U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILLIAM T. PERKINS and U.S. POSTAL SERVICE,
POST OFFICE, Wilmington, DE

Docket No. 02-1210 Submitted on the Record;
Issued November 1, 2002

DECISION and ORDER

Before MICHAEL J. WALSH, ALEC J. KOROMILAS,
WILLIE T.C. THOMAS

The issue is whether appellant has met his burden of proof to establish that he sustained an injury in the performance of duty on December 22, 2000.

On January 30, 2001 appellant, a 46-year-old distribution clerk, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1). He alleged that on December 22, 2000 he sustained an injury to his right ankle while in the performance of his federal job duties. Appellant did not stop work.[1]

In a January 29, 2001 disability certificate, Dr. R.P. DuShuttle, a Board-certified orthopedic surgeon, indicated that appellant could not work until his reevaluation on February 12, 2001.

In a January 30, 2001 disability certificate, appellant was released to return to work by an occupation technician.

In several duty status reports dating from January 30, 2001, Dr. Aaron Green, an internist, advised that appellant injured his right ankle when it was caught in a chain and slipped. He opined that appellant's right ankle pain was probably due to a nonoccupational cause such as gouty arthritis or some other form of arthritide because of the sensitization he had to light touch could be seen in other occupational injuries. Dr. Green also explained the fact that appellant's symptoms completely resolved over a three-week time period was atypical for a musculoskeletal disorder to recur without any associated trauma and the chronic nature of the skin changes seemed to support the possibility of a nonoccupational etiology for his present symptoms. Dr. Green advised sedentary duty.

[1] The record reflects that appellant subsequently took time off due to the injury.

In a duty status report dated February 8, 2001, M. Wescott, a physician's assistant, indicated that appellant could work with restrictions.

The employing establishment controverted the claim indicating that appellant initially declined to report the injury as he appeared to be fine, further the employing establishment indicated that the witness did not see appellant fall and that he was on leave on the date of the fall.

By letters dated March 16, 2001, the Office of Workers' Compensation Programs advised appellant of the additional factual and medical evidence needed to establish his claim and requested that he submit such. He was advised that submitting a rationalized statement from his physician addressing any causal relationship between his aimed injury and factors of his federal employment was crucial. Appellant was allotted 30 days to submit the requested evidence.

Appellant forwarded additional medical evidence comprised of: treatment notes from his physical therapist dating from January 31 to February 15, 2001; progress notes and duty status reports, including duty status reports from a physician whose signature is illegible and a duty status report from a physician's assistant dated February 15, 2001.

By decision dated April 12, 2001, the Office rejected the claim indicating that appellant had not submitted sufficient evidence to support that he sustained an injury as alleged. The Office noted several factual inconsistencies in the claim in addition to the claimant's lack of response to the Office's correspondence of March 16, 2001.

By letter dated April 21, 2001, appellant requested a hearing, which was held on October 29, 2001.[2] He enclosed additional evidence, including a copy of his tour of duty for the dates December 16 to 22, 2000 and physical therapy notes.

In a statement dated October 22, 2001, Jeff Harris, an employee of Calloway Transportation, advised that appellant was assisting him in loading his truck. He advised that appellant was to the rear of his truck and when he turned around, he noticed him getting up from an apparent fall. Mr. Harris explained that he did not actually see or witness the fall and appellant did proceed to help him finish loading his vehicle.

In a report dated October 24, 2001, Dr. DuShuttle advised that the reason it took an extended amount of time for appellant's December 22, 2000 injury to heal was because of a right calcareous fracture as well as a partial tear of the flexor hallucis longus tendon. He referenced the magnetic resonance imaging (MRI) report.

By decision dated January 17, 2002, the Office denied appellant's claim for the reason that "fact of injury was not established" as it was not established that the claimed incident occurred on December 22, 2000 in the manner alleged.

[2] During the hearing, appellant explained that he did report the incident verbally to his supervisor and explained how later, when he actually reported the injury, may have told them the wrong date, but he confirmed that December 22, 2000 was the date of the injury.

The Board finds that appellant has not met his burden of proof to establish that he sustained an injury in the performance of duty on December 22, 2000.

