U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BRUCE A. FAULKNER and DEPARTMENT OF THE ARMY, ANNISTON ARMY DEPORT, Anniston, AL

Docket No. 02-392; Submitted on the Record;
Issued July 1, 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 in the performance of duty.

The Board has duly reviewed the case record in this appeal and finds that appellant has failed to establish that he sustained an injury in the performance of duty.

On June 8, 2001 appellant, then a 40-year-old industrial engineering technician, filed a traumatic injury claim alleging that on April 6, 1999 he experienced swelling, fever, redness and pain in the lower right side of his right ankle while walking on a flat hard concrete surface. He stated that he felt a twinge on the right side of his right ankle. Appellant's claim was accompanied by medical evidence.

By letter dated July 16, 2001, the Office of Workers' Compensation Programs advised appellant to submit additional factual and medical evidence supportive of his claim. In a July 30, 2001 response, appellant explained why he delayed in providing notice of his injury and in obtaining medical treatment.

In an August 22, 2001 decision, the Office found the evidence of record insufficient to establish that appellant sustained an injury in the performance of duty on April 6, 1999.[1]

[1] The Board notes that, subsequent to the Office's August 22, 2001 decision, the Office received additional factual and medical evidence. The Board, however, cannot consider evidence that was not before the Office at the time of the final decision. *See Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35 (1952); 20 C.F.R. § 501.2(c)(1). Appellant may resubmit this evidence and legal contentions to the Office accompanied by a request for reconsideration pursuant to 5 U.S.C. § 8128(a). 20 C.F.R. § 501.2(c).

A person who claims benefits under the Federal Employees' Compensation Act[2] has the burden of establishing the essential elements of his claim, including that he sustained an injury while in the performance of duty and that he had disability as a result.[3] In accordance with the Federal (FECA) Procedure Manual, to determine whether an employee actually sustained an injury in the performance of his duty, the Office begins with the analysis of whether "fact of injury" has been established. Generally, "fact of injury" consists of two components, which must be considered, in conjunction with the other.

The first component to be established is that the employee actually experienced the employment incident or exposure, which is alleged to have occurred.[4] In order to meet his burden of proof to establish the fact that he sustained an injury in the performance of duty, an employee must submit sufficient evidence to establish that he actually experienced the employment injury or exposure at the time, place and in the manner alleged.

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.[5] The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon complete factual and medical background, showing a causal relationship between the claimed condition and the identified factors.[6] The belief of the claimant that a condition was caused or aggravated by the employment is not sufficient to establish a causal relationship.[7]

Regarding the first component, the Office found that the lack of contemporaneous medical evidence raised sufficient doubt as to whatever the injury occurred in the performance of duty as alleged. An injury does not have to be confirmed by eyewitnesses in order to establish that an employee sustained an injury in the performance of duty as alleged, but the employee's statements must be consistent with surrounding facts and circumstances and his subsequent course of action. Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury, and failure to obtain medical treatment, may cast sufficient doubt on an employee's statements in determining whether he has established a *prima facie* case. The employee has the burden of establishing the occurrence of the alleged injury at the time, place and in the manner alleged, by a preponderance of the reliable, probative and substantial evidence. An employee has not met this burden when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.[8]

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[2] 5 U.S.C. §§ 8101-8193.

[3] *Charles E. Evans*, 48 ECAB 692 (1997); *see* 20 C.F.R. § 10.110(a).

[4] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803(2)(a) (June 1995).

[5] *John J. Carlone*, 41 ECAB 354 (1989); *see* 5 U.S.C. § 8101(5) ("injury" defined); 20 C.F.R. §§ 10.5(a)(15), 10.5(a)(16) ("traumatic injury" and "occupational disease" defined).

[6] *Lourdes Harris*, 45 ECAB 545 (1994); *see Walter D. Morehead*, 31 ECAB 188 (1979).

[7] *Charles E. Evans*, *supra* note 3.

[8] *Merton J. Sills*, 39 ECAB 572 (1988); *Vint Renfro*, 6 ECAB 477 (1954).

