

**United States Department of Labor
Employees' Compensation Appeals Board**

I.L., Appellant

and

**U.S. POSTAL SERVICE, HIGHBRIDGE
STATION POST OFFICE, Bronx, NY, Employer**

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**Docket No. 07-2201
Issued: May 12, 2008**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 30, 2007 appellant filed a timely appeal from the April 13, 2007 decision of the Office of Workers' Compensation Programs denying modification of a hearing representative's January 18, 2007 decision affirming the Office's October 13, 2006 denial of appellant's claim for recurrence of disability. On July 15, 2007 an Office hearing representative denied appellant's request for a review of the written record. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant established that she sustained a recurrence of disability due to her accepted January 30, 1995 employment injury; and (2) whether the Office properly denied appellant's request for a second hearing in the form of a review of the written record.

FACTUAL HISTORY

On February 18, 1995 appellant, then a 50-year-old letter carrier, filed an occupational disease claim, Form CA-2, alleging that the soreness, pain and swelling of her right hand was due to opening and closing mailboxes in the performance of duty. The Office accepted her claim on June 28, 1995 for tendinitis of the right hand. The employing establishment assigned appellant to limited duty.

On May 18, 2006 appellant filed a recurrence of disability claim,¹ Form CA-2a, alleging that she had pain and swelling in her hand in cold weather and when casing mail. She stated that this condition was related to her accepted injury. Appellant did not stop working in her light-duty assignment.

On July 17, 2006 the Office notified appellant that she needed to submit additional medical and factual information to establish her claim.

On a disability slip dated July 24, 2006, Dr. Yusuf Yazici, a Board-certified internist and rheumatologist, stated that appellant could not work from July 17 to August 14, 2006 because she was under medical care for her right knee and right hand. On July 28, 2006 he indicated that he first began treating appellant on June 14, 2006. Dr. Yazici diagnosed appellant with systemic lupus erythematosus and osteoarthritis of the hand, which caused pain in the hand joints and stiffness that prevented full usage. He noted that appellant's right hand and wrist had pain with palpitation and range of motion exercises.

On August 31, 2006 appellant submitted a claim for compensation for leave without pay taken from August 21 to 31, 2006.

On September 15, 2006 Dr. Yazici stated that he was treating appellant for her lupus condition and knee osteoarthritis. He treated her for these conditions on July 17, August 4 and 14 and September 13, 2006.

By decision dated October 13, 2006, the Office denied appellant's claim for recurrence of disability. The Office found that the evidence of record did not establish a change in the nature or extent of either her injury-related condition or her light-duty position.

On October 25, 2006 appellant requested a review of the written record. She stated that the osteoarthritis in her right hand and right knee were sustained at work. These conditions disabled her from performing some work-related tasks, including writing, placing rubber bands around large bundles of mail, lifting bundles of mail and bending her knees to place bags onto a skid. In a statement dated August 28, 2006, several of her coworkers indicated that they were aware that she had difficulty walking due to a right knee injury and that she complained of pain

¹ The Board notes that the Office treated this claim alternately as a recurrence of disability and a recurrence of medical condition. Though appellant was not disabled for work at the time she filed the claim, she subsequently requested compensation for a period of total temporary disability. Therefore, the Board will treat this claim as a recurrence of disability.

in her right hand. On October 25, 2006 Dr. Yazici reported that appellant had informed him that her lupus and osteoarthritis were acquired through employment-related accidents.

In a January 17, 2007 decision, an Office hearing representative affirmed the October 13, 2006 decision. She found that appellant had not provided information about the factual events surrounding her alleged recurrence and that the medical evidence did not include information about her accepted work injury, examination findings or opinion on causal relationship.

On February 1, 2007 appellant requested reconsideration. In a written statement, she reiterated the employment activities that she was disabled from performing. On a September 13, 2006 disability slip, Dr. Yazici indicated that appellant was unable to work that day because of an examination and injection. On February 1, 2007 Dr. Camille Philippe, a Board-certified family practitioner, stated that the osteoarthritis in appellant's right hand may be related to her accepted injury of January 30, 1995.

