

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LAWRENCE E. GRAY and DEPARTMENT OF THE ARMY,
CORPS OF ENGINEERS, ST. LOUIS DISTRICT, St. Louis, MO

*Docket No. 99-135; Submitted on the Record;
Issued April 7, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issues are: (1) whether appellant met his burden of proof in establishing that he sustained an injury causally related to factors of employment; and (2) whether the Office of Workers' Compensation Programs abused its discretion in denying appellant's request for a hearing.

On January 1, 1998 appellant, then a 60-year-old steam-electric striker who worked aboard a dredge, filed an occupational disease claim alleging that job duties including bending, stooping, and climbing up and down caused back strain. He stopped work on October 19, 1997. By letter dated March 6, 1998, the Office informed appellant of the type of evidence needed to support his claim which was to include a comprehensive medical report from his treating physician that describes, *inter alia*, the employment exposures or incidents that contributed to his condition. By decision dated April 8, 1998, the Office denied appellant's claim on the grounds that the medical evidence was insufficient to establish that his condition was causally related to factors of employment. In a letter postmarked on May 18, 1998, appellant requested a hearing. In a July 15, 1998 decision, an Office hearing representative denied appellant's request on the grounds that it was not timely filed. The instant appeal follows.

The Board finds that appellant failed to establish that he sustained an injury causally related to factors of employment.

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 the factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the 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 factors identified by the claimant. The evidence required to establish

causal relationship is rationalized medical opinion evidence, based upon a complete and accurate factual and medical background, showing a causal relationship between the claimed conditions and the identified factors. The belief of appellant that the condition was caused or aggravated by the identified factors is not sufficient to establish causal relation.¹

In the present case, there is no dispute that appellant was a federal employee and that he timely filed a claim for compensation benefits. However, the medical evidence is insufficient to establish that he sustained an employment-related injury because it does not contain a rationalized medical opinion explaining how his back condition was caused or aggravated by employment factors. While appellant submitted a report dated February 4, 1998 from Dr. James F. Loomis, a Board-certified internist, this report does not contain an opinion regarding the cause of appellant's back condition.² It is thus insufficient to establish causal relationship³ and appellant did not provide the necessary rationalized medical opinion describing how employment factors caused his back condition and, hence, did not meet his burden of proof.

The Board further finds that the Office did not abuse its discretion in denying appellant's request for a hearing as untimely.

In this case, the Office denied appellant's request for a hearing on the grounds that it was untimely. In its July 15, 1998 decision, the Office stated that appellant was not, as a matter of right, entitled to a hearing since his request had not been made within 30 days of its April 8, 1998 decision. The Office noted that it had considered the matter in relation to the issue involved and indicated that appellant's request was denied on the basis that the issue of whether he sustained an employment injury could be addressed through a reconsideration application.

The Board has held that the Office, in its broad discretionary authority in the administration of the Federal Employees' Compensation Act,⁴ has the power to hold hearings in certain circumstances where no legal provision was made for such hearings and that the Office must exercise this discretionary authority in deciding whether to grant a hearing.⁵ In the present case, appellant's request for a hearing was postmarked May 18, 1998 and was thus made more than 30 days after the date of issuance of the Office's prior decision dated April 8, 1998. The Office was therefore correct in stating in its July 15, 1998 decision that appellant was not entitled to a hearing as a matter of right.

¹ *Lourdes Harris*, 45 ECAB 545 (1994).

² Dr. Loomis noted that he had seen appellant on October 21, 1997 for increased back pain with spasm in the left lower back and saw him again on November 3, 1997 in the emergency room following a motor vehicle accident with a diagnosis of upper neck and back spasm. The record also contains a brief report with an illegible signature dated November 3, 1997 noting that appellant was seen in the emergency room with a diagnosis of mild trapezius strain following a minor motor vehicle accident.

³ *See Alberta S. Williamson*, 47 ECAB 569 (1996).

⁴ 5 U.S.C. §§ 8101-8193.

⁵ *Henry Moreno*, 39 ECAB 475 (1988).

While the Office also has the discretionary power to grant a hearing request when a claimant is not entitled to a hearing as a matter of right, the Office, in its July 15, 1998 decision, properly exercised its discretion by stating that it had considered the matter in relation to the issue involved and had denied appellant's request on the basis that the issue of whether he sustained an injury causally related to factors of employment could be addressed through a reconsideration application. 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.⁶ 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 hearing request which could be found to be an abuse of discretion.

The decisions of the Office of Workers' Compensation Programs dated July 15 and April 8, 1998 are hereby affirmed.

Dated, Washington, D.C.
April 7, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

⁶ See *Daniel J. Perea*, 42 ECAB 214, 221 (1990).