U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LARRY W. WITHMAN and U.S. POSTAL SERVICE,
POST OFFICE, Broomfield, Colo.

Docket No. 96-1568; Submitted on the Record;
Issued April 22, 1998

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issues are: (1) whether appellant has met his burden of proof in establishing that he sustained a foot condition causally related to factors of his federal employment; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for a hearing pursuant to section 8124(b) of the Federal Employees' Compensation Act.

On August 14, 1995 appellant, then a 44-year-old letter carrier, filed an occupational disease claim, alleging that he had conditions in his left ankle and the bottom of his foot related to the stress of performing his federal employment that he first became aware of on August 8, 1995. In a supplemental statement, appellant asserted that he had pain in the bottom of his left foot and that when he tried to walk gently on it, he strained his left ankle. He indicated that he had to exit his vehicle while working using his right foot and leg due to the pain caused by exiting on his left foot and leg.

In a decision dated November 8, 1995, the Office accepted appellant's claim for left ankle strain but did not accept the claimed condition of metatarsalgia as there was no evidence addressing what caused the pain in appellant's foot. In a merit decision dated December 18, 1995, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted with the request was not sufficient to establish that modification of the prior decision was warranted. In a letter decision dated February 15, 1996, the Office denied appellant's request for a hearing as untimely.

The Board has carefully reviewed the entire case record on appeal and finds that appellant has not met his burden of proof to establish that his left foot condition was sustained while in the performance of duty.

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;[1] (2) a factual statement identifying the employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;[2] 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 was causally related to the employment factors identified by the claimant.[3] The medical evidence required to establish causal relationship, generally, 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 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,[4] must be one of reasonable medical certainty,[5] and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific factors identified by claimant.[6]

In the present case, appellant established that he sustained a strain of the left ankle that was causally related to factors of his federal employment. However, the Office found that the evidence attendant to his doctor's diagnosis of metatarsalgia was not sufficient to establish that appellant's foot pain was related to his federal employment. Appellant submitted a form report dated August 14, 1995 by Dr. Louis T. Montour, a general practitioner, who provided a history of appellant having sprained his left ankle with the bottom of the foot pain starting at about the same time. In another form report submitted by appellant, Dr. Montour diagnosed repetition injury and metatarsalgia under second-left junction and checked a box indicating that the injury was consistent with the history of injury. The September 8, 1995 form report in which Dr. Montour checked a box to indicate that the claimed condition was related to the provided history of injury is insufficient to sustain appellant's burden of proof as this report is not rationalized. Dr. Montour did not provide any explanation or rationale for his opinion that the diagnosed medical condition was causally related to the factors of appellant's federal employment. Therefore, this report is insufficient to meet appellant's burden of proof.[7] In response to the Office's September 14 and October 13, 1995 requests for a rationalized medical opinion relating appellant's injury to the identified factors of appellant's federal employment, appellant submitted a report dated September 8, 1995 which noted that appellant experienced pain in his left foot while getting out of his mail truck. Dr. Montour recommended physical therapy and that appellant alternate his feet when exiting the mail truck. While he did note that

[1] *See Ronald K. White*, 37 ECAB 176 (1985).

[2] *See Walter D. Morehead*, 31 ECAB 188 (1979).

[3] *See generally Lloyd C. Wiggs*, 32 ECAB 1023 (1981).

[4] *William Nimitz, Jr.*, 30 ECAB 567 (1979).

[5] *See Morris Scanlon*, 11 ECAB 384 (1960).

[6] *See William E. Enright*, 31 ECAB 426 (1980).

[7] *Debra S. King*, 44 ECAB 203 (1992); *Salvatore Dante Roscello*, 31 ECAB 247 (1979).

appellant experienced pain while working, he has not provided an opinion which defined the mechanism of injury or clearly related the metatarsalgia in appellant's left foot to his federal employment. Consequently, appellant has not met his burden of proof to establish that the claimed condition of metatarsalgia is causally related to factors of his federal employment.

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

Section 8124(b)(1) of the Act provides that a "claimant for compensation not satisfied with the 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."[8] As section 8124(b)(1) is unequivocal in setting forth the time limitations for requesting a hearing, a claimant is not entitled to a hearing as a matter of right unless the request is made within the requisite 30 days.[9] In this case, the Office issued its merit decision denying appellant's request for reconsideration on December 18, 1995. A review of the record indicates that appellant submitted a request for hearing dated January 18, 1996 but postmarked January 19, 1996 and received January 23, 1996. As appellant's request for hearing was not postmarked or received within 30 days of the Office's decision, he is not entitled to a hearing under section 8124 as a matter of right.

Even when the hearing request is not timely, the Office has discretion to grant the hearing request and must exercise that discretion. In this case, the Office advised appellant that it considered his request in relation to the issue involved and the hearing was denied on the basis that he could address this issue by submitting evidence which showed that his foot condition was causally related to his August 8, 1995 employment injury. Appellant was advised that he may request reconsideration with additional evidence. The Board has held that an abuse of discretion is generally shown through proof of manifest error, a clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deductions from established facts.[10] There is no evidence of an abuse of discretion in the denial of a hearing in this case.

[8] 5 U.S.C. § 8124(b)(1).

[9] *Charles J. Prudencio*, 41 ECAB 499 (1990); *Ella M. Garner*, 36 ECAB 238 (1984).

[10] *Daniel J. Perea*, 42 ECAB 214 (1990).

The decisions of the Office of Workers' Compensation Programs dated February 15, 1996, and December 18 and November 8, 1995 are hereby affirmed.

Dated, Washington, D.C.
April 22, 1998

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member