U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DENNIS J. BRUMMEYER and DEPARTMENT OF THE NAVY, MARINE CORPS EDUCATION & DEVELOPMENT COMMAND, Quantico, Va.

Docket No. 96-905; Submitted on the Record;
Issued January 14, 1998

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS, BRADLEY T. KNOTT

The issue is whether appellant sustained an injury in the performance of duty on May 24, 1995 as alleged.

On June 5, 1995 appellant, then a 45-year-old gardener, filed a claim for compensation alleging that on May 24, 1995, while dismounting a tractor, he slipped and hit his back against the right fender.

In a treatment note dated May 16, 1995, Dr. John W. Johnson, appellant's treating physician and Board-certified orthopedic surgeon, stated that appellant had been doing well "until he started using a weed eater which he estimates weighs in upwards of 100 pounds. He has had [a] recurrence of left leg pain and has no progression of his neurologic deficit…. I feel that this is too much for him and that he should have a permanent 10-pound weight restriction."

In a treatment note dated June 6, 1995, Dr. Johnson stated that appellant was treated at the employing establishment clinic two weeks earlier as a result of an injury caused from slipping on wet grass while getting out of a tractor. Upon examination, Dr. Johnson stated that appellant had had an acute exacerbation of his lumbar radiculitis superimposed on his chronic problem and ordered him off work for two weeks.

In a duty status report dated July 11, 1995, Dr. Johnson stated that appellant, while dismounting a tractor on May 24, 1995, slipped and hit his back on the right fender.

On August 30, 1995 the Office of Workers' Compensation Programs requested that appellant explain his activities on May 16, 1995 that required medical treatment from Dr. Johnson, and why the doctor provided a different work history than the work history provided by appellant in his claim form.

In a medical report dated September 15, 1995, Dr. Johnson stated that appellant had been under his care "since April 1994 for a problem with his lumbar spine," noting that appellant had

undergone a decompressive laminectomy in August 1994. He further noted that appellant, on June 6, 1995, tripped on grass causing an acute exacerbation of his lumber radiculitis. Dr. Johnson added that he was certain that appellant's present medical problems were related to his "original injury."

In an undated letter received by the Office on September 18, 1995, appellant stated that he hurt his back when he stepped off of a tractor on May 24, 1995, and that he was treated by the employing establishment doctor the next day and advised to remain off work for a week, he then stated that upon his return to work on May 31, 1995, he sustained a back spasm, was sent to a civilian hospital, and was released with instructions to see his personal physician.

On October 19, 1995 the Office, in a decision, denied appellant's claim for benefits on the grounds that the medical evidence failed to establish that appellant sustained an injury as alleged. In an accompanying memorandum, the Office stated that appellant submitted numerous explanations of his injury, including Dr. Johnson's May 16, 1995 medical report, wherein he stated that appellant was doing well until he started using a weed eater; a June 6, 1995 medical report wherein Dr. Johnson stated that appellant injured himself when he slipped on wet grass getting out of a tractor, and a July 11, 1995 medical report wherein he stated that appellant injured himself dismounting a tractor. On the basis of appellant's failure to present a clear, decisive account of the injury as alleged, the Office denied the claim.

The Board finds that appellant failed to establish that he sustained an injury in the performance of duty.

An employee seeking benefits under the Federal Employees' Compensation Act[1] has the burden of establishing the essential elements of his or 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 filed within the applicable time limitations 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 and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.[3]

In order to determine whether an employee actually sustained an 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. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.[4]

[1] 5 U.S.C. §§ 8101-8193.

[2] *Elaine Pendleton*, 40 ECAB 1143, 1154 (1989).

[3] *David J. Overfield*, 42 ECAB 718, 721 (1991).

[4] *Elaine Pendleton*, *supra* note 2.

The second component of fact of injury is whether the employment incident caused a personal injury and generally can be established only by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.[5]

In this case, appellant alleged in his Form CA-1 that he sustained a back injury at work on May 24, 1995. However, in his May 15, 1995 report, Dr. Johnson, a Board-certified orthopedic surgeon and appellant's attending physician, reported that appellant was doing well until he started using a weed eater. In his June 6, 1995 medical report, Dr. Johnson stated that appellant injured himself when he slipped on wet grass while dismounting a tractor. This history is not consistent with appellant's statement in his CA-1 claim form which states that he slipped while dismounting the tractor, not that he slipped on grass or that he injured himself while using a weed eater. In addition, in response to the Office's request to clarify the inconsistency in the medical evidence, appellant submitted a September 15, 1995 medical report from Dr. Johnson who stated that appellant's injury occurred on June 6, 1995. The Board finds that the inconsistencies in the medical evidence as to when and how the alleged injury occurred cast serious doubt upon the validity of the claim and therefore appellant has failed to meet his burden of proof in establishing that the employment incident occurred as alleged and has failed to establish fact of injury. The Office properly denied this claim.

The decision of the Office of Workers' Compensation Programs dated October 19, 1995 is hereby affirmed.

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

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott

[5] *Kathryn Haggerty*, 45 ECAB 383 (1994); *see* 20 C.F.R. § 10.110(a).

Alternate Member