U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DANIEL A. REGAS and U.S. POSTAL SERVICE,
POST OFFCIE, Kankakee, IL

Docket No. 98-2076; Submitted on the Record;
Issued January 6, 2000

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has met his burden of proof in establishing that he sustained an injury on or about February 10, 1996 as alleged.

On February 10, 1996 appellant, then a 39-year-old mail carrier, filed an occupational disease claim, alleging that he sustained injuries to his left side, buttocks and left leg that gradually became worse depending on the length of time he stood while sorting mail. In a supplemental statement, appellant noted that he had several prior similar injuries involving sciatica which were work related. In a decision dated October 9, 1996, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that the evidence of record did not establish that an injury had been sustained as alleged. By merit decisions dated January 28, 1997 and March 9, 1998, the Office denied appellant's requests for reconsideration on the grounds that the evidence was not sufficient to establish a basis for modifying the prior decision.

The Board has duly reviewed the case record on appeal and finds that appellant has not established that he sustained an injury as alleged.

A person who claims benefits under the Federal Employees' Compensation Act[1] has the burden of establishing the essential elements of his claim, including that he sustained an injury while in the performance of duty and that he had disability as a result.[2] In accordance with the Federal (FECA) Procedure Manual, in order to determine whether an employee actually sustained an injury in the performance of his duty, the Office begins with the analysis of whether "fact of injury" has been established. Generally, "fact of injury" consists of two components which must be considered one in conjunction with the other. The first component to be established is that the employee actually experienced the employment incident or exposure

[1] 5 U.S.C. §§ 8101-8193.

[2] *Daniel R. Hickman*, 34 ECAB 1220 (1983); *see* 20 C.F.R. § 10.110(a).

which is alleged to have occurred.[3] In order to meet his burden of proof to establish the fact that he sustained an injury in the performance of duty, an employee must submit sufficient evidence to establish that he actually experienced the employment injury or exposure at the time, place and in the manner alleged. The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.[4] The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon complete factual and medical background, showing a causal relationship between the claimed condition and the identified factors.[5] The belief of claimant that a condition was caused or aggravated by the employment is not sufficient to establish a causal relationship.[6]

In the present case, the Office initially determined that appellant has not established either component of the two prong fact of injury test. However, in its decision dated January 28, 1997, the Office found that appellant has established that the incidents of employment occurred as alleged. Therefore, appellant satisfied the first component of the fact of injury test. Nonetheless, as indicated above, to establish an injury appellant must also demonstrate that the identified employment incident or activity caused a personal injury. Appellant has not provided sufficient medical evidence to discharge his burden of proof. Appellant urges that his conditions are related to past back injuries and submitted copies of his prior claims together with medical evidence verifying these prior injuries. However, appellant has not submitted documentation establishing that any of these prior injuries were accepted as work related. Moreover, a review of the medical evidence contemporaneous with his occupational disease claim reveals that, although appellant was diagnosed with lumbar radiculitis, lumbar strain and left acute sciatica spasm, none of the physicians related the diagnosed conditions to factors of appellant's federal employment. A magnetic resonance imaging scan revealed a mild posterior disc bulging particularly at the L5 to S1 level with no specific evidence of disc herniation or spinal stenosis. While one medical report indicates that appellant believed his condition was causally related to an injury five years prior, the doctor did not express an opinion either supporting or rejecting appellant's belief. The only other medical report of record to discuss causation is by Dr. Ronald Michael, an internist, who diagnosed nonspecific lumbar radiculitis perhaps from the small disc bulge. Thus, as none of the medical evidence of record indicates that appellant sustained a personal injury caused by the identified employment factors, appellant has not established that he sustained an injury as alleged.

[3] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803(2)(a) (June 1995).

[4] *John J. Carlone*, 41 ECAB 354 (1989); *see* 5 U.S.C. § 8101(5) ("injury" defined); 20 C.F.R. §§ 10.5(a)(15), 10.5(a)(16) ("traumatic injury" and "occupational disease" defined).

[5] *Lourdes Harris*, 45 ECAB 545 (1994); *see Walter D. Morehead*, 31 ECAB 188 (1979).

[6] *Manuel Garcia*, 37 ECAB 767 (1986).

The decision of the Office of Workers' Compensation Programs dated March 9, 1998 is hereby affirmed.

Dated, Washington, D.C.
January 6, 2000

David S. Gerson
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member