U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JEFFREY O. DRESSLER and DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION HOSPITAL, Canandaigua, N.Y.

Docket No. 97-487; Submitted on the Record;
Issued October 9, 1998

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant met his burden of proof to establish that he sustained an injury to his lower back in the performance of duty.

On July 16, 1996 appellant, a 41-year-old housekeeping aid, filed a Form CA-1 claim based on traumatic injury, alleging that on July 9, 1996, he injured his lower/middle back while lifting chairs onto a desk in order to wax the floor.

Appellant subsequently submitted a Form CA-16 dated August 5, 1996 from Dr. Christopher K. Pollick, a specialist in family practice, who examined and treated appellant on July 10, 1996 for the alleged injuries resulting from the July 9, 1996 work incident. Dr. Pollick provided a brief history of the July 9, 1996 employment incident and stated that appellant suffered a lumbosacral strain, which he indicated was caused or aggravated by the employment activity described. Dr. Pollick placed appellant on total disability from July 10 to 23, 1996 and on partial disability from July 24 until August 5, 1996, during which time he restricted appellant from lifting more than 20 pounds and from repetitive bending and twisting activities. Dr. Pollick also submitted two medical form reports with notes dated July 10, 18, 24, August 20 and September 4, 1996,[1] in which Dr. Pollick indicated that appellant was disabled from his regular duties, but these do not provide a probative, rationalized medical opinion regarding whether appellant sustained an injury or disability on July 9, 1995 causally related to employment factors.

The employing establishment controverted the claim by letter dated August 7, 1996, asserting that appellant did not report the injury to his supervisor immediately after it occurred, had been denied leave for the period, for which he was subsequently off duty due to the alleged

[1] This note stated that appellant stated "he was moving furniture to clean floors. Had gradual onset of back pain, work next AM."

injury and submitted an inconsistent statement regarding the circumstances pertaining to the alleged injury.

In a letter to appellant dated August 26, 1996, the Office of Workers' Compensation Programs requested that appellant submit additional information in support of his claim, including a medical report and opinion from a physician, supported by medical reasons, as to how the reported work incident caused or aggravated the claimed injury, plus a diagnosis and clinical course of treatment for the injury. The Office specifically requested that appellant indicate why he did not report the injury when it allegedly occurred, to explain why he claimed that he suffered the injury, while waxing floors when he was not scheduled to do so at the time of the alleged injury, to indicate why he called his supervisor and requested the following Friday off and to explain why he reported a recurrence of disability when he first reported the injury to his supervisor and then informed personnel of a new injury when he was advised that he was not entitled to continuation of pay for a recurrence. The Office informed the employee that he had 30 days to submit the requested information.

By decision dated September 26, 1996, the Office denied appellant's claim on the grounds that the evidence of record failed to establish that appellant sustained the claimed injury in the performance of duty.

The Board finds that appellant did not meet his burden of proof to establish that he sustained an injury to his lower back in the performance of duty.

An employee seeking benefits under the Federal Employees' Compensation Act[2] has the burden of establishing that 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 timely filed within the applicable time limitation period 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.[3] 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.[4]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "fact of injury" has been established. 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.[5] Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.[6] The medical evidence required

[2] 5 U.S.C. §§ 8101-8193.

[3] *Joe Cameron*, 42 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[4] *Victor J. Woodhams*, 41 ECAB 345 (1989).

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

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

to establish causal relationship is usually rationalized medical 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 the 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, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[7]

In the present case, the Board initially finds that the Office erred in finding that appellant did not meet his *prima facie* burden of submitting sufficient evidence to establish that he experienced the employment incident at the time, place and in the manner alleged. As the Board has stated, an injury does not have to be confirmed by eyewitnesses in order to establish the fact that an employee sustained an injury in the performance of duty, but the employee's statements must be consistent with the surrounding facts and circumstances and his subsequent course of action. An employee has not met this burden when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim. However, an appellant's statement alleging that an injury occurred at a given time and manner is of great probative value and will stand unless refuted by the evidence.[8]