By decision dated April 13, 2007, the Office denied modification of the January 17, 2007 decision. It found that appellant had provided an explanation of the circumstances of her recurrence, but that she had not submitted medical evidence to establish that her arthritis was related to her accepted employment injury. The Office stated that appellant could appeal the decision either by requesting reconsideration and submitting additional evidence, or by appealing to the Board.

On May 7, 2007 appellant requested a review of the written record before the Branch of Hearings and Review.

By decision dated June 15, 2007, the Office hearing representative denied appellant's request on the grounds that she had already received a review of the written record on the issue of whether she had sustained a recurrence. He stated that he had considered appellant's request and made a discretionary finding that the issues in the case could be addressed by requesting reconsideration or by appealing to the Board.

LEGAL PRECEDENT -- ISSUE 1

A claimant seeking compensation under the Federal Employees' Compensation Act² has the burden of establishing the essential elements of her claim by the weigh of reliable, probative and substantial evidence.³ To establish a claim for recurrence of disability, a claimant must establish that she experienced a spontaneous material change in her employment-related condition without an intervening injury or new exposure to the work environment that caused the illness.⁴ An employee who is disabled from her date-of-injury position by employment-related residuals has the burden of establishing that she sustained a recurrence of disability such that she cannot perform her light-duty position. The employee must therefore show either a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-

² 5 U.S.C. §§ 8101-8193.

³ *Edward W. Spohr*, 54 ECAB 806 (2003).

⁴ *Carlos A. Marrero*, 50 ECAB 117 (1998); *Philip L. Barnes*, 55 ECAB 426 (2004); 20 C.F.R. § 10.5(x).

duty requirements.⁵ Where a claimant alleges a change in condition, her burden of proof includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury and supports the conclusion with sound medical rationale. Where no such rationale is present, the medical evidence is of diminished probative value.⁶

ANALYSIS -- ISSUE 1

The Office accepted that appellant sustained tendinitis in her right hand causally related to factors of her federal employment. The issue to be resolved is whether appellant has established that she sustained a recurrence of disability causally related to this injury. As she did not allege a change in her light-duty requirements, she must show a spontaneous change in the nature or extent of her employment-related condition.

On July 28, 2006 Dr. Yazici, a Board-certified internist and rheumatologist, reported that appellant complained of pain and stiffness in the joints of her right hand, which prevented its full use. He noted that she had pain with palpitation and range of motion exercises in her right hand and wrist. Dr. Yazici diagnosed lupus and osteoarthritis of the hand. He stated that appellant was disabled from July 17 to August 14, 2006 because she was under his care for both her right knee and right hand conditions. On September 15, 2006 Dr. Yazici noted that he had treated appellant for lupus and knee osteoarthritis on July 17, August 4 and 14 and September 13, 2006. The Board finds that Dr. Yazici gave no opinion as to the cause of appellant's right hand osteoarthritis. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship.⁷

On February 1, 2007 Dr. Philippe, a Board-certified family practitioner, stated that the osteoarthritis in appellant's right hand may be related to her accepted injury of January 30, 1995. She did not provide any objective findings related to appellant's condition or an explanation of how she arrived at her opinion. The Board notes that a medical opinion that is speculative or equivocal in character has little probative value on the issue of causal relationship.⁸ Additionally, a medical opinion that is not fortified by rationale is of diminished probative value.⁹ The Board therefore finds that the opinion of Dr. Philippe, which is both speculative and lacking in rationale, is inadequate to establish appellant's claim of recurrence of disability.

The Board finds that appellant has not met her burden of proof to establish by the weight of the medical evidence that she sustained a recurrence of disability causally related to her accepted right hand tendinitis.

⁵ *Terry R. Hedman*, 38 ECAB 222 (1986).

⁶ *Mary A. Ceglia*, 55 ECAB 626 (2004).

