U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of EDWARD J. KELLY and U.S. POSTAL SERVICE,
POST OFFICE, Media, PA

Docket No. 00-496; Submitted on the Record;
Issued January 25, 2001

DECISION and ORDER

Before MICHAEL E. GROOM, A. PETER KANJORSKI,
VALERIE D. EVANS-HARRELL

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 17, 1999, as alleged.

On April 17, 1999 appellant, then a 62-year-old letter carrier, filed a notice of traumatic injury (Form CA-1) alleging that, on March 17, 1999, while taking a tray out of a hamper to load onto a truck he injured his back. On the reverse side of the form, the employing establishment stated that appellant stopped work on March 17, 1999 and returned to work March 19, 1999.

The employing establishment submitted an authorization for medical attention form indicating appellant was seen in the health unit on March 17, 1999 due to "hurt back lifting tray of flats out of hamper" and was returned to duty on March 18, 1999 with restrictions for five days; a March 17, 1999 medical report form from an occupational health center, signed by a physician's assistant, diagnosing acute low back strain and returning appellant to work on March 18, 1999 with restrictions; and a March 22, 1999 medical report form from the occupational health center, signed by a physician's assistant, indicating appellant was returned to full duty that day.

By letter dated May 17, 1999, the Office of Worker's Compensation Programs requested detailed factual and medical information from appellant. Specifically, a statement explaining why he did not report the injury within 30 days, a description of how the injury occurred and a completed attending physician's report, Form CA-20, from the private physician who examined him as a result of the injury. Appellant did not respond.

By decision dated June 24, 1999, the Office denied appellant's claim for failure to establish fact of injury. The Office found that there were inconsistencies and discrepancies in the case regarding whether or not the claimed event, incident occurred at the time, place and in the manner alleged. The Office also found that the medical evidence failed to demonstrate that appellant sustained an injury as the result of the alleged incident.

By an undated letter received on July 22, 1999, appellant requested reconsideration of the June 24, 1999 decision. In support of the request for reconsideration, appellant submitted the receipt of notice of injury section of the CA-1 form signed by appellant's supervisor on April 17, 1999 indicating the date of injury as March 17, 1999; and a statement by another supervisor stating that appellant was injured on March 17, 1999 and that a member of the hospital staff indicated an incorrect injury date when processing the paperwork.

By decision dated July 27, 1999, the Office, after reviewing the case on its merits, denied appellant's request for reconsideration finding that the evidence of record was insufficient to warrant modification of the prior decision.

The Board finds that appellant has failed to establish that he sustained an injury in the performance of duty on March 17, 1999, as alleged.

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 filed within the applicable time limitations of the Act.[2] An individual seeking disability compensation must also establish that an injury was sustained at the time, place and in the manner alleged,[3] that the injury was sustained while in the performance of duty,[4] and that the disabling condition for which compensation is claimed was caused or aggravated by the individual's employment.[5] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.[6]

In order to determine whether an employee actually sustained an 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 which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.[7] In this case, the Office found that there were such inconsistencies in the evidence as to cast doubt that the incident occurred as alleged. Appellant has consistently maintained that on March 17, 1999 while performing his duties as a letter carrier, *i.e.*, taking a tray of mail out of a hamper to load onto a truck, he injured his back. The record supports that appellant was in the performance of his duties on March 17, 1999 and was seen in the health unit by a physician's assistant on that

[1] 5 U.S.C. §§ 8101-8193.

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

[3] *Robert A. Gregory*, 40 ECAB 478 (1989).

[4] *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[5] *Steven R. Piper*, 39 ECAB 312 (1987).

[6] *David J. Overfield*, 42 ECAB 718 (1991); *Victor J. Woodhams*, 41 ECAB 345 (1989).

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

day for complaints of back pain. The employing establishment acknowledged that the incident occurred on March 17, 1999. Therefore, the Board finds that appellant has established that the incident occurred on March 17, 1999, as alleged.

The second component of fact of jury is whether the employment incident caused a personal injury and generally can be established only by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability, claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.[8]

In this case, there is no rationalized medical opinion supporting that the March 17, 1999 incident resulted in a personal injury. The only evidence submitted was an authorization for medical attention form signed by a physician's assistant indicating appellant was seen in the health unit on March 17, 1999 due to "hurt back lifting tray of flats out of hamper" and was returned to duty on March 18, 1999 with restrictions for five days; a March 17, 1999 medical report form from an occupational health center, signed by a physician's assistant, diagnosing acute low back strain, and returning appellant to work on March 18, 1999 with restrictions; and a March 22, 1999 medical report form from an occupational health center, signed by a physician's assistant, indicating appellant was returned to full duty that day. None of the medical evidence was from a physician as defined under the Act and; therefore, is not considered competent medical evidence under the Act.[9] The evidence submitted is insufficient to establish appellant's claim.

By letter dated May 17, 1999, the Office advised appellant of the type of medical evidence needed to support his claim, but appellant failed to provide such evidence. The Board finds that appellant has failed to meet his burden of proof in establishing that he sustained a injury to his back in the performance of duty on March 17, 1999, as alleged.

[8] *Kathryn Haggerty*, 45 ECAB 383 (1994), *see* 20 C.F.R. § 10.110(a).

[9] A physician's assistant does not meet the definition of a physician under the Act. 5 U.S.C. § 8101(2); *see Shelia Arbour* (*Victor E. Arbour*) 43 ECAB 779 (1992).

The decisions of the Office of Workers' Compensation Programs dated July 27 and June 24, 1999 are affirmed as modified.[10]

Dated, Washington, DC
January 25, 2001

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

Valerie D. Evans-Harrell
Alternate Member

[10] The Board notes that appellant filed a claim for recurrence of disability (Form CA-2a) on September 14, 1999. On October 5, 1999 the Office advised appellant that his recurrence of disability claim could not be developed because his original claim for a March 17, 1999 injury had been denied. A recurrence of disability is defined as a spontaneous return or increase of disability due to a previous injury or occupational disease without intervening cause. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences,* Chapter 2.1500.3(b)(1) (January 1995).