

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHRISTOPHER M. CRAIG and U.S. POSTAL SERVICE,
POST OFFICE, Carolina Beach, NC

*Docket No. 03-1144; Submitted on the Record;
Issued September 26, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issues are: (1) whether appellant has met his burden of proof to establish that he sustained an injury in the performance of duty; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for an oral hearing.

On September 10, 2002 appellant, then a 42-year-old letter carrier, filed a Form CA-2a, notice of recurrence of disability, which the Office deemed should be treated as an occupational disease claim. He alleged that August 12, 2002 was the date of his recurrence following his original injury of October 5, 2002 and that he had experienced back and neck pain due to the constant twisting and turning involved with delivering the mail.

In an August 14, 2002 report, Dr. R. Mark Rodger, a Board-certified orthopedic surgeon, indicated that appellant had complaints of neck pain radiating into the shoulder a little bit on the left with no radiculopathy. He indicated that appellant alleged that his condition had recently worsened and was similar to what he had before, which dated back to his motor vehicle accident in 2000 where he injured his back and neck. Dr. Rodger indicated that appellant was performing regular duty but had taken a "ten-day stress leave." He noted evidence of disc rupture at L5-S1, which was likely the reason for appellant's back problems and aggravation of underlying degenerative changes in the cervical spine as the most likely reason for his neck pain and a reactivation of degenerative disc disease in his neck as the most likely reason for this problem.

In an August 14, 2002 duty status report, Dr. Rodger indicated that appellant had an aggravation of the neck from repetitive turning, pain, stiffness, pounding headache, ringing in the ears with a limited range of motion. He described his clinical findings as neck pain and indicated that the diagnosis was due to the injury; indicated that appellant could not return to regular duty and prescribed limitations for appellant.

By letter dated October 30, 2002, the Office advised appellant of the additional factual and medical evidence needed to establish his claim and requested that he submit such. Appellant

was advised that submitting a rationalized statement from his physician addressing any causal relationship between his claimed injury and factors of his federal employment was crucial. Appellant was allotted 30 days to submit the requested evidence.

By decision dated December 12, 2002, the Office denied appellant's claim on the grounds that he did not submit sufficient medical evidence to establish that he sustained an injury in the performance of duty.

On January 15, 2003 appellant requested an oral hearing.

By decision dated March 13, 2003, the Office denied appellant's request as untimely. Additionally, the Office considered the matter in relation to the issue involved and denied appellant's request on the basis that the issues could equally well be addressed through the reconsideration process.

The Board finds that appellant has not met his burden of proof to establish that he sustained an injury in the performance of duty.

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of her claim including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.² These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.³

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 employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment 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 employment factors identified by the claimant. The medical evidence required to establish a causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the

¹ 5 U.S.C. §§ 8101-8193.

² *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

³ *See Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁴

In the present case, the Office found that the evidence received was sufficient to establish that appellant experienced the claimed employment factor of twisting and head turning.

However, the Board finds that appellant has not established that his condition was caused by an employment factor. Appellant did not submit any medical evidence to establish that he sustained a condition in the performance of duty. The record contains several reports from Dr. Rodger; however, he did not provide a diagnosis or condition causally relating appellant's condition to specific factors of his employment. In his August 14, 2002 report, Dr. Rodger related that appellant had neck pain and his condition had worsened. Further, he noted evidence of disc rupture at L5-S1 and degenerative problems. However, Dr. Rodger did not attempt to distinguish appellant's degenerative condition from factors of his employment. In his duty status report of the same date, he wrote "yes" in response to whether the diagnosis was due to his injury. However, checking of the box "yes" that the disability was causally related to employment is insufficient without further explanation or rationale, to establish causal relationship.⁵ Dr. Rodger did not offer a rationalized medical opinion as to how appellant's employment caused or aggravated his condition. As appellant has not submitted the requisite medical evidence needed to establish his claim, he has failed to meet his burden of proof. For the above-noted reasons, appellant has not established that he sustained an injury in the performance of duty.

Further, the Board finds that the Office properly denied appellant's request for an oral hearing.

Any claimant dissatisfied with a decision of the Office shall be afforded an opportunity for an oral hearing or, in lieu thereof, a review of the written record. 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 a hearing is sought. A claimant is not entitled to a hearing or a review of the written record if the request is not made within 30 days of the date of the decision for which a hearing is sought.⁶ However, the Office has the discretion to grant or deny a request that was made after this 30-day period.⁷ In such a case, the Office will determine whether a discretionary hearing should be granted and, if not, will so advise the claimant with reasons.⁸

Appellant's request for a hearing was postmarked January 15, 2003, which is more than 30 days after the Office's December 12, 2002 decision. As such, he is not entitled to an oral hearing as a matter of right. Moreover, the Office considered whether to grant a discretionary

⁴ *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

⁵ *Barbara J. Williams*, 40 ECAB 649 (1989).

⁶ 20 C.F.R. § 10.616(a) (1999).

⁷ *Herbert C. Holley*, 33 ECAB 140 (1981).

⁸ *Rudolph Bermann*, 26 ECAB 354 (1975).

review and correctly advised appellant that the issue of whether he sustained an injury due to factors of his employment could equally well be addressed by requesting reconsideration.⁹ Accordingly, the Board finds that the Office properly exercised its discretion in denying appellant's untimely request for an oral hearing.

The March 13, 2003 and December 12, 2002 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
September 26, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

⁹ The Board has held that a denial of review on this basis is a proper exercise of the Office's discretion. *E.g., Jeff Micono*, 39 ECAB 617 (1988).