U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of HARLAN J. MARBLEY and DEPARTMENT OF VETERANS AFFAIRS, EMPLOYEE RELATIONS OFFICE, Washington, D.C.

Docket No. 96-915; Submitted on the Record;
Issued March 12, 1998

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant has met his burden of proof in establishing that he sustained an injury to his right hand in the performance of duty on July 26, 1995.

On July 28, 1995 appellant, then a 51-year-old food service worker, filed a claim alleging that he sustained an employment-related injury to his right hand. Appellant stated that on July 26, 1995, he "went to pick up a hot bottom and twisted his right hand." The record reveals that a "hot bottom" is used in keeping meals warm for patients and weighed, according to the Shandon & Lipshaw scale, 5.16 pounds. The record also reveals that appellant did not stop working following the alleged injury, but received in and out right carpal tunnel release surgery on August 11, 1995, was placed on work restrictions and advised not to work with his right hand and to keep it elevated for 48 hours in order to reduce swelling.

The employing establishment controverted appellant's claim, alleging that it was inappropriate for the appellant to file a traumatic injury claim due to the lifting of an object which weighed 5.16 pounds given his medical history of radioscaphoid arthritis and arthritis of the basal joint of the thumb.

In an August 22, 1995 letter, the Office of Workers' Compensation Programs advised appellant of the type of factual and medical evidence needed to establish his claim and requested that he submit such. The Office particularly requested that appellant submit a physician's reasoned opinion addressing the relationship of his claimed condition and specific employment factors. Appellant was allotted thirty days within which to submit the requested evidence.

The employing establishment forwarded to the Office copies of appellant's factual and medical background. These documents included: (1) various medical documentation concerning appellant's medical condition from the years of 1990 to 1991, which are not relevant to the alleged injury of July 26, 1995; and (2) numerous copies of appellant's operative and surgical procedures, anesthesiology reports, x-rays, laboratory work, progress notes, discharge

instructions, etc., concerning appellant's August 11, 1995, in and out carpal tunnel release surgery dated August 7, 10, 11, 25 and 28, 1995.[1]

Thereafter, appellant submitted duty status reports dated August 21 and 25, 1995. In the August 21, 1995 duty status report, Dr. Robert S. Hatch, described how the injury occurred and the part of the body affected as "arthritis of the right hand," provided a clinical finding of "right median nerve compression," and diagnosed appellant with "right carpal tunnel syndrome." Dr. Hatch also checked a "yes" box indicating that the history of the injury given to him by appellant corresponded with arthritis of the right hand. In the August 25, 1995 duty status report, the physician who bears an illegible signature, described how the injury occurred and the part of the body affected as "right hand," provided a clinical finding of "S/P ? right hand CTS [carpal tunnel syndrome] release and removal ?-wire, " and diagnosed "old arthritis Rt [right] wrist and CTS [carpal tunnel syndrome] right hand."

In a decision dated September 25, 1995, the Office found that appellant was in the performance of duty and the July 26, 1995 incident occurred as alleged, but the medical evidence submitted was insufficient to establish an injury causally related to the employment incident. The Office also noted that appellant was advised of the deficiencies in his claim and afforded an opportunity to provide supportive evidence; however, evidence sufficient to support the fact that appellant sustained an injury to his right hand on July 26, 1995, was not submitted. Moreover, the Office noted that although the employing establishment submitted numerous medical evidence in order to help develop appellant's claim, there was nothing mentioned in any of these documents of the alleged July 26, 1995 injury.[2] The Office, therefore, found these documents to be irrelevant to appellant's claim for benefits.

The Board finds that appellant has not met his burden of proof in establishing that he sustained an injury to his right hand in the performance of duty on July 26, 1995.

An employee seeking benefits under the Federal Employees' Compensation Act[3] has the burden of establishing that the essential elements of his or her claim[4] including the fact that the individual is an "employee of the United States" within the meaning of the Act,[5] that the claim was timely filed within the applicable time limitation period of the Act,[6] that an injury was sustained in the performance of duty as alleged, and that any disability and/or specific condition

[1] The Board notes that the employment establishment submitted medical evidence regarding appellant's prior medical condition for the years of 1990 and 1991. These documents are not relevant to appellant's alleged injury of July 26, 1995 and will not be considered.

[2] *Id.*

[3] 5 U.S.C. §§ 8101-8193.

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

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

[6] 5 U.S.C. § 8122.

for which compensation is claimed are causally related to the employment injury.[7] 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.[8]

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.[9] Second, the employee must submit sufficient evidence to establish that the employment incident caused a personal injury.[10] 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.[11]

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.[12] The question of whether an employment incident caused a personal injury generally can be established only by medical evidence.[13]

In this case, the Office found that the claimed event, incident or exposure occurred at the time, place and in the manner alleged. However, there is no rationalized medical opinion evidence to support the fact that appellant suffered an injury or disability causally related to any specific work factors. The only evidence submitted by appellant in this case, were two duty status reports dated August 21 and 25, 1995. The remaining medical evidence was submitted by the employing establishment. Neither the August 21 and 25, 1995 duty status reports, nor the medical evidence submitted by the employing establishment are relevant to the main issue of the present case, *i.e.*, whether appellant has submitted sufficient medical evidence to support his

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

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

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

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

[11] 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).

[12] *See Elaine Pendleton, supra* note 7.

[13] *See John J. Carlone, supra* note 9.

claim that he sustained an injury to his right hand as a result of the July 26, 1995 incident.[14] Appellant was advised of the deficiency in this claim on August 22, 1995, and afforded the opportunity to provide supportive evidence, however, no medical evidence addressing whether any medical condition arose out of the incident of July 26, 1995, was submitted by appellant. Consequently, appellant has not submitted rationalized medical evidence, based on a complete history, explaining how and why his alleged medical condition was employment related.[15]

Furthermore, as indicated by the Office in its September 25, 1995 decision, the medical evidence submitted by the employing establishment, neither presented an awareness appellant's July 26, 1995 employment incident, gave a clear diagnosis or opinion, provided a history of appellant's preexisting condition, and/or incident, or otherwise provided a rationalized medical opinion based upon reasonable medical certainty, that there was a causal connection between appellant's right hand condition, the August 11, 1995 surgery and any specific workplace factors. For example, this medical evidence did not explain how or why the picking up of a hot bottom and the twisting of appellant's right hand caused or contributed to the presence or occurrence of a specific medical condition.[16] Therefore, these documents are insufficient to establish appellant's claim for benefits.

The decision of the Office of Workers' Compensation Programs dated September 25, 1995 is affirmed.

Dated, Washington, D.C.
March 12, 1998

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

[14] *See Victor J. Woodhams, supra* note 8.

[15] *Charles H. Tomasezewski*, 39 ECAB 461 (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 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

[16] *Id.*