U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LOUIS M. RUFOLO and U.S. POSTAL SERVICE,
POST OFFICE, West Palm Beach, FL

Docket No. 99-2292; Submitted on the Record;
Issued November 21, 2000

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
PRISCILLA ANNE SCHWAB

The issues are: (1) whether appellant sustained an injury in the performance of duty on August 4, 1997; and (2) whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's case for a merit review under 20 C.F.R. § 10.608.

On August 5, 1997 appellant, a 47-year-old mailhandler, filed a notice of traumatic injury and claim for compensation (Form CA-1) alleging that he sustained an injury to his lower back while in the performance of duty on August 4, 1997. He stated that his injury occurred when a coworker approached him from behind and lifted him off his feet.

The Office initially denied the claim based on its determination that the August 4, 1997 incident involved horseplay and, therefore, appellant's claimed injury did not occur in the performance of duty. In a decision dated October 6, 1998 and finalized on October 8, 1998, an Office hearing representative affirmed the earlier denial of benefits, on different grounds. While the hearing representative found that appellant was not involved in horseplay on August 4, 1997, he nonetheless denied the claim on the basis that the medical evidence of record was insufficient to establish that appellant sustained an injury as a result of the August 4, 1997 employment incident.

On February 8, 1999 appellant filed a request for reconsideration, which the Office denied on April 2, 1999 without reviewing the merits of appellant's claim. He filed a timely appeal with the Board on July 2, 1999.[1]

The Board has duly reviewed the case record on appeal and finds that the case is not in posture for decision.

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[1] Appellant submitted additional evidence on appeal. Inasmuch as the Board's review is limited to the evidence of record that was before the Office at the time of its final decision, the Board cannot consider appellant's newly submitted evidence. 20 C.F.R. § 501.2(c).

In order to determine whether an employee sustained a traumatic 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 that must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident that is alleged to have occurred.[2] The second component is whether the employment incident caused a personal injury.[3] In this case, the Office accepted that appellant actually experienced the August 4, 1997 employment incident. The question is whether the accepted employment incident caused a personal injury.

The day following his injury, appellant was seen in the emergency department of the Columbia JFK Medical Center. The examining physician, Dr. James D. Goodwin, III, noted the following history of injury: "work mate lifting [appellant] last [evening and] strained back." He reported findings of "local pain, no radiculopathy," which he attributed to the history of injury appellant provided. Additionally, Dr. Goodwin placed appellant on modified duty and referred appellant for an orthopedic evaluation.

Dr. H. Donald Lambe, a Board-certified orthopedic surgeon, subsequently examined appellant on September 12, 1997 and diagnosed lumbar sprain. He advised appellant to continue to work in a sedentary, light-duty capacity. In a report dated October 10, 1997, Dr. Lambe described the treatment he provided appellant over the prior four-week period and expressed the opinion that appellant's current low back condition was related to his August 4, 1997 injury.

Proceedings under the Federal Employees' Compensation Act are not adversarial in nature, nor is the Office a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence to see that justice is done.[4] Although the reports of Drs. Goodwin and Lambe do not contain sufficient rationale to discharge appellant's burden of proving by the weight of the reliable, substantial and probative evidence that his current back condition is causally related to the accepted August 4, 1997 employment incident, they raise an uncontroverted inference of causal relationship sufficient to require further development of the case record by the Office.[5]

On remand the Office should refer appellant, the case record and a statement of accepted facts to an appropriate medical specialist for an evaluation and a rationalized medical opinion on whether appellant's current back condition is causally related to the accepted employment incident of August 4, 1997. After such further development of the case record as the Office deems necessary, a *de novo* decision shall be issued.

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

[3] *John J. Carlone*, 41 ECAB 354 (1989).

[4] *William J. Cantrell*, 34 ECAB 1223 (1983).

[5] *See John J. Carlone*, *supra* note 3; *Horace Langhorne*, 29 ECAB 820 (1978).

The decisions of the Office of Workers' Compensation Programs dated April 2, 1999[6] and October 8, 1998 are hereby set aside, and the case is remanded for further proceedings consistent with this opinion.

Dated, Washington, DC
November 21, 2000

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member

Priscilla Anne Schwab
Alternate Member

[6] Given the Board's disposition of the merit issue in the present case, it is not necessary for the Board to specifically address the nonmerit issue of whether the Office, by decision dated April 2, 1999, properly denied appellant's February 8, 1999 request for reconsideration.