U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERT L. WIDMOR and U.S. POSTAL SERVICE,
POST OFFICE, Bridgeport, OH

Docket No. 99-2283; Submitted on the Record;
Issued October 17, 2000

DECISION and ORDER

Before DAVID S. GERSON, A. PETER KANJORSKI,
VALERIE D. EVANS-HARRELL

The issues are: (1) whether appellant established a recurrence of total disability due to his accepted November 7, 1996 employment injury; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for a hearing as untimely filed.

On January 8, 1997 appellant filed a traumatic injury claim alleging that he injured his back on November 7, 1996 while loading a tray of mail into his mail vehicle. The Office accepted the claim for lumbosacral strain and authorized physical therapy. The Office subsequently authorized a magnetic resonance imaging (MRI) scan of appellant's lumbar spine, an orbital x-ray of the eye and a computerized axial tomography (CAT) scan and mylogram of the lumbar spine.

In a July 29, 1998 report, Dr. Luis A. Vasquez stated that appellant had been referred to Dr. Reza P. Asli, a Board-certified neurological surgeon, based upon the finding of discogenic disease by CAT scan and myelogram testing.

In a report dated August 7, 1998, Dr. Asli diagnosed chronic lumbosacral strain and opined that appellant needed to take a month off of work so appellant could get physical therapy and a rehabilitation program. Dr. Asli noted that appellant "had decompressive lumbar laminectomy done about 20 years ago for lumbar soleus and he did quite well for many years until on November 7, 1996 when he hurt his back at work."

In an attending physicians report (Form CA-20) dated September 2, 1998, Dr. Asli diagnosed lumbar strain and spasms of appellant's back muscles which the physician opined was due to his employment. In an attached work restrictions/limitations dated September 2, 1998, Dr. Asli indicated appellant could return to his regular work duties on September 14, 1998.

On September 13, 1998 appellant filed a claim for a recurrence of disability.

By letter dated October 7, 1998, the Office informed appellant regarding the definition of a recurrence, that the evidence he had submitted was insufficient to support a claim of causal relationship and advised him as to the type of evidence required to support his claim.

In a letter dated October 7, 1998, the Office requested additional information from Dr. Asli as well as advising him of the definition of a recurrence and the medical evidence necessary to support appellant's claim for a recurrence of disability.

By decision dated December 14, 1998, the Office denied appellant's claim for a recurrence of disability.[1]

By letter dated January 14, 1999, and received by telefacsimile in the Office's Branch of Hearings and Review on the same date, appellant's counsel requested an oral hearing.

On March 8, 1999 the Office denied appellant's request for an oral hearing on the basis that the request was untimely made.

The Board finds that appellant has failed to establish that he sustained a recurrence of disability was causally related to the November 7, 1996 employment injury.

Under the Federal Employees' Compensation Act,[2] an employee who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the recurrence of the disabling condition, for which compensation is sought is causally related to the accepted employment injury.[3] As part of this burden the employee must submit rationalized medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the current disabling condition is causally related to the accepted employment-related condition,[4] and supports that conclusion with sound medical reasoning.[5]

Section 10.104(b)(2) 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 medical report covering the dates of examination and treatment, the history given by the employee, the findings, the results of x-ray and laboratory tests, the diagnosis, the course of treatment, 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

[1] By letter dated December 30, 1998, the Office advised appellant that a December 21, 1998 report from Dr. Asli had been received subsequent to the December 14, 1998 decision and advised appellant of his appeal rights.

[2] 5 U.S.C. §§ 8101-8193 (1974).

[3] *Dennis J. Lasanen*, 43 ECAB 549, 550 (1992).

[4] *Kevin J. McGrath*, 42 ECAB 109, 116 (1990).

