U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of HOMER A. MILLER and TENNESSEE VALLEY AUTHORITY, GUNTERSVILLE HYDRO PLANT, Guntersville, Ala.

Docket No. 96-659; Submitted on the Record;
Issued January 7, 1998

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
BRADLEY T. KNOTT

The issue is whether appellant has met his burden of proof to establish that he sustained an injury in the performance of duty on August 24, 1994.

The Board has duly reviewed the case record in the present appeal and finds that the Office of Workers' Compensation Programs' hearing representative properly determined in its September 28, 1995 decision, which affirmed the Office's December 5, 1994 decision, that appellant failed to meet his burden of proof in establishing his claim due to insufficient medical evidence.

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

There is no dispute that appellant is a federal employee and that he timely filed his claim for compensation benefits. However, the medical evidence is insufficient to establish that appellant sustained an injury in the performance of duty on August 24, 1994[3] because it does not

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

[2] The Office's regulations clarify that a traumatic injury refers to injury caused by a specific event or incident or series of incidents occurring within a single workday or work shift whereas occupational disease refers to injury produced by employment factors which occur or are present over a period longer than a single workday or shift; *see* 20 C.F.R. §§ 10.5(a)(15), (16).

[3] Part of a claimant's burden of proof includes the submission of rationalized medical evidence based upon a

contain a rationalized medical opinion explaining how appellant's back injury was caused or aggravated by factors of his federal employment.[4] For example, in a medical treatment note Dr. Bobby F. King, the general practitioner and employing establishment physician from whom appellant first sought treatment on August 31, 1994, indicated that appellant reported a history of back pain since 1988 and reported that this most recent flareup began approximately one week prior. Dr. King noted that x-rays of appellant's spine showed degenerative changes and diagnosed lumbar sprain. This note did not, however, indicate what caused appellant's back condition or state whether appellant's condition was caused by factors of his federal employment.

In an attending physician's report received by the Office on October 12, 1994, a physician, whose signature is illegible, noted that on August 24, 1994 appellant "was moving something at work and had twisting motion." The physician diagnosed lumbar strain with degenerative disc and indicated by check mark that this injury was causally related to appellant's employment duties. While the physician indicated by check mark that appellant's diagnosed condition of lumbar strain was related to his federal employment, without supporting rationale, this opinion has little probative value and is insufficient to establish causal relationship between any medical condition appellant may have and factors of appellant's federal employment.[5] Finally, in a medical

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complete factual and medical background showing causal relationship between claimed injury and employment factors; *see Mary J. Briggs*, 37 ECAB 578 (1986); *Joseph T. Gulla*, 36 ECAB 516 (1985).

[4] Appellant testified that he injured his back at 10:00 a.m. on August 24, 1994 and first reported this incident to his supervisor at noon the same day. The employing establishment controverted the claim primarily on the basis of appellant's supervisor's contention that appellant mentioned his sore back at 7:00 a.m. that morning, before starting work. In response to this allegation, appellant testified that while early on the morning of August 24, 1994, he told his supervisor that his back was stiff, his back was not injured and he did not report an injury until later that day. Appellant worked all day on August 24, 25 and 26, 1994, and following the weekend, worked August 29, 30 and 31, 1994. On August 30, 1994 appellant consulted the employing establishment's administrative officer about filing a claim for a recurrence of a 1988 back injury. On August 31, 1994 after several days of home treatment which afforded no relief, appellant sought medical treatment from the employing establishment's medical office. Appellant reported to the nurse at the medical facility that he had injured his back "on the job" in 1988 and that since then he experienced occasional flareups of back pain. The employing establishment physician noted that appellant reported that his painful symptoms began approximately one week earlier. X-rays taken on that date revealed degenerative changes of the lumbosacral spine. On September 1, 1994 appellant filed a claim for traumatic injury, Form CA-1, alleging that he injured his back on August 24, 1988. The record contains a TVA Form 1890, report of alleged work-related injury or illness, signed by appellant on September 2, 1988, indicating that he had injured his back that day while loading a pipe on a dolly, but does not contain a prior CA-1. At the hearing, appellant testified that he lost no time from work due to this injury and did not file a claim for compensation. Appellant also testified that he broke his nose and his tailbone in 1972, prior to his employment with the TVA.

[5] *See Ruth S. Johnson*, 46 ECAB ___ (Docket No. 93-1657, issued November 18, 1994). *See Linda L. Mendenhall*, 41 ECAB 532 (1990); *George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board held that a medical opinion not fortified by medical rationale is of little probative value).

report dated December 19, 1994, Dr. Robert W. Hargraves, a Board-certified family practitioner and appellant's attending physician, stated:

> "His current symptoms were caused by a new injury at work. He does have degenerative disc disease on his x-ray which statistically would be a very common finding at this age. This certainly makes him more prone to back injury. His current symptoms are not old. I have been [appellant's] family physician since 1987 and he has had no back complaints until this injury at work."

However, as Dr. Hargraves apparently had no knowledge of appellant's 1972 or 1988 back injuries, his opinion is not based on an accurate factual and medical history and, therefore, is of diminished probative value as to the cause of appellant's current back condition.[6]

The Office advised appellant of the type of medical evidence needed to establish his claim but he did not provide such evidence. Consequently, appellant has not submitted sufficient medical evidence to establish that he sustained an employment injury on August 24, 1994. In view of this, appellant has not met his burden of proof in establishing that he sustained an injury in the performance of duty on that date.

The decision of the Office of Workers' Compensation Programs dated September 28, 1995 is affirmed.

Dated, Washington, D.C.
January 7, 1998

Michael J. Walsh
Chairman

George E. Rivers
Member

Bradley T. Knott
Alternate Member

[6] *Ern Reynolds*, 45 ECAB 690 (1994); *Melvina Jackson*, 38 ECAB 443, 449-50 (1987).