U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MATTHEW M. MONTGOMERY and U.S. POSTAL SERVICE, POST OFFICE, Cincinnati, Ohio

Docket No. 96-1175; Submitted on the Record;
Issued April 14, 1998

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM, BRADLEY T. KNOTT

The issues are: (1) whether appellant has met his burden of proof in establishing that he sustained an injury in the performance of duty on September 20, 1994, and (2) whether the Office of Workers' Compensation Programs properly denied appellant's right to a hearing.

On September 29, 1994 appellant, then a 31-year-old mail carrier filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1) alleging that he sustained an injury to his head while delivering mail in the performance of duty on September 20, 1994. Appellant stated that he was injured while walking in a yard when a water/gardening hose was dropped on his head from a residents upper window, causing him a head injury and to bend. Appellant also stated that he began having headaches, blurred vision, dizziness, light-headedness and was unable to drive a vehicle. The record shows that appellant stopped work on September 27, 1994, returned to work on September 29, 1994, and was placed on temporary work restrictions until October 11, 1994, the day he returned to full duty status.[1]

Appellant submitted in support of his claim an unsigned discharge instruction form from the Bethesda Hospital Emergency Department dated September 26, 1994 revealing a prescription for medication for headaches. Appellant submitted work/activity restriction reports from physicians with illegible signatures dated September 28 and October 11, 1994. The employing establishment also submitted on appellant's behalf, an accident report dated September 29, 1994 and a temporary limited-duty job offer dated September 30, 1994.

By letter dated October 31, 1994, the Office advised appellant of the deficiencies in his claim. Appellant was directed to have a physician complete an enclosed attending physician's

[1] The record also indicates that appellant submitted a report of termination of disability and/or payment (Form CA-3) alleging total disability on September 27 and 28, 1994, as a result of the garden hose incident of September 20, 1994. This request was denied by the Office's March 6, 1995 decision.

report (Form CA-20) and arrange for the submission of a copy of the actual hospital records from the emergency room within 20 days from the date of its letter.

In response to the Office's October 31, 1994 letter, the employing establishment submitted on appellant's behalf, the unsigned last page of a "Test Results Summary," dated October 11, 1994, indicating that there were no current lab/resulting ancillary orders and that the noncontrast and contrast enhanced head computerized tomography (CT) studies revealed that "the ventricular system is within normal limits. No abnormal areas of enhancement are seen. No abnormal intra-axial, nor abnormal extra-axial masses, nor fluid collections were seen [and contained the] impression [of] normal head CT."

By decision dated March 6, 1995, the Office denied appellant's claim for failure to establish fact of injury. In an accompanying memorandum, the Office also found that the claimed event, incident or exposure occurred at the time, place and in the manner alleged; however, a medical condition resulting from the identified incident was not supported by the medical evidence of file.

On March 4, 1996 the Board received appellant's letter of appeal dated February 3, 1996 and postmarked February 13, 1996, in the instant case. Appellant also submitted a copy of his February 3, 1996 appeal letter to the Office.[2] The Office, in turn, interpreted appellant's February 3, 1996 letter as a request for a hearing on his claim.[3] Appellant stated that this request is made because of "the misleading from certain parties, the delaying of my mail for I could not timely file an appeal on these claims. The filing the wrong forms I could [not] determine I just done as I was told and found out later it was the wrong ones." No additional evidence was submitted with this request. By decision dated March 7, 1996, the Office denied appellant's hearing request on the grounds that it was not requested within 30 days of its March 6, 1995 decision and that the issue could be resolved through the reconsideration process.

The Board finds that appellant has not met his burden of proof in establishing that he sustained an injury in the performance of duty on September 20, 1994.

An employee seeking benefits under the Federal Employees' Compensation Act[4] has the burden of establishing that the essential elements of his or her claim[5] including the fact that the individual is an "employee of the United States" within the meaning of the Act,[6] that the claim was timely filed within the applicable time limitation period of the Act,[7] that an injury was

[2] Appellant has further indicated that he filed a claim under the File No. A9-408523. This claim has not been addressed in the instant case, and consequently, will not be addressed by the Board.

[3] The Board notes that the record in the instant case, does not contain a envelope with a postmark date, or a date stamp placed on appellant's February 3, 1996 letter, which revealed the actual day it was received by the Office.

