

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOSEPH L. WARNER and DEPARTMENT OF THE STATE,
NARCOTICS AFFAIRS SECTION, La Paz, Bolivia

*Docket No. 00-1287; Submitted on the Record;
Issued March 8, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issues are: (1) whether appellant has established that he sustained a right eye condition in the performance of duty; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for a written review of the record.

On November 6, 1997 appellant, then a 50-year-old foreign service officer, filed a traumatic injury claim alleging that he sustained a detached retina in the right eye while on temporary duty status (TDY) in Bolivia on October 22, 1997. In an accompanying statement, appellant indicated that, while at breakfast on October 22, 1997, his vision in the right eye became blurry. Appellant indicated that his vision did not improve and the following day he was treated by an ophthalmologist, Dr. Gonzalo Murillo, who found two tears in the retina of the right eye. He returned to the United States that evening, and the following day underwent laser surgery.

By decision dated January 28, 1999, the Office denied the claim on the grounds that the medical evidence was insufficient to meet appellant's burden of proof. In a letter dated August 30, 1999, appellant requested a review of the written record. By decision dated December 6, 1999, the Office determined that the request was untimely. The Office further stated that the request was further denied because the issue in the case could equally well be addressed by requesting reconsideration and submitting new and relevant evidence.

The Board finds that appellant has not established a right eye injury in the performance of duty.

Appellant has the burden of establishing that his condition is causally related to factors of his federal employment. Where an employee is on TDY away from his regular place of employment, he is covered by the Federal Employees' Compensation Act 24 hours a day with respect to any injury that results from activities essential or incidental to his temporary

assignment.¹ However, the fact that an employee is on a special mission or in travel status during the time a disabling condition manifests itself does not raise an inference that the condition is causally related to the incidents of employment.² Appellant must submit probative medical evidence on causal relationship between the diagnosed condition and activities incidental to the employment.³

It is well established, therefore, that a claimant on TDY must submit probative medical evidence on causal relationship between the diagnosed condition and activities incidental to the federal employment. In this case, Dr. Murillo diagnosed retinal tears with mild retinal detachment on October 23, 1997. Dr. Scott Cousins, an ophthalmologist, indicated in a November 3, 1997 report that laser treatment was used for appellant's acute retinal tears in the right eye. There is, however, no opinion from any physician of record as to the cause of appellant's condition. The medical evidence establishes a diagnosed right eye condition, without providing a reasoned medical opinion on causal relationship with incidents of appellant's federal employment. As noted above, a condition manifesting itself while on TDY does not infer causal relationship. Appellant must submit medical evidence establishing causal relationship between the diagnosed right eye condition and incidents of federal employment while on TDY. The Board finds that appellant has not submitted sufficient medical evidence to meet his burden of proof in this case.⁴

The Board further finds that the Office properly denied appellant's request for a review of the written record.

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."⁵ Section 10.615 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.⁶ The regulations provide that a request must be sent (as determined by the postmark date or other carrier's date marking) within 30 days of the decision.⁷

¹ *Richard Michael Landry*, 39 ECAB 232 (1987).

² *Stanley K. Takahaski*, 35 ECAB 1065 (1984).

³ *William B. Merrill*, 24 ECAB 215 (1973). The Board also notes that, if an employee is sent by his employer to a place where adequate medical facilities are not available, and an injury results because of a delay in receiving adequate treatment, the injury may be compensable. See *Carl Paul Johnson*, 39 ECAB 470 (1988). Appellant has not, however, argued or submitted evidence supporting an injury causally related to inadequate medical treatment.

⁴ The Board's jurisdiction is limited to evidence that was before the Office at the time of the January 28, 1999 final Office decision on the merits of the claim. 20 C.F.R. § 501.2(c). Evidence submitted after this date cannot be reviewed by the Board on this appeal.

⁵ 5 U.S.C. § 8124(b)(1).

⁶ 20 C.F.R. § 10.615 (1999).

⁷ 20 C.F.R. § 10.616(a).

In the present case, appellant's request for a review of the written record was dated August 30, 1999. Since this is more than 30 days after the January 28, 1999 Office decision, appellant is not entitled to a review of the written record as a matter of right.

Although appellant's request for a review of the written record was untimely, the Office has discretionary authority with respect to granting the request and the Office must exercise such discretion.⁸ In this case, the Office advised appellant that the issue could be addressed through the reconsideration process and the submission of new evidence. This is considered a proper exercise of the Office's discretionary authority.⁹ There is no evidence of an abuse of discretion in this case.

The decisions of the Office of Workers' Compensation Programs dated December 6 and January 28, 1999 are affirmed.

Dated, Washington, DC
March 8, 2001

Michael J. Walsh
Chairman

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

⁸ See *Cora L. Falcon*, 43 ECAB 915 (1992).

⁹ *Id.*