U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of HERBERT E. RICHARDSON and U.S. POSTAL SERVICE,
POST OFFICE, Knoxville, Tenn.

Docket No. 96-2173; Submitted on the Record;
Issued July 10, 1998

DECISION and ORDER

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

The issue is whether appellant has met his burden of proof in establishing that he sustained an injury to his lower back while in the performance of duty on February 10, 1995.

On October 3, 1995 appellant, then a 54-year-old letter carrier filed a claim alleging that he sustained an employment-related injury to his lower back while lifting a tray of magazines out of a hamper in the performance of duty on February 10, 1995. Appellant first obtained medical treatment for this alleged injury eight months later on October 3, 1995; was immediately placed on bed rest with no lifting until October 16, 1995; advised that physical therapy could be arranged; had right sided inguinal hernia surgery repair on October 30, 1995; and was again out of work until November 20, 1995. The employing establishment controverted appellant's claim for benefits contending that the filing of appellant's claim and the prescribed bed rest eight months after the alleged incident is questionable.

In support of his claim, appellant submitted a duty status report (Form CA-17) from Dr. Rickey D. Manning, a Board-certified family practitioner dated October 3, 1995, accompanied by a certificate to return to work. The CA-17 form noted the date of injury as February 11, 1995, not February 10, 1995 as alleged, but indicated that the injury occurred after appellant "lifted tray of ? from hamp[er] to truck" and hurt his lower back. Dr. Manning diagnosed appellant with lumbar sprain/strain, right inguinal hernia. The return to work certificate which is also dated October 3, 1995, shows that Dr. Manning placed appellant on immediate bed rest with no lifting until October 17, 1995.

By letter dated November 9, 1995, the Office of Workers' Compensation Programs informed appellant that the medical evidence submitted by Dr. Manning was insufficient and advised appellant of the type of factual and medical evidence needed to establish his claim and requested that he submit such. The Office particularly requested that appellant submit a physician's reasoned opinions addressing the relationship of his claimed condition and specific

employment factors. Appellant was allotted 30 days within which to submit the requested evidence.

In response appellant submitted various progress notes and operative reports from Dr. Manning ranging in dates from October 3, 1995 through November 10, 1995, as well as an attending physician's report, Form CA-20 dated November 8, 1995. In these documents, Dr. Manning presented the history of injury as given to him by appellant; diagnosed appellant with lumbar sprain/strain, right sided inguinal hernia, prescribed medication and physical therapy; noted that appellant's right sided inguinal hernia repair was performed by Dr. Brian H. Garber, a Board-certified general surgeon on October 30, 1995 and provided his operative procedures.

In a decision dated December 18, 1995, the Office denied appellant's claim on the grounds that fact of injury was not established. The Office stated that appellant had not responded to an November 9, 1995, Office inqury for clarification and had waited nearly eight months to file a notice of injury and obtain medical treatment for the alleged incident of February 10, 1995.

By letter dated April 4, 1996, appellant requested reconsideration of the December 18, 1995 decision and submitted additional evidence. This evidence included: appellant's own statements dated February 22, and April 4, 1996; a statement from his supervisor dated March 5, 1996 and noting that he was informed of appellant's alleged incident on or about February 10, 1995; a station manager's statement concerning appellant's word and loyalty to his job dated March 9, 1996; and a medical report from Dr. Manning dated March 5, 1996.

In a merit decision on reconsideration dated May 8, 1996, the Office modified its prior December 18, 1995 decision by finding that the incident occurred as alleged on February 10, 1995; but noting that a medical condition resulting from the incident had not been established. In other words, the evidence of record failed to support a casual relationship between the diagnosed condition and the incident of February 10, 1995.

The Board finds that appellant has not met his burden of proof in establishing that he sustained an injury to his lower back while in the performance of duty on February 10, 1995.

An employee seeking benefits under the Federal Employees' Compensation Act[1] has the burden of establishing that the essential elements of his or her claim[2] including the fact that the individual is an "employee of the United States" within the meaning of the Act,[3] that the claim was timely filed within the applicable time limitation period of the Act,[4] that an injury was sustained in the performance of duty as alleged, and that any disability and/or specific condition

[1] 5 U.S.C. §§ 8101-8193.

[2] *See Daniel R. Hickman*, 34 ECAB 1220 (1983); *see also* 20 C.F.R. § 10.110.

