U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RUFUS RICHARDSON and U.S. POSTAL SERVICE, POST OFFICE, Atlanta, GA

Docket No. 98-2537; Submitted on the Record;
Issued June 6, 2000

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS, WILLIE T.C. THOMAS

The issue is whether appellant has met his burden of proof in establishing that he sustained an injury in the performance of duty on March 29, 1998.

The Board has reviewed the case record in the present appeal and finds that the Office of Workers' Compensation Programs properly determined that appellant failed to meet his burden of proof in establishing that he sustained an injury in the performance of duty on March 29, 1998, as alleged.

On March 29, 1998 appellant, a 36-year-old tractor trailer operator, filed a claim for a traumatic injury (Form CA-1) alleging that, on that date, he sustained an injury to his neck when a "private vehicle" struck his "postal vehicle." He stopped working that day and returned on March 31, 1998 after using "one day" of leave.

By decision dated July 15, 1998, the Office denied his claim, finding that, although the evidence of record established that he "actually experienced the claimed accident," he failed to submit medical evidence establishing that a condition was diagnosed in connection therewith. Therefore, he did not demonstrate that he sustained an injury within the meaning of the Federal Employees' Compensation Act.[1]

An employee seeking benefits under the Act 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]

[1] 5 U.S.C. §§ 8101-8193.

[2] *Elaine Pendleton*, 40 ECAB 1143 (1989); *see also Daniel R. Hickman*, 34 ECAB 1220 (1983).

There is no dispute that appellant is an employee within the meaning of the Act, that his claim was timely filed and that the March 29, 1998 incident occurred as alleged, *i.e.*, that the postal vehicle he was operating was struck by a "private vehicle." However, he has not submitted any medical evidence to establish that he sustained a neck injury as a result of the employment incident.

In a June 11, 1998 letter, the Office advised appellant that the information he submitted was insufficient to establish that he sustained an injury on March 29, 1998, as alleged. Therefore, it requested that he provide factual and medical evidence supportive of his claim. Among other things, the Office requested that appellant submit rationalized medical evidence explaining how the employment incident of March 29, 1998 caused or aggravated his claimed neck condition. The Office allotted appellant 30 days within which to provide the requested information. Appellant did not respond within the time allotted.

Appellant has not submitted any medical evidence to establish that he sustained an injury/condition to his neck in the performance of duty on March 29, 1998, as alleged. As such, he has failed to meet his burden of proof and the Office properly denied his claim.

The decision of the Office of Workers' Compensation Programs dated July 15, 1998 is hereby affirmed.[3]

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

Michael J. Walsh
Chairman

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

[3] On appeal appellant submitted additional evidence which was not before the Office at the time it issued its July 15, 1998 decision. However, pursuant to section 501.2(c) of its *Rules of Procedure* (20 C.F.R. § 501.2(c)), the Board may not for the first time on appeal review evidence that was not before the Office at the time it issued its final decision. Appellant may resubmit this evidence to the Jacksonville, Florida district Office, together with a written request for reconsideration pursuant to 20 C.F.R. §§ 10.606 and 10.607.