recurrence of disability on February 13, 2004 causally related to the September 6, 2003 injury or otherwise provide medical reasoning explaining how her current condition or disability was due to the September 6, 2003 employment injury. The Board has found that vague and unrationalized medical opinions on causal

[3] Section 10.104(a)-(b) of the Code of Federal Regulations provides that, when an employee has received medical care as a result of the recurrence, he or she should arrange for the attending physician to submit a detailed medical report. The physician's report should include the physician's opinion with medical reasons regarding the causal relationship between the employee's condition and the original injury, any work limitations or restrictions, and the prognosis. 20 C.F.R. § 10.104.

[4] *See Robert H. St. Onge, supra* note 2.

[5] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship,* Chapter 2.805.2 (June 1995).

[6] For the importance of bridging information in establishing a claim for a recurrence of disability, *see Robert H. St. Onge, supra* note 2; *Shirloyn J. Holmes,* 39 ECAB 938 (1988); *Richard McBride,* 37 ECAB 748 (1986).

[7] *See Ricky S. Storms,* 52 ECAB 349 (2001); *Morris Scanlon,* 11 ECAB 384, 385 (1960).

relationship have little probative value.[8] Therefore, these reports are insufficient to meet appellant's burden of proof.

The other medical reports submitted by appellant do not address causal relationship between appellant's accepted condition and her claimed recurrence of disability.

LEGAL PRECEDENT -- ISSUE 2

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."[9] Section 10.617 and 10.618 of the federal regulations implementing this section of the Act provides that a claimant shall be afforded a choice of an oral hearing or a review of the written record by a representative of the Secretary.[10] Although there is no right to a review of the written record or an oral hearing if not requested within the 30-day time period, the Office may within its discretionary powers grant or deny appellant's request and must exercise its discretion.[11] The Office's procedures concerning untimely requests for hearings and review of the written record are found in the Federal (FECA) Procedure Manual, which provides:

> "If the claimant is not entitled to a hearing or review (*i.e.*, the request was untimely, the claim was previously reconsidered, etc.), [Hearing and Review] will determine whether a discretionary hearing or review should be granted and, if not, will so advise the claimant, explaining the reasons."[12]

ANALYSIS -- ISSUE 2

Appellant requested a hearing in an appeal request form and in a letter dated June 24, 2004. Section 10.616 of the federal regulations provides: "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."[13] While the case record does not contain the envelope, or a copy thereof, that accompanied appellant's request for reconsideration, the date of the letter in which the hearing was requested, June 24, 2004, is more than 30 days from issuance of the May 24, 2004 decision. Appellant contends on appeal that her June 24, 2004 request was timely as the May 24, 2004 decision was postmarked May 27, 2004. She submitted a copy of an

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[8] *Jimmie H. Duckett,* 52 ECAB 332 (2001); *Franklin D. Haislah,* 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

[9] 5 U.S.C. § 8124(b)(1).

[10] 20 C.F.R. §§ 10.616, 10.617.

[11] *Delmont L. Thompson,* 51 ECAB 155 (1999); *Eddie Franklin,* 51 ECAB 223 (1999).

[12] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Review of the Written Record,* Chapter 2.1601.4(b)(3) (June 1997).

[13] 20 C.F.R. § 10.616.

envelope postmarked May 27, 2004; however, the Board may not consider new evidence for the first time on appeal.[14] The evidence of record at the time of the Office's January 11, 2005 decision reflects that the decision was issued on May 24, 2004; therefore, the Board finds that appellant's hearing request was not timely. The 30-day time period for determining the timeliness of appellant's hearing request commences on the first day following the issuance of the Office's decision.[15] As the Office's decision was issued on May 24, 2004, the 30-day period for requesting a hearing began to run on May 25, 2004 and the last or 30th day was June 23, 2004. Since appellant's hearing request was dated June 24, 2004, it was untimely as it fell on the 31st day after the issuance of the Office's decision. Accordingly, appellant was not entitled to a hearing as a matter of right. The Office properly found that appellant was not entitled to an oral hearing as a matter of right because her request was not made within 30 days of the Office's May 24, 2004 decision.

The Office also 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 of right. The Office properly exercised its discretion by stating that it had considered the matter in relation to the issue involved and had 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, 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 deduction from established facts.[16] In the present case, the evidence of record does not indicate that the Office committed any act 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 appellant's request for an oral hearing under section 8124 of the Act.

CONCLUSION

The Board finds that appellant has not met his burden of proof in establishing that she sustained a recurrence of disability or a medical condition beginning February 13, 2004 causally related to her accepted employment-related injury on September 6, 2003. The Board further finds that the Office properly denied appellant's request for a hearing as untimely.

[14] With her request for an appeal, appellant submitted additional evidence with her appeal. However, the Board may not consider new evidence on appeal; *see* 20 C.F.R. § 501.2(c).

[15] *See Donna A. Christley*, 41 ECAB 90, 91 (1989). *See also John B. Montoya*, 43 ECAB 1148, 1151-52 (1992).

[16] *Samuel R. Johnson*, 51 ECAB 612 (2000).

ORDER

IT IS HEREBY ORDERED THAT January 11, 2005 and May 24, 2004 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: August 15, 2005
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

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