An employee seeking benefits under the Federal Employees' Compensation Act 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 filed within the applicable time limitation 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 elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.[4]

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.[5] In some traumatic injury cases, this component can be established by an employee's uncontroverted statement on the Form CA-1.[6] An alleged work incident does not have to be confirmed by eyewitnesses in order to establish that an employee sustained an injury in the performance of duty, but the employee's statement must be consistent with the surrounding facts and circumstances and his subsequent course of action.[7] A consistent history of the injury as reported on medical reports, to the claimant's supervisor and on the notice of injury can also be evidence of the occurrence of the incident.[8]

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.[9]

Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must

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

[4] *Daniel J. Overfield*, 42 ECAB 718, 721 (1991).

[5] *Elaine Pendleton*, *supra* note 3.

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

[7] *Rex A. Lenk*, 35 ECAB 253, 255 (1983).

[8] *Id.* at 255-56.

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

be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.[10]

In the present case, the Board finds that appellant has met the first component.

Appellant contends that he sustained an injury on December 22, 2000 as he was helping unload a truck when his right foot got caught in a chain and pulled his leg out from under him. He stated that the truck driver did not see him fall but did see him getting up after the fall. The driver corroborated his statement. He also advised that originally he did not believe that the injury was serious enough to warrant medical attention and thought it would heal itself. The driver noted that he verbally reported in to his supervisor and subsequently indicated that it did not heal itself and continued to worsen such that he notified his immediate supervisor and filed written notice. In subsequent correspondence, the employing establishment controverted the claim based upon an incorrect date of injury and that no one saw the incident. However, there was no disagreement that an incident occurred as the employing establishment confirmed that appellant verbally reported the incident. The discrepancy is regarding December 22, 2000 or a date near that time. Appellant has explained how the dates could be misconstrued as he originally thought his injury would heal on its own and he was initially uncertain of the date till he checked the driving record, this is not sufficient to cast serious doubt on appellant's statements and thus the information supplied by appellant is sufficient to prove that the incident occurred at the time, place and in the manner alleged.

However, the Board finds that appellant has not met the second component of fact of injury.

Appellant originally went to Dr. Aaron Green, who noted that he had injured his right ankle when it was caught in a chain and slipped. His opinion was that appellant's right ankle pain was probably due to a nonoccupational cause such as gouty arthritis or some other form of arthritide because of the sensitization he had to light touch could be seen in other occupational injuries. Further, Dr. Green explained the fact that appellant's symptoms completely resolved over a three-week time period was atypical for a musculoskeletal disorder to recur without any associated trauma and the chronic nature of the skin changes seemed to support the possibility of a nonoccupational etiology for his present symptoms. He also provided disability certificates from Dr. DuShuttle but they did not contain any rationale. None of the physicians expressed any specific opinion that the claimant's condition was causally related to the incident or medical rationale supporting such an opinion based upon a complete history.[11]

[10] *James Mack*, 43 ECAB 321 (1991).

[11] *Arlonia B. Taylor*, 44 ECAB 591 (1993).

Appellant also had notes from a physician's assistant and physical therapists; however, they are not considered physicians under the Act. Section 8101(2) of the Act provides that the term "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by the applicable state law. Only medical evidence from a physician as defined by the Act will be accorded probative value. Health care providers such as nurses, acupuncturists, physician's assistants and physical therapists are not physicians under the Act. Thus, their opinions on causal relationship do not constitute rationalized medical opinions and have no weight or probative value.[12]

Consequently, appellant's medical records failed to state that there was a causal relationship between the diagnosed condition and the employment incident of December 22, 2000. As appellant has not submitted the requisite medical evidence needed to establish his claim, he has failed to meet his burden of proof.

For the above-noted reasons, appellant has not established that he sustained an injury in the performance of duty on December 22, 2000.[13]

The January 17, 2002 decision of the Office of Workers' Compensation is affirmed as modified.

Dated, Washington, DC
November 1, 2002

Michael J. Walsh
Chairman

Alec J. Koromilas
Member

Willie T.C. Thomas
Alternate Member

[12] *Jan A. White,* 34 ECAB 515, 518 (1983).

[13] The Board notes that, subsequent to the Office's January 17, 2002 decision, appellant submitted additional evidence. The Board has no jurisdiction to review this evidence for the first time on appeal. 20 C.F.R. § 501.2(c); *James C. Campbell,* 5 ECAB 35 (1952).