United States Department of Labor
Employees' Compensation Appeals Board

AVALON C. BAILEY, Appellant	)	
and	)	**Docket No. 04-2178**
	)	**Issued: December 23, 2004**
ARCHITECT OF THE CAPITOL, Washington, DC, Employer	)	

Appearances:
Avalon C. Bailey, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chairman
MICHAEL E. GROOM, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On September 2, 2004 appellant filed a timely appeal from an August 5, 2004 merit decision of the Office of Workers' Compensation Programs which found that he did not sustain an injury as defined by the Federal Employees' Compensation Act. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of this case.

ISSUE

The issue is whether the Office, by its August 5, 2004 decision, properly denied appellant's claim for compensation.

FACTUAL HISTORY

On April 27, 2004 appellant, then a 37-year-old recycling/utility worker, filed a traumatic injury claim for compensation to his low back and left shoulder sustained on January 29, 2004 by lifting heavy newspapers, trash, soda cans and bottles. In a statement dated May 3, 2004, appellant stated that on January 30, 2004 he reported to work at his scheduled time of 6:00 p.m., obtained supplies, got keys to the offices on the first floor, started to lift newspapers and other

recyclables into bins, and experienced pain in his left shoulder and low back. Appellant stated that he told his supervisor, Anna Comer, that his left shoulder and low back were hurting but that he would try to finish his floor, that on the same day he told another supervisor, Joe Knott, that he was hurting, that Mr. Knott asked him whether he was working during the day, and that he told him he was not.

In a May 4, 2004 memorandum of an investigation of appellant's claimed injury, an occupational safety and health specialist at the employing establishment noted that appellant told Ms. Comer "I kind of hurt my shoulder at work today and I'm just a little stiff" on January 29, 2004 at about 9:00 p.m.,[1] that on January 30, 2004, at about 1:30 a.m., appellant informed Mr. Knott that he had sustained an injury on his day job and showed him a doctor's excuse stating he could not work until February 10, 2004.[2] The occupational safety and health specialist stated that in her interview of appellant on April 27, 2004 he stated that he felt pain in his shoulder and back when he lifted a container full of books between 7:00 and 7:30 p.m. on January 29, 2004; that he did not know where the supervisors got the idea that he was injured on his day job; that he used to drive trucks during the day but did not do that any more; and that they could not prove he had a day job.

Appellant submitted medical reports from Dr. Emmanuel T. Mbualungu, a Board-certified internist. A January 30, 2004 note stated that appellant was unable to work until February 10, 2004, and a February 12, 2004 note stated that he was unable to work February 10 to 26, 2004 and needed further evaluation and physical therapy. In May 3 and 4, 2004 reports on Office forms, Dr. Mbualungu noted left shoulder discomfort to abduction, back pain with leg elevation, and normal lumbosacral x-rays. Dr. Mbualungu diagnosed left shoulder strain and lumbar strain, listed appellant's period of total disability as January 30, 2004 to the present, and indicated, by checking a box on the form, that appellant's conditions were caused or aggravated by lifting at work.

By letter dated June 28, 2004, the Office advised appellant that the evidence was insufficient to support his claim that he actually experienced the incident or factor alleged to have caused his injury, that it was not sufficient to support that he was injured while performing any duty of his employment, and a physician's opinion as to how the January 29, 2004 injury resulted in the condition diagnosed had not been provided. The Office afforded appellant 30 days to submit the requested information.

[1] The case record does not contain any statement directly from Ms. Comer.

[2] Mr. Knott's February 17, 2004 statement says that on January 30, 2004 at about 1:30 a.m. appellant informed him that "he had sustained an injury on his day job," that "subsequently [appellant] informed me that he was injured on this job."

