U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RICHARD CARDOZA and U.S. CUSTOMS SERVICE, OFFICE OF INVESTIGATION, El Paso, TX

Docket No. 02-1889; Submitted on the Record;
Issued December 18, 2002

DECISION and ORDER

Before MICHAEL J. WALSH, COLLEEN DUFFY KIKO, A. PETER KANJORSKI

The issue is whether appellant has established that he sustained an injury to his head in the performance of duty.

On February 25, 2002 appellant, then a 39-year-old special agent, filed a notice of traumatic injury and claim for continuation of pay/compensation, Form CA-1, alleging that, on February 21, 2002, while in the course of his employment, he was involved in a motor vehicle accident, resulting in appellant receiving a bump on the right side of his head and a tender elbow. On the reverse of the form, appellant's supervisor noted that appellant was injured in the performance of duty, but did not indicate if appellant stopped working.

In a March 5, 2002 letter, the Office of Workers' Compensation Programs advised appellant that the information submitted was insufficient to establish whether he was eligible for benefits under the Federal Employees' Compensation Act.[1] The Office advised appellant of the additional medical and factual evidence needed to support his claim. In particular, appellant was advised to provide a physician's opinion, with medical rational reasons for such opinion, as to how the work incident caused or aggravated the claimed injury.

In response to the Office's letter, appellant forwarded physical therapy reports dated January 11, January 25, February 4 and February 8, 2002, and a bill, dated March 14, 2002, for ambulance services that were rendered on February 21, 2002.

By decision dated April 17, 2002, the Office denied appellant's claim. The Office found that, while appellant experienced the claimed incident, he failed to provide medical evidence sufficient to establish a relationship between the February 21, 2002 automobile accident and his medical condition.

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[1] 5 U.S.C. §§ 8101-8103.

The Board finds that appellant has not met his burden of proof in establishing that he sustained an injury in the performance of duty.

An employee seeking benefits under the Federal Employees' Compensation Act has the burden of establishing that 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 limitations 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 employment injury.[2] These are 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]

The second component is whether the employment incident caused a personal injury and generally can be only be established 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]

In the instant case, there is no dispute that appellant is an employee, or that he was involved in an automobile accident on February 21, 2002. However, there is insufficient medical evidence to establish that this accident caused or aggravated a medical condition.

In this case, appellant submitted a bill for ambulance services dated February 21, 2002. However, there is no evidence to establish that he sustained an injury on that date. The physical therapy reports submitted predate the automobile accident. Further, a physical therapist is not considered to be a physician under the provisions of the Act, and is not competent to render a medical opinion.[6]

As noted above, part of appellant's burden of proof includes the submission of medical evidence establishing that the claimed condition is causally related to employment factors. As

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

[3] *Daniel J. Overfield*, 42 ECAB 718, 721 (1991); *Victor J. Woodhams*, 41 ECAB 345 (1989).

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

[5] *See* 20 C.F.R. § 10.11(a); *John M. Tornello*, 35 ECAB 234 (1983).

[6] *See* 20 C.F.R. § 8101(2); *Charley V.B. Harley*, 2 ECAB 208, 211 (1949).

appellant has not submitted such evidence, he has not met his burden of proof in establishing his claim.[7]

The decision of the Office of Workers' Compensation Programs dated April 17, 2002 is affirmed.

Dated, Washington, DC
December 18, 2002

Michael J. Walsh
Chairman

Colleen Duffy Kiko
Member

A. Peter Kanjorski
Alternate Member

[7] The record contains a magnetic resonance imaging report from Dr. Jacob Heydemann, a Board-certified orthopedist, received after the Office's April 17, 2002 decision. Additionally, in appellant's July 1, 2002 application for review to the Board, appellant submitted new factual and medical evidence. The Board's jurisdiction is limited to evidence which was before the Office at the time it rendered the final decision. Inasmuch as this evidence was not considered by the Office, it cannot be considered on review by the Board. 20 C.F.R. § 501.2(c). This decision does not preclude appellant from submitting such evidence to the Office as part of a reconsideration request.