In controverting appellant's claim, the employing establishment contended that appellant delayed in providing it with notification of his ankle injury. On appellant's traumatic injury claim form, the employing establishment stated that appellant did not file the claim within 30 days of the date of his alleged injury.

In response to the Office's July 16, 2001 letter, appellant stated that he verbally notified his supervisor the following Monday about his ankle injury. He explained that he waited two years to file a claim because the injury would appear to heal only to recur months later. In describing his injury, appellant stated that "[a]t first it was just a twinge and over the weekend swelling, redness, heat and popping occurred."

Appellant provided a witness statement from Jerry L. Sewell, a coworker, providing:

> "[Appellant] approached me at/near the end of the workday and told me that his ankle was bothering him and that he had felt a twinge there. The next day, [appellant] had a noticeable (sic) limp and he asked me to look at his ankle. He removed shoe/sock and I noticed swelling, redness and fever.

Appellant submitted a June 8, 2001 clinic pass of Dr. Charles Pederson, an employing establishment physician, indicating a history that appellant injured his ankle while walking on a hard concrete surface. Dr. Pederson's March 8, 2001 treatment notes provided that "[appellant] complained of ankle injury in April 1999 while walking on flat surface.... Just walking along and felt pain in my foot." Dr. Pederson stated that appellant reported subsequent swelling that resolved in about four to five days.

The March 8, 2001 medical treatment notes of a registered nurse, whose signature is illegible, revealed the following history provided by appellant regarding his alleged injury:

> "[Appellant] states that on April 6, 1999 he was walking on flat surface when he felt a tingle on right ankle -- ankle became swollen and red resolving in three days. [Appellant] has not been seen [regarding] this problem. [Appellant] has no previous history of ankle problems."

In a June 25, 2001 attending physician's report, Dr. C.H. McCrimmon, a Board-certified orthopedic surgeon, indicated that appellant injured his ankle while walking on a flat concrete surface and that he felt a twinge on the right side of his right ankle, which became swollen, red and painful.

The Board finds that although appellant did not submit any medical evidence contemporaneous to the April 6, 1999 incident, his statements, Mr. Sewell's statement, Dr. Pederson's clinic pass and treatment notes, the nurse's medical treatment notes and Dr. McCrimmon's attending physician's report provide a consistent history of incident. Accordingly, the Board finds that the contemporaneous evidence of record supports that the incident occurred at the time, place and in the manner alleged.[9]

[9] *Louise F. Garnett*, 47 ECAB 639, 643-44 (1996); *Constance G. Patterson*, 41 ECAB 206 (1989); *Julie B. Hawkins*, 38 ECAB 393 (1987).

The Board, however, finds that the medical evidence of record fails to establish that appellant's right ankle injury was caused by the April 6, 1999 employment incident. The sole medical evidence of record that addresses the causal relationship between appellant's ankle injury and the April 6, 1999 employment incident is Dr. McCrimmon's June 25, 2001 attending physician's report. As noted above, Dr. McCrimmon provided a description of the April 6, 1999 employment incident. He diagnosed a right ankle sprain and indicated that appellant's condition was caused or aggravated by the employment activity by placing a checkmark in the box marked "yes." The Board has held that an opinion on causal relationship which consists only of a physician checking "yes" to a medical form report question on whether the claimant's condition was related to the history given is of little probative value. Without any explanation or rationale for the conclusion reached, such report is insufficient to establish causal relationship.[10] Inasmuch as Dr. McCrimmon failed to provide any medical rationale explaining how or why appellant's ankle condition was caused by the April 6, 1999 employment incident, his report is insufficient to establish appellant's burden.

Although the Office advised appellant of the type of medical evidence needed to establish his claim, appellant failed to submit medical evidence responsive to the request. Consequently, appellant has not established that his right ankle injury was caused by factors of his federal employment.

The August 22, 2001 decision of the Office of Workers' Compensation Programs is hereby affirmed, as modified.

Dated, Washington, DC
July 1, 2002

Michael J. Walsh
Chairman

Colleen Duffy Kiko
Member

A. Peter Kanjorski
Alternate Member

[10] *Lucrecia M. Nielson*, 42 ECAB 583, 594 (1991).