Having received no further information from appellant, the Office issued a decision on August 5, 2004.[3] The Office found:

> "Your claim for compensation is denied as the evidence is not sufficient to establish that you sustained an injury as defined by the Federal Employees' Compensation Act (FECA).
>
> "You filed a timely claim for compensation as a [f]ederal employee for an injury as referenced above. In order for further consideration to be given under the FECA, the evidence must demonstrate that (1) a specific event, incident or exposure occurred at the time and place, and in the manner alleged, and (2) a diagnosed medical condition is connected to the accepted trauma or exposure.
>
> "You were advised of the deficiencies in your claim in a letter dated June 28, 2004, and provided the opportunity to provide the necessary evidence. No further evidence was received. The evidence on file did not establish that the claimed condition resulted from the accepted event(s).
>
> "The Employees' Compensation Appeals Board has held that:
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> > 'Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that her condition was caused or adversely affected by her employment. As part of this burden she must present rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relation. (Citation omitted.)
> >
> > 'Based on these findings, the claim is denied because the requirements have not been met for establishing that you sustained an injury as defined by the FECA….'"

LEGAL PRECEDENT

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 the employment injury.[4]

In determining whether a claimant has discharged his or her burden of proof and is entitled to compensation benefits, the Office is required by its statute and regulations to make findings of fact. Section 8124(a) of the Act provides: "The [Office] shall determine and make a

[3] After this decision, the Office received additional evidence from appellant. As the Board's review is limited by 20 C.F.R. § 501.2(c) to "the evidence in the case record which was before the Office at the time of its final decision," the Board cannot review this additional evidence on appeal.

[4] *Gabe Brooks*, 51 ECAB 184 (1999).

finding of fact and make an award for or against payment of compensation…."[5] Section 10.126 of Title 20 of the Code of Federal Regulations provides: "The decision shall contain findings of fact and a statement of reasons."[6]

The Office's procedure manual specifies additional requirements for a final Office decision denying a claim for benefits. In the subsection titled, "Discussion of Evidence" the procedure manual states: "[T]he [Office] should identify and discuss all evidence which bears on the issue at hand, including any unsuccessful attempts to obtain significant evidence … [and] should summarize the relevant facts and medical opinions…." In the subsection titled, "Basis for Decision" the procedure manual states: "The reasoning behind the [Office's] evaluation should be clear enough for the reader to understand the precise defect of the claim and the kind of evidence which would overcome it."[7] In the section titled, "How to Write Notices of Decisions" the procedure manual states: "A finding that claimant failed to meet the burden of proof is properly made from the evidence, or lack of it, and not simply because the claimant did not respond to a request for information from the [Office]."[8]

ANALYSIS

The Office's August 5, 2004 decision does not contain any discussion of the factual or medical evidence submitted by appellant in conjunction with his claim, or specify the precise defect of the claim so that one could know the kind of evidence needed to overcome it. The Office did not state whether the January 29, 2004 incident occurred as alleged or whether the medical evidence was insufficient to establish that the alleged incident resulted in the diagnosed conditions. The Office's denial appears to be solely based on the insufficiency of the medical evidence, but it contains no discussion of any the medical reports appellant submitted.

The Office's decision concludes by denying the claim because appellant had not established that he sustained an injury within the meaning of the Act. The meaning of "injury" includes both the factual determination of whether a specific incident occurred as alleged, and the medical question of whether the employment incident resulted in a physical or mental condition.[9]

The August 5, 2004 decision refers to the Office's June 28, 2004 notice of deficiencies in the claim and appellant's failure to submit further evidence, but the June 28, 2004 Office letter indicates that appellant's claim was deficient with regard to both these elements; it states that the evidence was not sufficient to establish that appellant actually experienced the incident, and that the medical evidence did not state how the employment incident resulted in the diagnosed condition. The August 5, 2004 Office decision is based more on appellant's failure to respond to

[5] 5 U.S.C. § 8124(a).

[6] 20 C.F.R. § 10.126.

[7] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.4e (March 1997).

[8] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.5a(2)(b) (March 1997).

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

the Office's June 28, 2004 letter than on any specific deficiencies noted in the evidence of record.

CONCLUSION

The case is not in posture for a decision due to the inadequacies of the decision issued by the Office on August 5, 2004. The case will be remanded to the Office for a proper decision containing findings of fact and a statement of reasons.

ORDER

IT IS HEREBY ORDERED THAT the August 5, 2004 decision of the Office of Workers' Compensation Programs is set aside and the case remanded to the Office for action consistent with this decision of the Board.

Issued: December 23, 2004
Washington, DC

Alec J. Koromilas
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member