U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BRYAN A. WILLIAMS and U.S. POSTAL SERVICE,
POST OFFICE, New Orleans, LA

Docket No. 99-91; Submitted on the Record;
Issued April 13, 2000

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether appellant sustained an injury to his back in the performance of duty.

On March 24, 1997 appellant filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1) alleging that he injured his back in the culling unit when he lifted a full tray of mail.

In a March 24, 1997 emergency room report by Dr. Gholamreza Malek a Board-certified diagnostic radiologist, diagnosed back pain and noted that appellant injured his back while picking up heavy boxes at work. Dr. Malek noted that a lumbar x-ray showed "no acute findings" and no evidence of any recent injury.

In treatment notes dated March 27, 1997, Dr. Anna Gonzaba noted that appellant injured himself at work on March 24, 1997 when he lifted a box weighing about 60 pounds. Dr. Gonzaba noted that appellant had back surgery in 1992 and was restricted to lifting 25 to 50 pounds.

In a report dated April 8, 1997, Dr. Gonzaba diagnosed back pain with a history of prior back surgery. Dr. Gonzaba noted:

> "[Appellant] presented himself to the Occupational Medicine Clinic after sustaining a back injury for lifting a box weighing approximately 60 pounds. He felt a pull in his lower back, neck and shoulders and began to experience pain in his leg. He has had previous back surgery in 1992 and is currently under restrictions and limitations 20 [to] 25 pounds, however, they appeared to have not been met according to the [appellant]."

On physical examination, Dr. Gonzaba noted that appellant's range of motion was limited in his back on extension and flexion. She further noted that appellant "presented to the Occupational Medicine Clinic after sustaining a back injury for lifting a box weighing

approximately 60 pounds." Lastly, Dr. Gonzaba indicated that appellant had been "placed on a not fit for duty status."

By letter dated April 9, 1997, the employing establishment contested the claim and submitted an April 4, 1997 statement by appellant's supervisor indicating that appellant had disappeared from the work area during the time the injury had allegedly occurred.

By letter dated April 25, 1997, the Office of Workers' Compensation Programs informed appellant that evidence submitted was insufficient to support his claim and advised him as to the type of evidence required.

By decision dated June 16, 1997, the Office found the evidence insufficient to establish fact of injury. Specifically, the Office determined that the inconsistencies in the claim cast doubt as to whether appellant had injured himself in the performance of duty.

In a June 3, 1997 report, Dr. Kenneth N. Adatto, an attending Board-certified orthopedic surgeon, opined that appellant was totally disabled through June 16, 1997. Dr. Adatto noted that appellant tried to work four hours per day and has not done well with this. On physical examination, he noted "spasm at stress only" and limited motion in appellant's cervical spine.

By letter dated July 1, 1997, appellant requested an oral hearing before an Office hearings representative and a hearing was held on June 10, 1998.

By decision dated August 7, 1998, the Office hearing representative found that the incident had occurred as alleged, but found that the medical evidence was insufficient to establish that the employment incident resulted in an injury. The hearing representative specifically noted that none of the medical evidence provided any opinion relating appellant's disability to the alleged injury.

The Board finds that this case is not in posture for decision and requires further development of the medical evidence.

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 timely filed within the applicable time limitation 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 essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[3]

[1] 5 U.S.C. §§ 8101-8193.

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

[3] *Delores C. Ellyett*, 41 ECAB 992 (1990); *Victor J. Woodhams*, 41 ECAB 345 (1989).

In order to determine whether an employee has sustained a traumatic injury in the performance of duty, the Office begins with an analysis of whether a "fact of injury" has been established. There are two components involved in establishing fact of injury, which must be considered. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident at the time, place and in the manner alleged.[4] Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused personal injury.[5] The medical evidence required to establish causal relationship, generally, is rationalized medical opinion evidence.

In this case, the Office hearing representative found that the March 24, 1997 incident described by appellant occurred, *i.e.*, appellant lifted a heavy box weighing approximately 60 pounds. Further, the medical evidence is generally supportive of appellant's allegations.

In his June 4, 1997 report, Dr. Adatto diagnosed cervical/lumbar disc and total disability for the period June 3 through June 16, 1997. However, he fails to mention appellant's March 24, 1997 employment incident. In his March 24, 1997 emergency room report, Dr. Malek diagnosed back pain and noted that appellant had injured his back at work when he lifted some heavy boxes. Dr. Gonzaba, in an April 8, 1997 report, noted that appellant had injured his back at work while lifting a box weighing approximately 60 pounds and placed appellant on "not fit for duty status." The Board notes that no medical evidence contradicts the reports of Drs. Malek and Gonzaba that appellant sustained a back injury while picking up a heavy box. While the evidence is insufficient to meet appellant's burden of proof it is sufficient to require further development. Therefore, the Board notes that the reports of Drs. Malek and Gonzaba constitute an uncontroverted inference of causal relationship.[6]

On remand, the Office shall prepare a statement of accepted facts, which shall include a description of the March 24, 1997 incident and appellant's employment duties, the dates and types of treatment afforded appellant for his back condition and pertinent information from the 1997 claim record. The Office shall then submit the statement of accepted facts, together with appellant's medical records, to an appropriate Board-certified specialist for an examination and a reasoned medical opinion on whether the March 24, 1997 lifting incident aggravated his underlying condition and, if so, whether such aggravation was temporary or permanent. Following such further development as it deems necessary, the Office shall issue a *de novo* decision.

The August 7, 1998 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision.

Dated, Washington, D.C.
April 13, 2000

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

[5] *Id.*

[6] *See Udella Billups*, 41 ECAB 260, 269 (1989).

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member