U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PATRICK T. WALL and DEPARTMENT OF COMMERCE, WORKERS' COMPENSATION BRANCH, Washington, DC

Docket No. 01-1802; Submitted on the Record;
Issued March 26, 2002

DECISION and ORDER

Before MICHAEL J. WALSH, ALEC J. KOROMILAS, MICHAEL E. GROOM

The issues are: (1) whether appellant has established that he sustained an injury on June 19, 2000 in the performance of duty; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration.

On August 3, 2000 appellant, then a 45-year-old foreign service diplomat, filed a claim, alleging that on June 19, 2000, while on temporary duty in the Dominican Republic, he was involved in an automobile accident and sustained injury. He claimed that, while he was in a government vehicle stopped at a red light, the vehicle was struck in the rear by another motorist who fled the scene. Appellant filed a police report and sought emergency medical treatment complaining of "neck, spine, [and] lower back all painful, loss of motion, headache, etc." Appellant reported this injury on the first day he was back in the United States. His supervisor completed the reverse of the claim form incorrectly noting the date of injury as "June 19, 1999" but noting that appellant reported the accident to the security office and the Embassy medical clinic the day after the accident and upon the first day after returning to the U.S.

In support of his claim, appellant submitted a Santo Domingo Police traffic accident report in Spanish, indicating that an accident had occurred on June 19, 2000 involving appellant and providing the details.

Appellant also submitted a June 23, 2000 certificate in Spanish from the Santo Domingo Department of Motor Vehicles about appellant's accident.

Appellant submitted a June 29, 2000 letter in Spanish from the Clinica Abreu Emergency Department regarding emergency treatment on June 20, 2000.

Appellant additionally submitted an undated referral from a nurse practitioner at the American Embassy to Unidad de Rehabilitation Functional. He submitted a June 20, 2000 cervical x-ray report in Spanish from Clinica Abreu signed by Dr. Orlando Duarte.

By letter dated August 25, 2000, the Office requested further information regarding appellant's claim.

By letter dated September 13, 2000, appellant's supervisor in Washington, D.C. advised the Office that the date of injury she had noted "June 19, 1999," was incorrect and that the correct date of injury was "June 19, 2000." Continuation of pay was controverted because appellant's claim was not filed within 30 days of the incident. The employing establishment noted that appellant sought reimbursement for his out-of-pocket expenses.[1]

By decision dated September 26, 2000, the Office rejected appellant's claim finding that fact of injury had failed to be established. The Office found that the evidence of record did not establish that a condition or injury had been diagnosed in connection with the traffic accident.

In a memorandum dated October 20, 2000, appellant requested reconsideration and in support he submitted an undated medical report in Spanish from Dr. Paul Zapata. An included translation noted that appellant was seen in the emergency room on June 20, 2000 where a cervical sprain was found as a result of an "indirect trauma." The report noted that appellant was treated with medication, immobilization and rest. A follow-up appointment was given for June 23, 2000. Appellant also resubmitted the June 20, 2000 x-ray report with translation, which noted a reduced disc space between C2-3 as a result of inflamed discitis or post-traumatic injury.

By decision dated April 18, 2001, the Office refused to reopen appellant's claim for a further review of the case on its merits as it found the evidence submitted insufficient to warrant reopening of the case. The Office found that appellant's letter neither raised substantive legal questions nor included new and relevant evidence.

The Board finds that this case is not in posture for decision.

An employee seeking benefits under the Federal Employees' Compensation Act[2] 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.[3] These are essential 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 must first be determined whether a "fact of injury" has been established.

---

[1] Various receipts for out-of-pocket expenses related to obtaining medical care were included, dated from June 21 to July 5, 2000.

[2] 5 U.S.C. §§ 8101-8193.

[3] *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[4] *Victor J. Woodhams*, 41 ECAB 345 (1989); *Delores C. Ellyett*, 41 ECAB 992 (1990).

First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.[5] Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.[6]

In this case, the Office accepted that appellant experienced the employment incident at the time, place and in the manner alleged. However, it did not accept that an injury or condition resulted from the employment incident.

The Board notes that the Office did not obtain any translation of the accident report, the June 20, 2000 x-ray report or the June 29, 2000 letter from Clinica Abreu. The Board has held that it is unreasonable for the Office to deny a claim for failure to establish fact of injury before it attempts to secure an accurate translation of the relevant evidence submitted to establish fact of injury.[7] In this case, the Office should have sought translations prior to rendering its merit decision.

On reconsideration, appellant submitted a report from Dr. Zapata. The Office denied reconsideration on the grounds that it was repetitive. The Board finds that the report of Dr. Zapata was new and relevant evidence, which should have been reviewed on its merits.

The Board will remand the case for clarification of the contents of evidence, to be followed by any further development as deemed appropriate.[8]

[5] *John J. Carlone*, 41 ECAB 354 (1989).

[6] *Id.* For a definition of the term "traumatic injury," see 20 C.F.R. §10.5(ee).

[7] *See Armando Colon*, 41 ECAB 563 (1990).

[8] Proceedings under the Act are not adversary 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. *See William J. Cantrell*, 34 ECAB 1223 (1983).

Consequently, the decisions of the Office of Workers' Compensation Programs dated April 18, 2001 and September 26, 2000 are hereby set aside and the case is remanded for further development in accordance with this decision and order of the Board.

Dated, Washington, DC
March 26, 2002

Michael J. Walsh
Chairman

Alec J. Koromilas
Member

Michael E. Groom
Alternate Member