⁷ *Jaja K. Asaramo*, 55 ECAB 200 (2004).

⁸ *Kathy A. Kelley*, 55 ECAB 206 (2004).

⁹ *Cecelia M. Corley*, 56 ECAB 662 (2005).

LEGAL PRECEDENT -- ISSUE 2

Section 8124(b)(1) of the Act provides that a claimant not satisfied with a decision of the Office is entitled, upon timely request, to a hearing before a representative of the Office.¹⁰ The Office regulations allow claimants to exercise this statutory right by requesting either an “oral hearing” or a “review of the written record.”¹¹ The Board has held that the Office, in its broad discretionary authority in the administration of the Act, 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.¹² Specifically, the Board has held that the Office has the discretion to grant or deny a hearing request on a claim involving an injury sustained prior to the enactment of the 1966 amendments to the Act which provided the right to a hearing,¹³ when the request is made after the 30-day period for requesting a hearing¹⁴ and when the request is for a second hearing on the same issue.¹⁵ 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

ANALYSIS

On October 25, 2006 appellant disagreed with the Office’s October 13, 2006 decision on her claim for recurrence of disability and made a timely request for a review of the written record. The request was granted and, on January 17, 2007, an Office hearing representative affirmed the October 13, 2006 decision. On February 1, 2007 appellant requested reconsideration and submitted new medical evidence. On April 13, 2007 the Office issued a merit decision denying modification of the Office hearing representative’s decision. The Office stated that appellant could appeal the decision by requesting reconsideration or by appealing to the Board. It did not state that a hearing was available to her. On May 7, 2007 appellant requested another review of the written record. The Office hearing representative denied the request, noting that she had already received a hearing on the issue of recurrence and could request reconsideration by the Office or appeal to the Board.

As noted above, an Office hearing representative had already conducted a review of the written record on appellant’s claim for recurrence of disability when she requested a second hearing, in the form of a review of the written record. The Board has held that section 8124(b) of the Act does not afford a claimant the right to a second hearing on the same issues before the

¹⁰ 5 U.S.C. § 8124(b)(1).

¹¹ 20 C.F.R. § 10.615.

¹² *Henry Moreno*, 39 ECAB 475, 482 (1988).

¹³ *Rudolph Bermann*, 26 ECAB 354, 360 (1975).

¹⁴ *Herbert C. Holley*, 33 ECAB 140, 142 (1981).

¹⁵ *Johnny S. Henderson*, 34 ECAB 216, 219 (1982).

¹⁶ *Daniel J. Perea*, 42 ECAB 214, 221 (1990).

Office.¹⁷ Because issues related to the claimed recurrence had already been addressed by an Office hearing representative, the Board finds that appellant was not entitled, as a matter of right, to a subsequent hearing on the same issues. Though appellant was not entitled to a hearing on her claim as a matter of right, the Office nevertheless conducted a review of her request and determined that a discretionary hearing would not be granted because she had other appeal options available. The Board finds that the Office properly exercised its discretionary authority under the circumstances of this case.¹⁸

CONCLUSION

The Board finds that appellant did not establish that she sustained a recurrence of disability due to her accepted January 30, 1995 employment injury. The Board also finds that the Office properly denied appellant's request for review of the written record.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation dated June 15 and April 13, 2007 are affirmed.

Issued: May 12, 2008
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

¹⁷ See *Johnny S. Henderson, supra* note 16 (noting that a hearing request was properly rejected after the Office "reviewed the case record and found no indication that a second hearing would serve any useful purpose").

¹⁸ Board notes that, prior to her second request, she received reconsideration of her claim. The Office procedure manual states that appeals, which are defined as reconsideration, hearing and review by the Board, may be requested in any order, except that a hearing may not be held after the case has been reconsidered. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Review Process*, Chapters 2.1600.1 (June 1997); *id.* at 2.1600.4 (December 1991). Appellant was therefore not entitled to a hearing.