[3] *See James A. Lynch*, 32 ECAB 216 (1980); *see also* 5 U.S.C. § 8101(1).

[4] 5 U.S.C. § 8122.

for which compensation is claimed are causally related to the employment injury.[5] 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.[6]

In order to determine whether a federal employee has sustained a traumatic 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. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.[7] Second, the employee must submit sufficient evidence to establish that the employment incident caused a personal injury.[8] An employee may establish that an injury occurred in the performance of duty as alleged but failed to establish that his or her disability and/or a specific condition for which compensation is claimed are causally related to the injury.[9]

To accept fact of injury in a traumatic injury case, the Office, in addition to finding that the employment incident occurred in the performance of duty as alleged, must also find that the employment incident resulted in an "injury." The term "injury" as defined by the Act, as commonly used, refers to some physical or mental condition caused either by trauma or by continued or repeated exposure to, or contact with, certain factors, elements or condition.[10] The question of whether an employment incident caused a personal injury generally can be established only by medical evidence.[11] The belief of the claimant that a condition was caused or aggravated by the employment is not sufficient to establish a causal relationship.[12]

In the instant case, it is not disputed that appellant has a lower back and a right sided inguinal hernia condition, but the Office found that the medical evidence was insufficient to establish that the incident of February 10, 1995 resulted in an injury. Dr. Manning submitted various reports and progress notes, an attending physician's report (Form CA-20) dated November 20, 1995, a duty status report (Form CA-17) dated October 3, 1995, and providing some support for causal relationship between the February 10, 1995 employment incident and

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[5] *See Melinda C. Epperly*, 45 ECAB 196 (1993); *Joe Cameron*, 42 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[6] *David J. Overfield*, 42 ECAB 718 (1991); *Delores C. Ellyett*, 41 ECAB 992 (1990); *Victor J. Woodhams*, 41 ECAB 345 (1989).

[7] *See John J. Carlone*, 41 ECAB 354 (1989).

[8] *Id*. For a definition of the term "injury," *see* 20 C.F.R. § 10.5(a)(14).

[9] As used in the Act, the term "disability" means incapacity because of an injury in employment to earn wages the employee was receiving at the time of the injury *i.e.*, a physical impairment resulting in the loss of wage-earning capacity; *see Frazier V. Nichol*, 37 ECAB 528 (1986).

[10] *See Elaine Pendleton*, *supra* note 5.

[11] *See John J. Carlone*, *supra* note 7.

[12] *Manuel Garcia*, 37 ECAB 767 (1986).

the lower back and right sided inguinal hernia condition. These documents, however, are insufficient to establish appellant's claim as Dr. Manning did not provide sufficient medical rationale[13] explaining why the incident of February 10, 1995 would result in a lower back and right sided inguinal hernia condition. Dr. Manning's rationale for his opinion supporting causal relationship between the incident and any workplace factors is that he believed appellant to be a reliable historian and that appellant's hernia was caused or at least exacerbated by appellant's lifting injury of February 10, 1995. Specifically, Dr. Manning stated that "I cannot prove this and this is only my medical opinion, but I would like to reiterate that he [appellant] is a person that I trust, and I see no significant gain for him [appellant] not to be honest in the situation." Therefore, Dr. Manning's opinion is entitled to little probative value as it is speculative and equivocal.[14] As there is no reasoned medical opinion attributing appellant's complaints to a lower back and hernia condition sustained in the performance of duty on February 10, 1995, the medical evidence submitted failed to establish fact of injury and is insufficient to meet appellant's burden of proof.

The Board, however, has held that an award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that his condition was caused, precipitated or aggravated by her employment is sufficient to establish causal relationship.[15] Causal relationship must be established by rationalized medical opinion evidence and therefore, appellant failed to submit such evidence in the present case.[16] The Office, therefore, properly denied appellant's claim for compensation.

The decisions of the Office of Workers' Compensation Programs dated May 8, 1996 and December 18, 1995 are affirmed.

Dated, Washington, D.C.
July 10, 1998

Michael J. Walsh
Chairman

[13] *Charles H. Tomaszewski*, 39 ECAB 461, 467-68 (1988) (finding that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship); *see also George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

[14] *Id.*

[15] *See Id., Victor J. Woodhams, supra* note 6.

[16] *See Victor J. Woodhams, supra* note 6.

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member