U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GOK H. MARK and U.S. POSTAL SERVICE,
POSTAL INSPECTION SERVICE, New York, NY

Docket No. 02-40; Submitted on the Record;
Issued July 1, 2002

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issues are: (1) whether appellant met his burden of proof to establish that he sustained an injury in the performance of duty on January 4, 2001; and (2) whether the refusal of the Office of Workers' Compensation Programs to reopen his case for further consideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a), constituted an abuse of discretion.

On January 8, 2001 appellant, then a 44-year-old postal inspector, filed a traumatic injury claim alleging that he sustained an injury on January 4, 2001 when his vehicle was struck by another vehicle from behind.[1] By decision dated April 26, 2001, the Office denied appellant's claim on the grounds that he did not submit sufficient medical evidence to establish that he sustained an injury in the performance of duty on January 4, 2001. By decision dated August 23, 2001, the Office denied appellant's request for a merit review.

The Board finds that appellant did not meet his burden of proof to establish that he sustained an injury in the performance of duty on January 4, 2001.

An employee seeking benefits under the Federal Employees' Compensation Act[2] has the burden of establishing the essential elements of his 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.[3] These are the essential

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[1] Appellant did not stop working for the employing establishment. The record contains documents which indicate that a third-party claim was made against the driver of the vehicle which struck appellant's vehicle.

[2] 5 U.S.C. §§ 8101-8193.

[3] *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[4]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the "fact of injury" has been established. There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident at the time, place and in the manner alleged.[5] Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.[6] The term "injury" as defined by the Act, refers to some physical or mental condition caused by either trauma or by continued or repeated exposure to or contact with, certain factors, elements or conditions.[7]

In support of his claim, appellant submitted a January 4, 2001 report in which a physician with an illegible signature indicated that he should be on bed rest and take pain medication. However, this report is of limited probative value on the relevant issue of the present case in that it does not contain an opinion that appellant sustained an injury in the performance of duty on January 4, 2001.[8] The Office provided appellant with an opportunity to provide additional medical evidence in support of his claim, but he did not do so within the allotted time period.[9]

The Board further finds that the refusal of the Office to reopen appellant's case for further consideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a), did not constitute an abuse of discretion.

To require the Office to reopen a case for merit review under section 8128(a) of the Act, the Office's regulations provide that a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) submit relevant and pertinent new evidence not previously considered by the Office.[10] To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.[11] When a claimant fails to meet one of the above

[4] *Delores C. Ellyett*, 41 ECAB 992, 998-99 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-27 (1990).

[5] *Julie B. Hawkins*, 38 ECAB 393, 396 (1987); *see* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.2a (June 1995).

[6] *John J. Carlone*, 41 ECAB 354, 356-57 (1989); *see* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.2a (June 1995).

[7] *Elaine Pendleton*, *supra* note 3; 20 C.F.R. § 10.5(a)(14).

[8] *See Charles H. Tomaszewski*, 39 ECAB 461, 467-68 (1988) (finding that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

[9] The Office accepted the occurrence of the January 4, 2001 employment incident as described by appellant.

[10] 20 C.F.R. §§ 10.606(b)(2).

[11] 20 C.F.R. § 10.607(a).

standards, the Office will deny the application for reconsideration without reopening the case for review on the merits.[12]

By letter dated June 8, 2001 and received by the Office on June 12, 2001, appellant requested reconsideration of his claim. In support of his claim, appellant resubmitted a copy of the January 4, 2001 report with an illegible signature of a physician. However, the Board has held that the submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.[13] Appellant also submitted a copy of the police report for the January 4, 2001 accident. However, the submission of this document is not relevant to the main issue of the present case, *i.e.*, whether appellant submitted sufficient medical evidence to establish that he sustained an injury in the performance of duty on January 4, 2001. The Board has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.[14]

In the present case, appellant has not established that the Office abused its discretion in its August 23, 2001 decision by denying his request for a review on the merits of its April 26, 2001 decision under section 8128(a) of the Act, because he did not show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by the Office or submit relevant and pertinent new evidence not previously considered by the Office.

[12] 20 C.F.R. § 10.608(b).

[13] *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Jerome Ginsberg*, 32 ECAB 31, 33 (1980).

[14] *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979). The record was also supplemented to include a document regarding the third-party claim and the findings of cervical, chest and lumbar spine x-rays from January 4, 2001 which exhibited normal results. However, these documents would not be relevant to the main issue of the present case as described above. The findings of x-ray testing do not contain any opinion that appellant sustained an employment-related injury on January 4, 2001.

The August 23 and April 26, 2001 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, DC
July 1, 2002

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member