

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RICHARD A. SAMALONIS and U.S. POSTAL SERVICE,
POST OFFICE, Bellmawr, NJ

*Docket No. 97-868; Submitted on the Record;
Issued October 18, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
A. PETER KANJORSKI

The issues are: (1) whether appellant has met his burden of proof to establish that he sustained an injury while in the performance of duty; and (2) whether the Office of Workers' Compensation Programs properly determined that appellant abandoned his request for a hearing.

The Board has duly reviewed the case record in the present appeal and finds that appellant has failed to meet his burden of proof to establish that he sustained an injury while in the performance of duty.

On February 22, 1996 appellant, then a 49-year-old mailhandler, filed a claim for an occupational disease (Form CA-2) alleging that he developed conditions to his neck, lower back and both shoulders due to factors of his employment. He stated that he first became aware that his conditions were related to factors of his employment in December 1994 when the employing establishment decided to remove conveyor belts with automatic dumpers. Appellant's claim was accompanied by a Form CA-17 dated February 23, 1996, two return to work notes and a narrative statement from himself.

By letter dated April 4, 1996, the Office advised appellant that the evidence submitted was insufficient to establish his claim. The Office further advised appellant to submit medical evidence supportive of his claim.

In response, the Office received another narrative statement from appellant, a statement from the employing establishment, a March 25, 1996 medical report from a physical therapist and a Form CA-17 dated February 28, 1996.

By decision dated June 25, 1996, the Office found the evidence of record insufficient to demonstrate that the claimed condition(s) or disability were causally related to factors of appellant's employment.

An employee seeking benefits under the Federal Employees' Compensation Act¹ 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 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.² 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.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 In this case, appellant has alleged that his conditions resulted from the employing establishment's 1994 decision to remove the conveyor belt with an automatic dumper. Appellant has alleged that the manner in which he now works requires repetitive bending at the waist to lift bundles of mail out of a bin. The Office accepted that the incident occurred at the time, place and in the manner alleged. The Board finds that the evidence of record supports that the incident occurred, as alleged.

The second component is whether the employment incident caused a personal injury and generally can be established by only 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 the present case, appellant has submitted no rationalized medical evidence establishing that his condition(s) complained of are causally related to his employment.

In support of his claim, appellant submitted a CA-17 form dated February 23, 1996 which diagnosed muscle strain and a CA-17 form dated February 28, 1996 which diagnosed lumbosacral strain and tendinitis and two return to work notes. This documentation, however, is insufficient to establish appellant's burden inasmuch as the CA-17 forms and return to work notes did not contain a history of injury, note any objective or subjective findings used to make a determination, and did not address a causal relationship between appellant's conditions and his factors of employment.

¹ 5 U.S.C. §§ 8101-8193.

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

³ *Daniel J. Overfield*, 42 ECAB 718 (1991).

⁴ *Elaine Pendleton*, *supra* note 2.

⁵ *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

Appellant also submitted a March 25, 1996 medical report from a physical therapist speculating that there was a possible causal relationship between appellant's job requirements and his physical condition. The physical therapist stated that repetitive bending at the waist, especially while lifting, would put increased stress on the low back and shoulders. As a physical therapist is not a physician, for the purposes of the Act, this report does not constitute probative medical evidence and is not sufficient to establish disability causally related to appellant's employment.⁶

Because appellant has failed to submit a rationalized medical report based on a complete, and accurate factual and medical background explaining why his conditions were sustained in the performance of duty, appellant has failed to meet his burden.

The Board further finds that the Office properly determined that appellant abandoned his request for a hearing.

Section 8124(b) of the Act provides claimants a right to a hearing if they request it within 30 days of an Office decision.⁷ Section 10.137 of Title 20 of the Code of Federal Regulations pertaining to postponement, withdrawal or abandonment of a hearing request states in relevant part:

“A scheduled hearing may be postponed or cancelled at the option of the Office, or upon written request of the claimant if the request is received by the Office at least three days prior to the scheduled date of the hearing and good cause for the postponement is shown. The unexcused failure of a claimant to appear at a hearing or late notice may result in the assessment of costs against such claimant.”

* * *

“A claimant who fails to appear at a scheduled hearing may request in writing within 10 days after the date set for the hearing that another hearing be scheduled. Where good cause for failure to appear is shown, another hearing will be scheduled. The failure of the claimant to request another hearing within 10 days, or the failure of the claimant to appear at the second scheduled hearing without good cause shown, shall constitute abandonment of the request for a hearing.”⁸

In the present case, by letter dated July 11, 1996, appellant requested a hearing before an Office representative in connection with the Office's June 25, 1996 decision. By notice dated October 11, 1996, the Office advised appellant of the time and place of a hearing scheduled for

⁶ Physical therapists are not physicians under the Act and are not qualified to provide the necessary medical evidence to meet appellant's burden of proof. *Jane A. White*, 34 ECAB 515, 518-19 (1983). Section 8101(2) provides that the term “physician” includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners.

⁷ 5 U.S.C. § 8124(b).

⁸ 20 C.F.R. § 10.137(c).

November 18, 1996. In letters received by the Office on October 15 and 25, 1996, appellant requested that the location of the hearing be moved from Philadelphia to New Jersey. Appellant stated that he suffers from post-traumatic stress syndrome and that he fears for his life in Philadelphia. In a letter dated October 28, 1996, the Office hearing representative denied appellant's request to reschedule the hearing to a location in New Jersey. Appellant failed to appear for the hearing. By decision dated December 2, 1996, the Office determined that appellant abandoned his request for a hearing.

Appellant did not request postponement at least three days prior to the scheduled date of the hearing. Nor did he request within 10 days after the scheduled date of the hearing that another hearing be scheduled. The Board accordingly finds that the Office properly held that appellant had abandoned his request for a hearing in this case.

The decisions of the Office of Workers' Compensation Programs dated December 2 and June 25, 1996 are affirmed.

Dated, Washington, D.C.
October 18, 1999

Michael J. Walsh
Chairman

George E. Rivers
Member

A. Peter Kanjorski
Alternate Member