U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CARLA ZAMORANO-EARWOOD and DEPARTMENT OF JUSTICE, OFFICE OF THE U.S. ATTORNEY, Houston, Tex.

Docket No. 97-1937; Submitted on the Record;
Issued March 23, 1999

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant sustained an injury on August 2, 1996 as alleged.

On September 18, 1996 appellant filed a claim for an injury to her upper back, right shoulder and right arm sustained on August 2, 1996 by lifting boxes and files. By letter dated November 1, 1996, the Office of Workers' Compensation Programs advised appellant that the information submitted with her claim was insufficient to establish that she sustained an injury on August 2, 1996. The Office advised appellant that she should submit a physician's report including "the physician's opinion supported by medical explanation as to how the reported work incident caused or aggravated the claimed injury. This explanation is crucial to your claim." The Office allotted appellant 20 days to submit medical evidence and stated that if the information was not submitted within 20 days her claim may be denied.

By decision dated December 18, 1996, the Office found that the evidence supported that appellant actually experienced the claimed event as alleged, but that a medical condition connected with this event was not supported. The Office denied appellant's claim for the reason that the evidence failed to demonstrate that appellant sustained an injury as alleged.

An employee seeking benefits under the Federal Employees' Compensation Act[1] has the burden of establishing 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

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[1] 5 U.S.C. §§ 8101-8193.

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

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

[4] 5 U.S.C. § 8122.

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.[5]

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, and 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 conditions.[6] The question of whether an employment incident caused a personal injury generally can be established only by medical evidence.[7]

The Board finds that appellant has not established that she sustained an injury on August 2, 1996 as alleged.

At the time the Office issued its December 18, 1996 decision,[8] the only medical evidence in the case record consisted of a December 3, 1996 report from Dr. David Benavides, a Board-certified orthopedic surgeon, diagnosing impingement of the right shoulder, possible rotator cuff tear, and cervical spondylosis, and imposing restrictions on appellant's activities. As this report did not contain a history of appellant's employment injury or an opinion that the diagnosed conditions were related to appellant's employment, it does not establish that appellant's August 2, 1996 employment incident resulted in the conditions diagnosed. Bills from appellant's emergency room visit on August 4, 1996 and from the Women's Health Care Center of Houston for treatment rendered there on September 19, 1996 do not constitute competent medical evidence and do not show that appellant's August 2, 1996 employment incident caused any medical condition. Appellant has not met her burden of proof.

[5] *See Daniel R. Hickman*, *supra* note 2.

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

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

[8] On appeal, appellant submitted additional medical evidence. However, 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," this evidence cannot be considered by the Board on appeal.

The decision of the Office of Workers' Compensation Programs dated December 18, 1996 is affirmed.

Dated, Washington, D.C.
March 23, 1999

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member