U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARCUS L. SMITH and U.S. POSTAL SERVICE,
POST OFFICE, San Francisco, CA

Docket No. 02-2279; Submitted on the Record;
Issued January 27, 2003

DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO,
MICHAEL E. GROOM

The issue is whether appellant established that he sustained an injury on January 30, 2002 while in the performance of duty.

On February 5, 2002 appellant, then a 46-year-old custodian, filed a claim for traumatic injury, alleging that on January 30, 2002, while in the performance of duty, he sustained an injury to his neck and back.

In a report dated February 5, 2002, Dr. John Burke, an emergency room physician, stated that he examined appellant that day and noted a history of injury including a fusion at C5 and C6 in 1994. Appellant related continued pain since the surgery, noting it "never got better." Dr. Burke noted appellant relaying his recent work-related incident, and, upon examination, found that appellant "has exacerbated an underlying injury to his neck." He recommended a follow-up appointment with an orthopedic surgeon.

On February 11, 2002 the employing establishment controverted the claim, stating that appellant did not report the incident on January 30, 2002, rather he requested two hours of sick leave on January 31, 2002, without identifying the cause of his illness. He then advised the employing establishment on February 2, 2001 that he sustained an injury on January 30, 2002.

On June 5, 2002 appellant submitted a claim for total disability from May 4 to July 30, 2002. In support of his claim, appellant submitted a report from Dr. Robert A. Rovner, a Board-certified orthopedic surgeon, who stated that he initially examined appellant on February 5, 2002. Dr. Rovner noted that appellant fell off a ladder in 1991, injuring his neck, and was subsequently diagnosed with spondylosis at C5-6 and C6-7. He found that appellant's current condition was related to the 1991 incident.

In a report dated February 13, 2002 and received by the Office of Workers' Compensation Programs on June 13, 2002, Dr. Rovner stated that appellant "fell off a ladder while working at the post office in 1991, and had an anterior-cervical fusion by Dr. Mitgang at

that time from which he apparently never recovered." He noted appellant's increased symptoms in the neck and upper extremities over time, and "has missed work as a result of his symptoms since Thursday, February 7, 2002. The symptoms precipitated at that time by lifting a heavy bag." He diagnosed cervical spondylosis, upper extremity radiculopathy. In a report dated March 1, 2002, Dr. Rovner stated that appellant's magnetic resonance imaging (MRI) scan revealed cervical spondylosis, more at C5-6 than C6-7. He further noted that "No evidence is present of any fusion in the past, notwithstanding his anterior cervical scar." His diagnosis was presumed anterior cervical fusion nonunion and spondylosis C5-6, greater than C6-7. In a report dated April 19, 2002 and received by the Office on June 13, 2002, Dr. Rovner stated that appellant's discogram was positive at C6. He stated that appellant had a surgical procedure at C5-6 but it was unclear whether a fusion was attempted. In a report dated June 1, 2002 and received by the Office on June 13, 2002, Dr. Rovner stated that he had performed an anterior-cervical fusion and bone graft and plating at C5-6 on May 30, 2002.

By letter dated June 11, 2002, the Office advised appellant that the information he had submitted was insufficient to establish that he sustained an injury as alleged. The Office requested that appellant submit medical records pertaining to his condition including copies of all treatment notes and test results related to his claimed condition and a comprehensive medical report from his treating physician.

By letter dated June 19, 2002, the Office requested Dr. Rovner to determine if appellant's anterior-cervical condition and resulting surgery were causally related to his alleged work-related injury on January 30, 2002.

By letter dated July 15, 2002, Dr. Rovner stated that he "had not personally investigated" whether appellant's condition was work related.

By decision dated August 2, 2002, the Office denied appellant's claim that he sustained an injury in the performance of duty.

The Board finds that appellant failed to establish that he sustained an injury in the performance of duty on January 30, 2002.

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, 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. These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[2]

[1] 5 U.S.C. §§ 8101-8193.

[2] *Charles E. Evans*, 48 ECAB 692 (1997).

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish a causal relationship is rationalized medical opinion evidence. 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 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.[3]

The medical evidence appellant submitted lacked a rationalized explanation of the relationship between the diagnosed condition and appellant's employment factors. Dr. Burke's February 2002 report does not relate appellant's medical condition to his January 30, 2002 work-related incident, but notes that he exacerbated an underlying condition.

Dr. Rovner's reports note appellant's prior condition, surgery and his opinion that the 1991 fusion did not create a union. Although he noted that appellant's January 2002 condition was related to an earlier injury of 1991, the Office advised him that the 1991 incident was not work related. Dr. Rovner then stated that he had not investigated whether appellant's condition has an "industrial basis."

Given that none of appellant's evidence supported his claim that he sustained a work-related injury on January 30, 2002, appellant failed to establish a compensable injury on that date.

[3] *Earl D. Smith,* 48 ECAB 615 (1947).

The decision of the Office of Workers' Compensation Programs dated August 2, 2002 is affirmed.[4]

Dated, Washington, DC
January 27, 2003

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member

[4] The Board notes that this case record contains evidence which was submitted subsequent to the Office's August 2, 2002 decision. The Board has no jurisdiction to review this evidence for the first time on appeal; *see* 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35, 36 n.2 (1952).