U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of FERNANDO L. RIVERA and U.S. POSTAL SERVICE,
POST OFFICE, San Juan, PR

Docket No. 99-781; Submitted on the Record;
Issued April 25, 2000

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant met his burden of proof to establish that he sustained an injury in the performance of duty on July 9, 1997.

The Board finds that appellant did not meet his burden of proof to establish that he sustained an injury in the performance of duty on July 9, 1997.

An employee seeking benefits under the Federal Employees' Compensation Act[1] has the burden of establishing the essential elements of his 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 compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[3]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the "fact of injury" has been established. There are two components involved in establishing the fact of injury. 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

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[1] 5 U.S.C. §§ 8101-8193.

[2] *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[3] *Delores C. Ellyett*, 41 ECAB 992, 998-99 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-27 (1990).

[4] *Julie B. Hawkins*, 38 ECAB 393, 396 (1987); *see* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.2(a) (June 1995).

submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.[5] The term "injury" as defined by the Act, refers to some physical or mental condition caused by either trauma or by continued or repeated exposure to, or contact with, certain factors, elements or conditions.[6]

On September 30, 1997 appellant, then a 36-year-old letter carrier, filed a claim alleging that on July 9, 1997 he sustained a herniated disc at L4-5 when he misjudged the depth of a step as he was walking down stairs at work. Appellant stopped work on September 30, 1997.[7] By decision dated December 1, 1997, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that he did not submit sufficient medical evidence to establish that he sustained an injury due to the accepted July 9, 1997 employment incident.

The Board finds that appellant did not submit sufficient medical evidence to establish that he sustained a July 9, 1997 employment injury.

In support of his claim, appellant submitted an August 11, 1997 report in which Dr. Jose Suarez-Alvarez, an attending Board-certified orthopedic surgeon, indicated that he had a low back problem with a suspected herniated disc at L4-5. Dr. Suarez-Alvarez indicated that appellant had problems with his right ankle, which had been fractured several years prior, and his right knee. In reports dated September 29, 1997, Dr. Suarez-Alvarez described appellant's back, knee and ankle problems and indicated that he had a herniated disc at L4-5 as established by diagnostic testing. The record contains other medical evidence concerning appellant's medical treatment between 1993 and 1997.[8]

These reports, however, are of limited probative value on the relevant issue of the present case in that they do not contain an opinion on causal relationship.[9] None of the medical reports contain any mention of the July 9, 1997 employment incident or any opinion that appellant sustained an injury due to an employment factor. The record does not contain a rationalized medical opinion relating appellant's claimed condition to the July 9, 1997 employment incident and therefore the Office properly denied appellant's claim.[10]

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[5] *John J. Carlone*, 41 ECAB 354, 356-57 (1989); *see* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.2(a) (June 1995).

[6] *Elaine Pendleton, supra* note 2; 20 C.F.R. § 10.5(a)(14).

[7] Appellant indicated on the claim form that his claim was filed on July 10, 1997, but other evidence of record shows that it was filed on September 30, 1997.

[8] In October 1997, appellant underwent surgical decompression for a right ankle impingement.

[9] *See Charles H. Tomaszewski*, 39 ECAB 461, 467-68 (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).

[10] Such medical rationale would be especially necessary because the record contains medical evidence which shows that appellant had problems at L4 since at least 1994.

The decision of the Office of Workers' Compensation Programs dated December 1, 1997 is affirmed.

Dated, Washington, D.C.
April 25, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member