In the present case, although the employing establishment asserted that appellant was not scheduled to wax floors on July 9, 1996, the activity, in which he allegedly was engaged at the time of his alleged injury, it has presented no evidence or documentation indicating that this activity was not part of his regular duties as a maintenance worker. Further, there are no eyewitness accounts from co-workers to refute appellant's claim that he sustained an injury while in the course of his employment on July 9, 1996. Finally, appellant received medical attention and was treated by Dr. Pollick for a lumbar sprain on July 10, 1996, the day after the alleged employment incident and the history of injury he gave to Dr. Pollick is not inconsistent with that, which he indicated on his Form CA-1. Based on the above set of facts, therefore, the employing establishment has not met its burden to submit substantial evidence to rebut the presumption that the employee sustained an injury at the time, place and in the manner alleged.[9] The Office's finding in this regard is therefore reversed. However, the question of whether an employment incident caused a personal injury generally can be established only by medical evidence,[10] and appellant has not submitted rationalized, probative medical evidence to establish that the employment incident on July 9, 1996 caused a personal injury and resultant disability.

In the present case, the only medical evidence bearing on causal relationship is Form CA-16 of Dr. Pollick, which he signed on August 5, 1996, which merely provided a brief, one-sentence history of the incident and a one-sentence notation that appellant injured his lower back while moving furniture and cleaning floors at work and Dr. Pollick's five form reports dated

[7] *Id.*

[8] *See Erik J. Koke*, 42 ECAB 412 (1991);*Carmen Dickerson*, 36 ECAB 409 (1984).

[9] *Id.*

[10] *See John J. Carlone*, 41 ECAB 353 (1989).

July 10, 18, 24, August 20 and September 4, 1996. None of these reports provide a probative, rationalized medical opinion sufficient to establish that appellant sustained an injury or disability on July 9, 1996 causally related to employment factors.

An award of compensation may not be based on surmise, conjecture, or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that his condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship. Causal relationship must be established by rationalized medical opinion evidence. Appellant failed to submit such evidence and the Office therefore properly denied appellant's claim for compensation.

Dr. Pollick's form reports do not constitute sufficient medical evidence demonstrating a causal connection between appellant's July 9, 1996 fall and the claimed injury to his lumbar spine diagnosed on July 10, 1996. Causal relationship must be established by rationalized medical opinion evidence. Dr. Pollick's opinion on causal relationship is of limited probative value in that he did not provide adequate medical rationale in support of his conclusions.[11] He did not sufficiently describe or explain the medical process through, which the July 9, 1996 work accident would have been competent to cause the claimed injuries. Furthermore, the form report from Dr. Pollick that supported causal relationship with a checkmark is insufficient to establish the claim, as the Board has held that without further explanation or rationale, a checked box is not sufficient to establish causation.[12] Thus, the Office's decision is affirmed.[13]

Lastly, notwithstanding the Board's affirmance of the Office's September 26, 1996 decision denying benefits, the Board finds that appellant is still entitled to reimbursement for or payment of expenses incurred for medical treatment for the period July 17, 1996, the date the employing establishment official signed the Form CA-16, authorization for examination and/or treatment, to September 15, 1996, the date 60 days from the official's signature (as such authorization was not terminated before that period). By Form CA-16, authorization for examination and/or treatment, signed by an employing establishment official on July 17, 1996 the employing establishment authorized Dr. Pollick to provide medical care for a period of up to 60 days from that date. The employing establishment's authorization for appellant to obtain medical examination and/or treatment created a contractual obligation to pay for the cost of necessary medical treatment and emergency surgery regardless of the action taken on the claim.[14]

[11] *William C. Thomas*, 45 ECAB 591 (1994).

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

[13] The Board notes that the Office based its denial of benefits on its finding that appellant did not establish a *prima facie* case that he sustained an injury in the performance of duty and did not make a specific finding that appellant failed to submit probative, rationalized medical evidence in support of his claim. However, the Office informed appellant in its August 26, 1996 letter that in order to establish his entitlement to benefits he needed to submit a rationalized opinion of how his medical condition was the consequence of his activity at work on July 9, 1996 and it noted in its September 26, 1996 decision that appellant had failed to submit such evidence.

[14] *Robert F. Hamilton*, 41 ECAB 431 (1990); *Frederick J. Williams*, 35 ECAB 805 (1984); 20 C.F.R. § 10.403.

The decision of the Office of Workers' Compensation Programs dated September 26, 1996 is hereby affirmed as modified.

Dated, Washington, D.C.
October 9, 1998

George E. Rivers
Member

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member