U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KENNETH F. DELANOY and DEPARTMENT OF THE AIR FORCE, FAIRCHILD AIR FORCE BASE, WA

Docket No. 00-1050; Submitted on the Record;
Issued May 2, 2001

DECISION and ORDER

Before WILLIE T.C. THOMAS, A. PETER KANJORSKI,
VALERIE D. EVANS-HARRELL

The issue is whether appellant has met his burden of proof to establish that he sustained an injury in the performance of duty.

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

On October 15, 1996 appellant, then a 60-year-old heavy equipment mechanic, filed a traumatic injury claim (Form CA-1) assigned number A14-0319942 alleging that on October 10, 1996 he experienced serious pain in his left knee while backing down a work stand. Appellant stated that he missed the bottom step with his left foot and almost fell down severely twisting his left knee. Appellant did not stop work.

The Office of Workers' Compensation Programs accepted appellant's claim as a no lost time case and administratively closed his case.

Subsequently, appellant filed a claim (Form CA-7) for a schedule award and the Office developed appellant's traumatic injury claim.

By letter dated September 21, 1998, the Office advised appellant to submit factual and medical evidence supportive of his claim. In response, appellant submitted factual and medical evidence by letter dated September 29, 1998.

In a decision dated November 5, 1998, the Office found the evidence of record sufficient to establish that appellant experienced the claimed accident, but insufficient to establish that he sustained a condition caused by the accident.

In a November 27, 1998 letter, appellant requested an oral hearing. Subsequently, appellant requested a review of the written record in response to the Office's April 5, 1999 letter

to his congressman indicating that a hearing could not be scheduled in the city where the employing establishment is located.

By decision dated September 15, 1999, the hearing representative affirmed the Office's November 5, 1998 decision.

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 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 and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[3]

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.[4] In this case, the Office accepted that appellant experienced the claimed accident as alleged. The Board finds that the evidence of record supports this incident.

The second component 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.[5] Although the Board has found that appellant experienced the incident as alleged, the case is not in posture for decision with respect to the second component, specifically, whether appellant sustained an injury or any disability as a result of the October 10, 1996 employment incident. In the instant case, appellant submitted a November 23, 1998 medical report of Dr. Steven M. Sanwick, a Board-certified orthopedic surgeon and his treating physician. In this report, Dr. Sanwick indicated that he had been treating appellant for a progressive problem with his left knee. He provided a history of appellant's left knee problems including, knee surgery in 1992, a reinjury in 1995 and the

[1] 5 U.S.C. §§ 8101-8193.

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

[3] *Daniel J. Overfield*, 42 ECAB 718 (1991).

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

[5] 20 C.F.R. § 10.110(a); *see John M. Tornello*, 35 ECAB 234 (1983).

October 10, 1996 employment incident. Dr. Sanwick noted that he had been following appellant for a progressive left knee problem since the October 10, 1996 injury. He opined:

> "I think this [appellant], at the time of the October 10, 1996 injury, almost certainly did have some early moderate degenerative arthritis of the medial compartment of his left knee but it is my opinion that on a more probable basis than not, the injury of October 10, 1996 significantly aggravated this preexisting condition."

The probative value of Dr. Sanwick's opinion is diminished because it is speculative as to whether the October 10, 1996 employment incident aggravated appellant's preexisting left knee condition.[6]

Proceedings under the 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.[7] Although Dr. Sanwick's report is insufficient to discharge appellant's burden of proving by the weight of the reliable, substantial and probative evidence that his left knee condition was aggravated by the October 10, 1996 employment incident, it raises an uncontroverted inference of causal relationship sufficient to require further development of the case record by the Office.[8]

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 left knee condition was aggravated by the accepted employment incident of October 10, 1996. After such development of the case record as the Office deems necessary, a *de novo* decision shall by issued.

[6] *See Jennifer Beville*, 33 ECAB 1970 (1982); *Leonard J. O'Keefe*, 14 ECAB 42 (1962).

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

[8] *See John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

The decision of the Office of Workers' Compensation Programs dated September 15, 1999 is hereby set aside and the case is remanded for further proceedings consistent with this opinion.

Dated, Washington, DC
May 2, 2001

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member

Valerie D. Evans-Harrell
Alternate Member