[4] 5 U.S.C. §§ 8101-8193.

[5] *See Daniel R. Hickman*, 34 ECAB 1220 (1983); *see also* 20 C.F.R. § 10.110.

[6] *See James A. Lynch*, 32 ECAB 216 (1980); *see also* 5 U.S.C. § 8101(1).

[7] 5 U.S.C. § 8122.

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.[8] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[9]

In order to determine whether a federal employee has sustained a traumatic injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.[10] Second, the employee must submit sufficient evidence to establish that the employment incident caused a personal injury.[11] An employee may establish that an injury occurred in the performance of duty as alleged but failed to establish that his or her disability and/or a specific condition for which compensation is claimed are causally related to the injury.[12]

To accept fact of injury in a traumatic injury case, the Office, in addition to finding that the employment incident occurred in the performance of duty as alleged, must also find that the employment incident resulted in an "injury." The term "injury" as defined by the Act, as commonly used, refers to some physical or mental condition caused either by trauma or by continued or repeated exposure to, or contact with, certain factors, elements or condition.[13] The question of whether an employment incident caused a personal injury generally can be established only by medical evidence.[14]

In the instant case, there is no dispute that the incident occurred at the time, place and in the manner alleged by appellant. However, an injury resulting from this incident has not been established. None of the medical evidence submitted on appellant's behalf contained a legible signature from a qualified physician. Therefore, absent a legibly signed signature from a qualified physician, the medical evidence lacks proper identification and cannot be considered as probative

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[8] *See Melinda C. Epperly*, 45 ECAB 196 (1993); *Joe Cameron*, 42 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[9] *David J. Overfield*, 42 ECAB 718 (1991); *Delores C. Ellyett*, 41 ECAB 992 (1990); *Victor J. Woodhams*, 41 ECAB 345 (1989).

[10] *See John J. Carlone*, 41 ECAB 354 (1989).

[11] *Id*. For a definition of the term "injury," *see* 20 C.F.R. § 10.5(a)(14).

[12] As used in the Act, the term "disability" means incapacity because of an injury in employment to earn wages the employee was receiving at the time of the injury, *i.e*., a physical impairment resulting in the loss of wage-earning capacity; *see Frazier V. Nichol*, 37 ECAB 528 (1986).

[13] *See Elaine Pendleton, supra* note 8.

[14] *See John J. Carlone, supra* note 10.

evidence.[15] Further, this medical evidence failed to establish a diagnosis, provide a history of the alleged incident, or provide a physician's rationalized medical opinion,[16] based upon reasonable medical certainty, that there is a causal connection between appellant's alleged head injury and any specific workplace factors. For example, there is no reasoned medical opinion attributing appellant's complaints to a head injury sustained in the performance of duty on September 20, 1994. As such, the medical evidence submitted failed to establish fact of injury and is insufficient to meet appellant's burden of proof.[17]

The Board further finds that the Office did not have authority to issue its March 7, 1996 decision denying appellant's request for a hearing.

The Board and the Office may not simultaneously have jurisdiction over the same issue in the same case.[18] Because the Office must review its decision and order to exercise its discretion on whether to grant an untimely request for a hearing, the Office may not issue a decision granting or denying a request for a hearing regarding the same issue on appeal before the Board.[19] The Office therefore did not have the authority to issue its March 7, 1996 decision, as the case was at the time before the Board on an appeal dated February 3, 1996 and postmarked February 13, 1996, of the same decision from which the hearing was requested.

[15] A medical report may not be considered as probative medical evidence if there is no indication that the person completing the report qualifies as a "physician" as defined in 5 U.S.C. § 8101(2); *see also Bradford L. Sutherland,* 33 ECAB 1568 (1982).

[16] *See Victor J. Woodhams, supra* note 9.

[17] *Charles H. Tomaszewski,* 39 ECAB 461, 467-68 (1988) (finding that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship); *see also George Randolph Taylor,* 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

[18] *See Russell E. Lerman,* 43 ECAB 770 (1992).

[19] *See Arlonia B. Taylor,* 44 ECAB 591 (1993).

The March 6, 1995 decision of the Office of Workers' Compensation Programs is affirmed; and the Office's March 7, 1996 decision on reconsideration is set aside as null and void.

Dated, Washington, D.C.
April 14, 1998

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member