U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of STEPHEN T. KOKUBUN and U.S. ARMY, DIRECTORATE OF LOGISTICS, Schofield Barracks, HI

Docket No. 02-1696; Submitted on the Record;
Issued July 8, 2003

DECISION and ORDER

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

The issue is whether appellant has established that he sustained an injury to his ankle in the performance of duty.

On March 1, 2002 appellant, then a 51-year-old driver, filed a notice of traumatic injury and claim for compensation, Form CA-1, alleging that on February 13, 2002 he sustained an injury to his left ankle while in the course of his employment. Appellant indicated that the cause of injury was "unknown." On the reverse of the form, appellant's supervisor indicated that he first received notice of the injury on March 1, 2002 and that appellant stopped work on February 15, 2002.

Evidence of record includes a medical report dated March 13, 2002, signed by Dr. Michael L. Reyes, a Board-certified orthopedic surgeon, who noted a diagnosis of left iliotibial (IT) band friction syndrome and left patella tendinitis.[1] Additionally, the record includes evaluation and treatment plans dated February 22 and March 4, 2002, signed by Paul K. Matsumoto, a physical therapist.

Further, a medical evaluation for light-duty form, dated March 7, 2002, and signed by Dr. Reyes notes a temporary diagnosis of left lateral knee pain. Finally, a duty status report, also dated March 7, 2002, and signed by Dr. Reyes, diagnosed left knee IT band function syndrome.

Further evidence includes various work status and medical certificate reports dated February 20, March 7 and 13, 2002, all signed by Dr. Reyes. These reports do not indicate a diagnosis of appellant's condition.

By letter dated April 3, 2002, the Office of Workers' Compensation Programs advised appellant that the information submitted in his claim was not sufficient to determine whether

[1] On February 28, 2002 the employing establishment authorized appellant, pursuant to Form CA-16, to obtain medical care for left knee pain from Dr. Reyes.

appellant was eligible for compensation benefits under the Federal Employees' Compensation Act.[2] In particular, appellant was advised to describe how the injury occurred and why he did not report the injury sooner to his supervisor.

In response to the Office's letter, appellant submitted a personal statement regarding the alleged left ankle injury, which appellant stated that he originally thought his ankle pain was caused by gout.

The Office also received numerous medical reports pertaining to appellant's left knee condition. These consist of reports from Dr. Reyes dated February 20, March 7 and 26, April 10, and 24, 2002. Dr. Reyes again diagnosed appellant's condition as left knee iliotibial band friction syndrome. The February 20, 2002 report noted that Dr. Reyes reviewed x-rays of appellant's knee, but noted that there was no evidence of abnormalities, fractures or dislocations. The subsequent reports noted a successive improvement of appellant's condition. No reference is made to the alleged ankle injury. Additionally, appellant forwarded two WC-2 physician report forms. These reports were signed by Dr. Reyes, and dated March 25 and April 4, 2002. In these reports, Dr. Reyes noted that appellant claimed that he "injured knee during work." No reference was made to the alleged ankle injury.

Also forwarded were two reports from Dr. Enid L. Rayner, a Board-certified internist, dated February 19 and April 1, 2002. Dr. Rayner initially noted that appellant suffered from swelling of the left knee, with a decreased range of motion (ROM). Dr. Rayner noted a history of left knee pain that came on "slowly," starting "sometime between Wednesday and Friday." On the subsequent visit, Dr. Rayner noted that appellant was seeing Dr. Reyes for knee inflammation. In lieu of a diagnosis, Dr. Rayner noted that appellant did not have any overt gout symptoms. Dr. Rayner did not address appellant's alleged ankle injury.

Two physical therapy reports, signed by Paul Matsumoto, dated March 22 and April 8, 2002, outlined a treatment plan for appellant's left knee condition. There was no mention of the alleged ankle injury.

By decision dated May 14, 2002, the Office denied appellant's claim. The Office noted that appellant submitted numerous medical reports pertaining to a knee injury; however, the Office found that appellant failed to provide factual evidence explaining how his ankle was injured as well as medical opinion evidence to substantiate his claim.

The Board finds that appellant has not met his burden of proof in establishing that he sustained an injury to his left ankle in the performance of duty.

An employee seeking benefits under the 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

[2] 5 U.S.C. §§ 8101-8193.

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] 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, if otherwise unexplained, cast sufficient doubt on an employee's statements in determining whether a *prima facie* case has been established.[9] Although an employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence,[10] an employee has not met this burden when there are inconsistencies in the evidence such as to cast serious doubt upon the validity of the claim.[11]

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence. To establish a casual relationship between the condition, as well as any attendant disability, claimed and the employment event or

[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] *Dorothy M. Kelsey*, 32 ECAB 998 (1981).

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

[11] *Joseph A. Fournier*, 35 ECAB 1175 (1984).

incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.[12]

In this case, appellant has not established fact of injury because he failed to explain how factors of his employment caused his alleged injury. On the notice of traumatic injury form, in fact, appellant indicated that the cause of his injury was "unknown." Additionally, in his response to the Office's April 3, 2002 letter requesting additional information; specifically how the alleged injury occurred, appellant again noted "unknown."

Further, in the present case, appellant alleged that he injured his ankle on February 13, 2002 while at work. However, appellant did not stop work because of the alleged injury until February 15, 2002, and he did not seek medical treatment until February 20, 2002. Once he did seek medical treatment, the initial treatment notes make no mention of an employment-related incident or an employment-related injury. Further, none of the subsequent medical reports mention a history of a work-induced injury. Also, none of the medical reports or treatment reports mentions the alleged ankle injury. All of the medical documents reference a knee condition.

The physical therapy reports signed by Mr. Matsumoto only address appellant's knee condition, not the alleged ankle condition, and provide no history of any incident occurring at work.

Finally, appellant did not notify his supervisor of the alleged injury until March 1, 2002. When asked why he delayed notifying his supervisor, appellant stated that he initially thought his gout had recurred.

There is no evidence contemporaneous with the claimed injury identifying any aspect or incident of appellant's employment that may have resulted in an injury. Appellant also has not offered any explanation as to why he claimed an ankle injury while medical and physical therapy records only identify a knee condition. None of these records mention an employment incident with regard to a history of injury.

Consequently, as appellant has not been responsive regarding what employment incident caused his claimed injury, he has not established the first component of fact of injury. He has not established that he experienced an employment incident that allegedly gave rise to an injury.

[12] *See Richard A. Weiss*, 47 ECAB 182 (1995); *John M. Tornello*, 35 ECAB 234 (1983).

The decision of the Office of Workers' Compensation Programs dated May 14, 2002 is affirmed.

Dated, Washington, DC
July 8, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member