U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RAMONA BLACKMAN and DEPARTMENT OF THE INTERIOR, BUREAU OF INDIAN AFFAIRS, Browning, MT

Docket No. 02-1584; Submitted on the Record;
Issued January 23, 2003

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON, MICHAEL E. GROOM

The issue is whether appellant sustained an injury while in the performance of duty on September 28, 2001.

On September 30, 2001 appellant, then a 49-year-old emergency firefighter, filed a traumatic injury claim alleging that on September 28, 2001 she experienced cold symptoms, coughing and congestion. The employing establishment stated that appellant did not stop work.

Accompanying the claim was a September 30, 2001 medical report completed by a field nurse practitioner, who diagnosed acute asthmatic bronchitis, and listed treatment rendered and medications prescribed.

By letter dated April 3, 2002, the Office of Workers' Compensation Programs requested detailed factual and medical information. Specifically, a narrative report from her attending physician which included a history of injury, examination findings, test results, a diagnosis, treatment provided, and an opinion on the relationship between a diagnosed condition and her federal employment.

After receiving no response from appellant, by decision dated May 15, 2002, the Office denied appellant's claim, finding that the claimed incident occurred as alleged, but that the medical evidence failed to establish that she sustained an injury as a result of the incident.

The Board finds that appellant has not established that the September 28, 2001 employment incident resulted in an injury.

An employee seeking benefits under the Federal Employees' Compensation Act[1] 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 and that the claim

[1] 5 U.S.C. §§ 8101-8193.

was filed within the applicable time limitations of the Act.[2] An individual seeking disability compensation must also establish that an injury was sustained at the time, place and in the manner alleged,[3] that the injury was sustained while in the performance of duty[4] and that the disabling condition for which compensation is claimed was caused or aggravated by the individual's employment.[5] 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.[6]

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.[7] In this case, the Office found that the claimed event, incident or exposure occurred at the time, place and in the manner alleged, but that the medical evidence was insufficient to support that appellant sustained an injury as a result of the incident.

The second component of fact of injury, whether the employment incident caused a personal injury, 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.[8]

In this case, the only evidence submitted, a September 30, 2001 report completed by a field nurse practitioner, is of no probative medical value because a nurse practitioner is not a physician as defined under the Act and, therefore, not competent to render a medical opinion.[9] The record contains no rationalized medical opinion evidence from a physician supporting a causal relationship between the September 28, 2001 employment incident and appellant's claimed condition.

By letter dated April 3, 2002, the Office advised appellant of the type of evidence needed to establish her claim, but such evidence has not been submitted. Therefore, the Board finds that the evidence of record is insufficient to meet appellant's burden of proof.

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

[3] *Robert A. Gregory*, 40 ECAB 478 (1989).

[4] *James E. Chadden, Sr*. 40 ECAB 312 (1989).

[5] *Steven R. Piper*, 39 ECAB 312. (1989).

[6] *David J. Overfield*, 42 ECAB 718 (1991); *Victor J. Woodhams*, 41 ECAB 345 (1989).

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

[8] *Kathryn Haggerty*, 45 ECAB 383 (1994); *see* 20 C.F.R. § 10.110(a).

[9] 5 U.S.C. § 8101(2); *Bertha L. Arnold*, 38 ECAB 282 (1986).

The May 15, 2002 decision of the Office of Workers' Compensation Programs is affirmed.[10]

Dated, Washington, DC
January 23, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

[10] The Board notes that on appeal appellant submitted new medical evidence. The Board has no jurisdiction to review evidence that was not before the Office at the time of its decision. 20 C.F.R. § 501.2(c). Appellant may submit this evidence to the Office with a request for reconsideration pursuant to 20 C.F.R. § 10.606(b).