U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JIM SHIBEL and DEPARTMENT OF THE NAVY,
NADEP NORTH ISLAND, San Diego, Calif.

Docket No. 97-653; Submitted on the Record;
Issued December 28, 1998

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant established that he sustained a low back injury in the performance of duty.

On July 5, 1996 appellant, then a 43-year-old metal parts inspector, filed a notice of traumatic injury, claiming that he hurt his back while following his supervisor's orders in bending and leaning across his work station in awkward positions. The employing establishment controverted the claim, noting that appellant's light-duty restrictions imposed after a knee injury had expired on July 1, 1996.

In support of his claim, appellant submitted a treatment note from Dr. William A. Snyder, a general practitioner, dispensary notes, and disability slips from Dr. Michael Madden, a chiropractor. On August 7, 1996 the Office of Workers' Compensation Programs requested that appellant submit a detailed narrative medical report including a history of his injury, examination findings, test results, diagnosis, treatment provided, prognosis, as well as the period and extent of disability, and explaining the causal relationship between his back injury and his employment. In a telephone discussion, the Office explained to appellant that a chiropractor is not considered a physician unless he diagnoses a subluxation as shown by x-rays.

On September 3, 1996 the Office denied the claim on the grounds that appellant had failed to establish that he sustained an injury on July 5, 1996 in the manner alleged—standing and bending over a machine to perform the task assigned. The Office noted that Dr. Madden diagnosed lumbar facet syndrome with sacroiliac strain on July 9, 1996 but not a subluxation. The Office added that Dr. Snyder indicated that appellant complained of back pain, but provided no diagnosis or objective findings in his chart note dated July 12, 1996.

On September 21, 1996 appellant informed the Office that some of the evidence he had submitted may not have been received in time for the Office to consider before issuing its

September 3, 1996 decision. The Office responded that unless appellant followed the appeal rights attached to the decision, his case would not be reopened.

The Board finds that appellant has failed to meet his burden of proof in establishing that he sustained a back injury in the performance of duty.

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 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 or specific condition for which compensation is claimed is 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 occupational disease.[3]

In a claim for compensation based on a traumatic injury, the employee must establish fact of injury by submitting proof that he or she actually experienced the employment accident or event in the performance of duty and that such an accident or event caused an injury as defined in the Act and its regulations.[4] The Office's regulations define traumatic injury as a wound or other condition of the body caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected.[5] The injury must be caused by a specific event or incident or series of events of incidents within a single workday or shift.[6]

In determining whether an employee sustained an injury in the performance of his duty, the Office begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components considered in conjunction with one another.[7] The first component to be established is that the employee actually experienced the employment incident at the time, place, and in the manner alleged. In some cases, this first component can be established by an employee's uncontroverted statement that is consistent with the surrounding facts and circumstances and his subsequent course of action.[8] The second component, whether

[1] 5 U.S.C. §§ 8101-8193 (1974).

[2] *Daniel J. Overfield*, 42 ECAB 718, 721 (1991).

[3] *Id*.

[4] *Gene A. McCracken*, 46 ECAB 593, 596 (1995).

[5] 20 C.F.R. § 10.5(15).

[6] *Richard D. Wray*, 45 ECAB 758, 762 (1994).

[7] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.2a (June 1995); *see Elaine Pendleton*, 40 ECAB 1143, 1147 (1989).

[8] *Edgar L. Colley*, 34 ECAB 1691, 1695 (1983).

the employment incident caused a personal injury, generally must be established by medical evidence.[9]

In this case, the Board finds that appellant established that he experienced low back pain at work on July 5, 1996. However, appellant has failed to submit medical evidence that any injury was sustained.[10] As the Office explained, the dispensary slips and disability certificates contained no diagnosis or history of injury and Dr. Snyder's July 12, 1996 chart note indicated only that appellant felt back pain at work on July 5, 1996. As the Board has held, the fact that an employee experiences pain at work does not establish a work-related injury.[11]

Appellant claimed that his supervisor forced him to work outside his light-duty restrictions, but the record demonstrates only that he and his supervisor quarreled over a work assignment on July 5, 1996 and that appellant worked for about an hour and then told his supervisor he was injured.

Inasmuch as appellant was properly advised of the necessity of a rationalized medical opinion supporting his claim and failed to provide the requisite evidence, the Board finds that he has not met his burden of proof in establishing entitlement to compensation.[12]

[9] *John J. Carlone*, 41 ECAB 354, 357 (1989). Every injury does not necessarily cause disability for employment. *Donald Johnson*, 44 ECAB 540. 551 (1993). Whether a particular injury causes disability for employment is a medical issue which must be resolved by competent medical evidence. *Debra A. Kirk-Littleton*, 41 ECAB 703, 706 (1990).

[10] The Board's jurisdiction of a case is limited to reviewing that evidence which was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c); *William A. Couch*, 41 ECAB 548, 553 (1990). Thus, the new evidence dated October 3 and September 16, 1996 cannot be considered by the Board because it post-dates the Office's final decision dated September 3, 1996. Appellant may request reconsideration based on this evidence if he chooses.

[11] *See Rosie M. Price*, 34 ECAB 292, 294 (1982) (finding that the mere occurrence of an episode of pain during the work day is not proof of an injury having occurred at work; nor does such an occurrence raise an inference of causal relationship); *Max Haber*, 19 ECAB 243, 247 (1967)(same).

[12] *See Alberta S. Williamson*, 47 ECAB ___ (Docket No. 94-1762, issued May 7, 1996) (finding that appellant failed to submit a rationalized medical report based on a complete factual and medical background explaining why her condition was contracted in the performance of duty).

The September 3, 1996 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.
December 28, 1998

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member