U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KENNETH D. BREWER and U.S. POSTAL SERVICE,
POST OFFICE, Cincinnati, Ohio

Docket No. 97-1429; Submitted on the Record;
Issued August 5, 1999

DECISION and ORDER

Before MICHAEL J. WALSH, 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 in the performance of duty on April 6, 1996.[1]

On April 18, 1996 appellant, then a 39-year-old custodian, filed a notice of traumatic injury and claim for continuation of pay/compensation, Form CA-1, alleging that he sustained an injury to his neck in the performance of duty on April 6, 1996.[2] Appellant stated that he was lifting a trash container weighing approximately 50 pounds when he felt a sharp pain in his neck shooting down his left arm and resulting in numbness. Appellant first sought medical treatment 10 days later on April 16, 1996 and first reported the alleged incident to the employing establishment on April 18, 1996. The record shows that appellant stopped work due to the alleged incident on April 18, 1996 and returned to restricted work duties with no lifting, pushing, pulling, climbing or overhead work on April 22, 1996. The employing establishment controverted appellant's claim alleging that the April 6, 1996 incident was not reported until April 18, 1996 when appellant was to remain working and he requested annual leave until April 21, 1996. In a decision dated August 7, 1996, the Office of Workers' Compensation Programs denied appellant's claim for the reason that the evidence of file failed to demonstrate that the claimed condition or disability was causally related to the alleged injury of April 6, 1996. On September 9, 1996 appellant requested reconsideration and submitted additional evidence in support of his claim. In a merit decision dated October 28, 1996, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted in support of

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[1] Appellant had filed a notice of occupational disease claim (Form CA-2) under the claim number, A9-384229, which was approved for a cervical nerve root impingement syndrome. Appellant also filed a claim for loss of wage-earning capacity, as he had changed from the letter carrier craft to a custodian in the maintenance field for medical reasons. As appellant's occupational and wage-loss claims are not before the Board, they will not be addressed.

[2] Appellant had also filed a separate notice of recurrence of disability and claim for continuation of pay/compensation (Form CA-2a) dated March 13, 1996, associated with claim number, A9-384229, which allegedly began on January 31, 1996. This claim is not before the Board and will not be addressed.

the request for reconsideration was insufficient to warrant modification of the August 7, 1996 decision. Appellant again requested reconsideration and submitted additional evidence. In a second merit decision on reconsideration dated January 23, 1997, the Office again denied appellant's request for reconsideration for the reason that the evidence submitted in support of the request for reconsideration was insufficient to warrant modification of the Office's October 28, 1996 decision.

The Board finds that the case is not in posture for decision and must be remanded for further development of the record.

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 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.[4] 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.[5]

In order to determine whether a federal employee has 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.[6] 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, incident or exposure, the employee must submit rationalized medical opinion, based on a complete factual and medical background, supporting such a causal relationship.[7]

In the instant case, the Office 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 accepted trauma or exposure had not been supported by the medical evidence of file. To support the claim, appellant submitted the following: a medical report from the Northside Urgent Care Center dated April 16, 1996; an initial and revised report from the Mercy Occupational Health Center dated April 18, 1996 with various progress notes and forms ranging in dates from

[3] 5 U.S.C. §§ 8101-8193.

[4] *David J. Overfield*, 42 ECAB 718 (1991); *Victor J. Woodhams*, 41 ECAB 345 (1989). (The employee must submit, among other things, medical evidence establishing that the employment factors identified by the employee proximately caused the condition for which compensation is claimed).

[5] *Id.*

[6] *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

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

March 15 to April 22, 1996; a request for authorization for physical therapy and a magnetic resonance imaging (MRI) scan of the cervical spine and a MRI report dated May 22, 1996 from Dr. Amrit L. Chadha, a Board-certified neurologist; and three additional medical reports from Dr. Chadha dated June 4, August 12 and November 12, 1996.

Upon review of the aforementioned evidence, the Board notes that Dr. Chadha's medical report dated November 12, 1996 provides sufficient support for appellant's claim to require further development of the record. Dr. Chadha stated:

> "[Appellant] sustained an injury to his neck in 1993 after which he developed pain in his neck and left arm. He showed evidence of C6-7 radiculopathy at that time. He was treated and he showed improvement. He was doing fair until April of 1996 when he sustained another injury. He started to have severe pain in his neck and left shoulder again. A repeat MRI scan of the cervical spine was obtained which showed evidence of C6 disc bulge. In addition, he also showed disc bulging at C5 and 6 intervertebral disc level with flattening of the anterior contour of the thecal sac. This was a new finding, I think this happened from his second injury. We shall continue to treat him conservatively at this time with anti-inflammatory medications like Daypro and Darvocet on a p.r.n. basis."

While this medical report and other medical reports submitted by Dr. Chadha are insufficient to discharge appellant's burden of proof by proving by the weight of the reliable, substantial and probative evidence that appellant's current neck and arm condition is causally related to his employment-related injury of April 6, 1996, they constitute sufficient evidence as a whole to support appellant's claim and to require further development of the record by the Office. Although the employing establishment has challenged appellant's claim by alleging that appellant's injury occurred on April 6, 1996 and appellant did not file his traumatic injury claim Form CA-1, until April 18, 1996, there is no opposing evidence in the record on the issue of whether appellant's neck and arm condition is causally related to the April 6, 1996 federal employment injury.[8]

The Office should send the case record to an appropriate medical specialist with a request to evaluate the evidence and provide a rationalized opinion on the issue of whether appellant's diagnosed condition is causally related to appellant's accepted federal employment injury of April 6, 1996. If the specialist feels that further examination of appellant would be useful in such a determination, he should be authorized to perform such examination. The Office should then make a *de novo* decision based on the augmented record.

[8] *See also John J. Carlone*, 41 ECAB 354 (1989). The Board notes that in this case the record contains no medical opinion to the contrary to appellant's claim and further notes that the Office did not seek advice from an Office medical adviser or refer the case to an Office referral physician for a second opinion.

The decisions of the Office of Workers' Compensation Programs dated January 23, 1997, October 28 and August 7, 1996, are hereby set aside and the case is remanded to the Office for further proceedings consistent with this decision of the Board, to be followed by a *de novo* decision.

Dated, Washington, D.C.
August 5, 1999

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member