[5] *Lourdes Davila*, 45 ECAB 139, 142 (1993).

prognosis.[6] Thus, the medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated or aggravated by the accepted injury.[7]

Appellant submitted reports from Dr. Asli, which are insufficient to meet appellant's burden. Dr. Asli, in his August 7, 1998 report, diagnosed chronic lumbar strain, which he attributed to the November 7, 1996 employment injury without providing any supporting medical rationale. The only rationale Dr. Asli noted connecting appellant's disability and employment injury was that appellant had undergone a decompressive lumbar laminectomy approximately 20 years ago and did well until the employment injury. In an attending physician's report dated September 2, 1998, Dr. Asli attributed appellant's lumbar strain and back muscle spasms to his employment. While Dr. Asli in his August 7, 1998 report and September 2, 1998 attending physician's report attributed appellant's disability to appellant's November 7, 1996 employment injury, the physician failed to provide any medical rationale or clinical findings to support his opinion. Therefore, the Board finds that Dr. Asli's reports are insufficient to meet appellant's burden of proof.[8] The Board finds that Dr. Asli's conclusion that appellant's lumbar strain and back muscle spasms are due to his November 7, 1996 employment injury is unsupported by any supporting clinical findings or rationale, the Board finds that his report is insufficient to meet appellant's burden of proof. [9]

Inasmuch as appellant failed to provide a rationalized medical opinion explaining the requisite causal relationship, the Board finds that he has failed to meet his burden of proof and that the Office properly denied his claim.[9]

The Board further finds that the Office properly denied appellant's request for a hearing.

Section 8124(b)(1) of the Act provides:

> "Before review under section 8128(a) of this title, a claimant for compensation not satisfied with a decision of the Secretary under subsection (a) of this section 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."[10]

A claimant is not entitled to a hearing if the request is not made within 30 days of the date of issuance of the decision as determined by the postmark of the request.[11] The Office has

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[6] 20 C.F.R. § 10.104(b)(2).

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

[8] *See Judith J. Montage*, 48 ECAB 292 (1995) (finding that medical reports not containing rationale on causal relationship are generally insufficient to meet appellant's burden of proof).

[9] *See Jose Hernandez*, 47 ECAB 288 (1996) (finding that despite a request from the Office, appellant failed to submit a rationalized medical opinion showing that the claimed recurrence was related to his employment injury).

[10] 5 U.S.C. § 8124(b)(1).

[11] 20 C.F.R. § 10.616(a).

discretion, however, to grant or deny a request that is made after this 30-day period.[12] In such a case, the Office will determine whether a discretionary hearing should be granted or, if not, will so advise the claimant with reasons.[13]

In the instant case, appellant's request for an oral hearing was faxed and received by the Office on January 14, 1999, more than 30 days after the Office's December 14, 1998 decision. In order to be timely, the request should have been received by January 13, 1999, which was the 30th day after the December 14, 1998 decision. Appellant's request was faxed and received by the Office on January 14, 1999, which was 31 days after the December 14, 1998 decision, and, therefore, was not submitted within 30 days of the Office's December 14, 1998 decision. Consequently, appellant is not entitled to a hearing as a matter of right.

Although the Office properly found appellant's hearing request to be untimely filed, the Office considered the matter in relation to the issue involved, and correctly advised appellant that she could pursue her claim through the reconsideration process. As appellant had the opportunity to pursue her claim by submitting to the appropriate regional Office a request for reconsideration, the Board finds that the Office did not abuse its discretion in denying appellant's request for a hearing.[14]

The decisions of the Office of Workers' Compensation Programs dated March 8, 1999 and December 14, 1998 are hereby affirmed.

Dated, Washington, DC
October 17, 2000

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

Valerie D. Evans-Harrell
Alternate Member

[12] *Herbert C. Holley*, 33 ECAB 140 (1981); *see also* 20 C.F.R. § 10.616(b).

[13] *Rudolph Bermann*, 26 ECAB 354 (1975).

[14] The Board has held that the denial of a hearing on these grounds is a proper exercise of the Office's discretion. *E.g., Jeff Micono*, 39 ECAB 617 (1988).