U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ELIZABETH A. FELL and U.S. POSTAL SERVICE,
POST OFFICE, Hillsborough, NC

Docket No. 03-1416; Submitted on the Record;
Issued July 7, 2003

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant sustained an injury in the performance of duty on July 30, 2002.

On August 2, 2002 appellant, then a 34-year-old rural letter carrier, filed a notice of traumatic injury (Form CA-1) alleging that on July 30, 2002,[1] while performing her duties she sustained an injury to her eye when a strap used to bundle mail struck her. The employing establishment indicated on the reverse side of the claim form that appellant was treated on July 30, 2002 by a nursing assistant at Orange Family Medical Group, P.A.

By letter dated August 29, 2002, the Office of Workers' Compensation Programs requested that appellant provide additional information, including dates of examination and treatment, a history of injury given by her to a physician, a detailed description of any findings, the results of all x-rays and laboratory tests, a diagnosis and course of treatment followed, and a physician's opinion supported by a medical explanation as to how the reported work incident caused the claimed injury. The Office explained that the physician's opinion was crucial to her claim. The Office allotted appellant 30 days to submit the requested information.

On September 16, 2002 the Office received an undated medical certificate from the Orange Family Medical Group signed by Mark Johnson, a physician's assistant, indicating that appellant was seen on July 30, 2002 and could not return to work until August 1, 2002.

By decision dated October 23, 2002, the Office denied appellant's claim, finding that the July 30, 2002 incident occurred as alleged, but that the medical evidence did not establish that a condition was diagnosed as a result of the incident. Therefore, fact of injury was not established.

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[1] Although appellant actually listed July 30, 2001 as the date of the alleged injury, other evidence of record indicates that she intended to include July 30, 2002 as the date of the alleged injury.

The Board finds that appellant has failed to meet her burden of proof in establishing that she sustained an employment-related injury to her eye on July 30, 2002.

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 limitations 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."[2] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[3]

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.[4] In the instant case, there is no dispute that the claimed incident occurred at the time, place and in the manner alleged.

The second component of fact of injury 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.[5] The Office found that the medical evidence was insufficient to support that appellant sustained an injury as a result of the incident.

In support of her claim, appellant submitted an undated medical certificate from the Orange Family Medical Group signed by Mr. Johnson, a physician's assistant, indicating that appellant was seen on July 30, 2002 and that she could not return to work until August 1, 2002. A physician's assistant is not a physician as defined under the Act.[6] Therefore, the report by Mr. Johnson does not constitute competent medical evidence.

By letter dated August 29, 2002, appellant was advised of the medical evidence needed to support her claim. However, such evidence was not provided. The Board finds that appellant failed to meet her burden of proof.

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[2] *Elaine Pendleton*, 40 ECAB 1143, 1154 (1989).

[3] *David J. Overfield*, 42 ECAB 718, 721 (1991).

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

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

[6] 5 U.S.C. § 8101(2); *see Shelia Arbour (Victor E. Arbour)*, 43 ECAB 779 (1992).

Accordingly, the decision dated October 23, 2002 of the Office of Workers' Compensation Programs is affirmed.[7]

Dated, Washington, DC
July 7, 2003

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

[7] Subsequent to the issuance of the Office's decision appellant submitted additional evidence. As this evidence was not previously submitted to the Office for consideration prior to its decision of October 23, 2002, the evidence represents new evidence which cannot be considered by the Board in the current appeal. The Board's jurisdiction is limited to reviewing the evidence that was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c). Appellant may resubmit this evidence to the Office, together with a request for reconsideration pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606.