U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of TROY J. GOULD and U.S. POSTAL SERVICE,
POST OFFICE, Bronx, NY

Docket No. 99-537; Submitted on the Record;
Issued June 5, 2000

DECISION and ORDER

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

The issues are: (1) whether appellant met his burden of proof in establishing that he sustained a hernia in the performance of duty on February 12, 1998; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for a hearing before an Office hearing representative.

On March 16, 1998 appellant, then a 31-year-old mailhandler, filed a claim for compensation alleging that he sustained a hernia in his lower abdomen on February 12, 1998 while attempting to remove a tow bar hook from the back of a tow motor. He stopped work on February 13, 1998 and returned to work on March 30, 1998.

Appellant submitted two notes from Dr. Meyer Ganem, a specialist in internal medicine, dated March 13 and 26, 1998, which indicated a hernia with a recommendation of light duty but did not mention a job-related injury.

By letter dated April 10, 1998, the Office requested additional medical evidence from appellant stating that the initial information submitted was insufficient to establish an injury. The Office particularly advised appellant of the type of medical evidence needed to establish his claim.

Appellant submitted CA-16 and CA-17 forms, dated April 7, 1998, signed by Dr. Ganem. The attending physician's report diagnosed two hernias. He indicated with a checkmark "yes" that appellant's condition was caused or aggravated by an employment activity. Dr. Ganem noted first examining appellant on March 26, 1998. The remainder of the medical evidence did not note appellant's history of injury or the cause of the condition.

In a decision dated May 15, 1998, the Office denied appellant's claim as the medical evidence was not sufficient to establish that the condition was caused by the employment factor

as required by the Federal Employees' Compensation Act.[1] The Office found that there was no medical evidence submitted which indicated that the diagnosed condition of a hernia was in any way related to the alleged employment factor of removing a bar from the back of a tow motor.

By letter postmarked July 1, 1998, appellant requested a hearing before an Office hearing representative. He also submitted additional medical evidence.

By decision dated August 5, 1998, the Office denied appellant's request for a hearing. The Office found that the request was not timely filed. Appellant was informed that his case had been considered in relation to the issues involved and that the request was further denied for the reason that the issues in this case could be addressed by requesting reconsideration from the district Office and submitting evidence not previously considered.

The Board finds that appellant has failed to establish that he sustained a hernia in the performance of duty on February 12, 1998, as alleged.

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 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 order to determine whether an employee actually sustained an 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.

The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.[4] In some traumatic injury cases, this component can be established by an employee's uncontroverted statement on the Form CA-1.[5] An alleged work incident does not have to be confirmed by eyewitnesses in order to establish that an employee sustained an injury in the performance of duty, but the employee's statement

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[1] 5 U.S.C. §§ 8101-8193.

[2] *Elaine Pendleton,* 40 ECAB 1143, 1145 (1989).

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

[4] *Elaine Pendleton, supra* note 2.

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

must be consistent with the surrounding facts and circumstances and his subsequent course of action.[6]

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.[7]

Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.[8]

In this case, it is not disputed that appellant was attempting to remove a tow bar hook from a tow motor on February 12, 1998. However, the medical evidence is insufficient to establish that this activity caused or aggravated a medical condition. The only medical report supporting a causal relationship between appellant's employment and his diagnosed condition is Dr. Ganem's report dated April 7, 1998, which diagnosed appellant with two hernia's and indicated with a checkmark "yes" that appellant's condition was caused or aggravated by an employment activity. The Board has held that an opinion on causal relationship which consists only of a physician checking "yes" to a medical form report question on whether the claimant's condition was related to the history given is of little probative value. Without any explanation or rationale for the conclusion reached, such report is insufficient to establish causal relationship.[9] The Board further notes that Dr. Ganem did not first treat appellant until over a month after the claimed injury occurred and that his reports do not indicate that he is familiar with the history of the injury.[10] Therefore, these reports are insufficient to meet appellant's burden of proof.

The remainder of the medical evidence fails to provide an opinion on the causal relationship between this incident and appellant's diagnosed condition. For this reason, this evidence is not sufficient to meet appellant's burden of proof.

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[6] *Rex A. Lenk*, 35 ECAB 253, 255 (1983).

[7] *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

[8] *James Mack,* 43 ECAB 321 (1991).

[9] *Lucrecia M. Nielson,* 41 ECAB 583, 594 (1991).

[10] *See Cowan Mullins,* 8 ECAB 155, 158 (1955) (where the Board held that a medical opinion based on an incomplete history was insufficient to establish causal relationship).

The Board further finds that the Office properly denied appellant's request for a hearing.

Section 8124(b) of the Act,[11] concerning a claimant's entitlement to a hearing before an Office representative, states: "Before review under section 8128(a) of this title, a claimant for compensation not satisfied with a decision of the Secretary under subsection (a) of this title is entitled, on request made within 30 days after the date of issuance of the decision, to a hearing on his claim before a representative of the Secretary."[12]

The Board has held that section 8124(b)(1) is "unequivocal" in setting forth the time limitation for requesting hearings. A claimant is entitled to a hearing as a matter of right only if the request is filed within the requisite 30 days.[13] Even where the hearing request is not timely filed, the Office may within its discretion, grant a hearing, and must exercise this discretion.[14]

In the instant case, the Office properly determined appellant's request for a hearing postmarked July 1, 1998 was not timely filed as it was made more than 30 days after the issuance of the Office's May 15, 1998 decision. The Office, therefore, properly denied appellant's hearing as a matter of right.

The Office then proceeded to exercise its discretion, in accordance with Board precedent, to determine whether to grant a hearing in this case. The Office determined that a hearing was not necessary as the issue in the case was medical and could be resolved through the submission of medical evidence in the reconsideration process. Therefore, the Office properly denied appellant's request for a hearing as untimely and properly exercised its discretion in determining to deny appellant's request for a hearing as he had other review options available.[15]

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[11] 5 U.S.C. §§ 8101-8193.

[12] 5 U.S.C. § 8124(b)(1).

[13] *Tammy J. Kenow*, 44 ECAB 619 (1993).

[14] *Id.*

[15] With his untimely request for a hearing and on appeal, appellant submitted additional evidence. However, the Board may not consider new evidence on appeal; *see* 20 C.F.R. § 501.2(c).

The August 5 and May 15, 1998 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, D.C.
June 5, 2000

Michael J. Walsh
Chairman

George E. Rivers
Member

Bradley T. Knott
Alternate Member